

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

T.R. et al.,

Plaintiffs,

v.

Civil Action No. 15-04782-MSG

The School District of Philadelphia,

Defendant.

**PLAINTIFFS' MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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Plaintiffs L.R. and D.R. and their mother, Madeline Perez, and R.H. and his mother, Manqing Lin (collectively, “Plaintiffs”), respectfully submit this memorandum of law in opposition to the Motion for Summary Judgment (the “Motion”) filed by Defendant the School District of Philadelphia (the “District”).

I. INTRODUCTION

Plaintiffs are parents with limited English proficiency (“LEP”) and their children who are students with disabilities enrolled in the District. In their First Amended Complaint (the “Complaint”), Plaintiffs seek to remedy the systemic deficiencies in translation and interpretation services provided by the District, which have deprived the Parent Plaintiffs, Ms. Lin and Ms. Perez, of their right to participate meaningfully in the process of developing and revising the Individualized Education Programs (“IEPs”) for their children, discriminated against them on the basis of national origin in contravention of federal protections, and denied their children equal opportunities to benefit from their education. The District’s Motion seeks summary judgment on each of Plaintiffs’ statutory claims, including those pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400–1482.

What is at stake in this litigation has been called a “central feature of the IDEA”—the significant role of parental involvement in developing special education plans for their children. *Hoelt v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1300 (9th Cir. 1992); *see also Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 524 (2007) (The “IDEA requires school districts to develop an IEP for each child with a disability, with parents playing a ‘significant role’ in this process.”).¹ The District itself admits to the critical role that access to a written IEP plays in

¹ *See also Mr. & Mrs. M. v. Ridgely Bd. of Educ.*, No. 3:05-CV-584 (RNC), 2007 U.S. Dist. LEXIS 24691, at *5 (D. Conn. Mar. 30, 2007) (district’s failure to ensure parents’ participation in IEP meetings essentially equates to a *per se* denial of FAPE even without loss of educational benefit).

ensuring meaningful parent participation for English speaking parents. Yet, the District denies the importance of the written IEP for LEP parents, including the effect of not having this document in a language they can read on their ability to: understand what is proposed for their children, understand detailed, complex evaluations and services contained in the IEP, which often exceed 50 pages, and track their children's progress throughout the school year.

The record evidence shows that documents like a Notice of Recommended Educational Placement ("NOREP"), which are explicitly required to be furnished in a parent's native language, are not translated; draft IEPs are never translated as a matter of policy; IEPs are not fully interpreted; and quality interpretation services by trained personnel are not available for all IEP meetings. The failure of the District to provide translated documents and quality interpretation services and the District's admission that it lacks any system to ensure these services are provided to LEP parents of children with disabilities has resulted in harm to Plaintiffs and others. LEP parents have been deprived of their rights under the IDEA and civil rights laws, including their right to meaningful participation due to their inability to understand complex evaluations provided only in English, to know what their child is receiving as reflected in an IEP, to learn what alternative services might be available, and to identify whether the District is following a current IEP. This lack of the ability to meaningfully participate has also resulted in the denial of services to their children, and, as a result, the denial of the Free and Appropriate Public Education ("FAPE") the law requires.

The District's primary legal argument that Plaintiffs lack standing for failure to exhaust administrative remedies glosses over this Court's prior decision, as well as the supporting case law establishing that it would be futile to pursue claims for injunctive and systemic relief seeking future language services through due process hearings. *See T.R. v. Sch. Dist. of Phila.*, 223 F.

Supp. 3d 321, 330 (E.D. Pa. 2016); *see also Komninos by Komninos v. Upper Saddle River Bd. of Educ.*, 13 F.3d 775, 778–79 (3d Cir. 1994). This futility is reflected in the decisions of hearing officers related to the original named plaintiffs in this action. Nothing in the law mandates or suggests that, after four years of litigation in district court and the development of a significant factual record regarding language services, Plaintiffs should be relegated to administrative proceedings that lack the requisite remedial authority.

Likewise, the District’s Statement of Undisputed Facts ignores the evidence in the record, which shows the harm the Plaintiffs have suffered as a result of the District’s systemic policy and practice of not providing adequate translation and interpretation services for LEP parents. Indeed, the record is replete with instances in which the Plaintiffs have been impacted by the District’s policy and practice of not providing translated IEPs, draft IEPs, NOREPs, and other basic documents to LEP parents. As a result, the Parent Plaintiffs, Ms. Perez and Ms. Lin, have been deprived of their right to participate in the special education process in violation of the IDEA and their rights under Title VI of the Civil Rights Act of 1964. Simultaneously, the Student Plaintiffs, L.R., D.R., and R.H., have been denied FAPes and are deprived of their rights under the IDEA, Section 504 of the Rehabilitation Act, Americans with Disabilities Act, and 22 Pa. Code §§ 14–15. They are also denied equal educational opportunities under the Equal Educational Opportunities Act. Without the systemic relief for language services sought in their Complaint, Plaintiffs’ statutory rights will continue to be violated by the District.

For the reasons set forth below and in the accompanying Response to the District’s Statement of Facts and Statement of Additional Facts that Preclude Summary Judgment (“Pls.’ SOF”), the District’s Motion should be denied in its entirety.

II. FACTUAL BACKGROUND

The central premise of the District’s Motion – namely, there is no factual disputes that (1) Ms. Lin and Ms. Perez did “meaningfully participate[] in the IEP processes for their children” and (2) the “Student Plaintiffs have [not] been deprived of any education benefits or opportunities” – is contradicted by the record evidence. In particular, the record shows that despite their legal obligations to do so, the District has failed to fully translate IEPs, failed to fully translate draft IEPs, failed to translate other special and regular education documents including NOREPs, which are explicitly required to be translated, and failed to provide adequate interpretation services. These failures have resulted in the Parent Plaintiffs not being able to meaningful participate in their children’s educational processes and in the denial of free and appropriate public educations for the Student Plaintiffs.

Below is a summary of the facts relevant to the District’s provision of language services to LEP parents and the impact of the District’s failed policies and practices on the Plaintiffs.²

A. The District’s Failed Policies and Practices Regarding Language Services.

A key component to ensuring LEP parents are able to participate in the IEP process is the high quality translation of IEP process documents—a fundamental proposition with which the District’s personnel agree. Ex. 8,³ Soderman Dep. 169:6–170:7; Ex. 19, Still Dep. 51:10–14; Ex. 25, Expert Report of Nelson L. Flores, Ph.D. at 11. Further, even the District’s own personnel recognize that it is “best practice” to provide parents with draft IEPs and evaluations prior to IEP meetings “so [t]hey have an opportunity to review the document and receive it to think about it before the IEP meeting itself.” Ex. 7, Hess Dep. 122:16–123:8, 188:20–189:9, 191:11–192:8.

² A more detailed statement of the facts is set forth in Plaintiffs’ Response to the District’s Statement of Facts and Statement of Additional Facts that Preclude Summary Judgment, which is hereby incorporated.

³ All exhibit citations are to the exhibits attached to Plaintiffs’ Response to the District’s Statement of Facts and Plaintiffs’ Statement of Additional Facts that Preclude Summary Judgment.

Nevertheless, the District does not consistently provide fully translated IEP process documents—whether draft or final—to LEP parents, despite providing those documents to their English-speaking counterparts. Indeed, the District admits that it does not even “keep track of the parents that are . . . limited English proficient,” discrediting any suggestion that the District can confirm all LEP parents are receiving the services they need and to which they are entitled. *See* Pls.’ SOF ¶¶ 10–12; *see also* Ex. 8, Soderman Dep. 191:16–22 (testifying that she is unaware of “any kind of evaluation of whether [LEP] parents of students with disabilities are receiving the interpretation and translation services that they need to participate in the special education process”). The District also fails to (1) consistently notify LEP parents of their rights to receive translation services, (2) consistently notice LEP parents of the process by which they may receive translations, and (3) track translation requests that are received. *See* Ex. 6, Perez Decl. ¶ 6; Ex. 14, Bustamante Dep. 113:22–115:6; Ex. 3, Aug. 2, 2018 Perng Decl. ¶¶ 7–12, 26, 28; Ex. 17, McCabe Decl. ¶¶ 20–21; Ex. 9, Capitolo Dep. 209:13–20; Ex. 8, Soderman Dep. 105:1–17; Ex. 27, Velez Dep. 188:24–192:16, 203:12–205:9, 216:14–222:1, 223:13–228:1.

With respect to the translation of IEP process documents in particular, District personnel concede that the District routinely only translates the headings and “no individual information” of IEPs for LEP parents. *See* Pls.’ Resp. to Def.’s SOF ¶ 16; Pls.’ SOF ¶¶ 16–17. District personnel also admit that the policy is to only provide English-versions of draft IEPs and evaluations to LEP parents, arguing that offering LEP parents the opportunity to meet with an interpreter prior to the IEP meeting to review the draft is a sufficient substitute.⁴ Furthermore, even when parents do request translations, there is no policy or consistent practice of providing them. Ex. 7, Hess Dep. 160:13–22; Ex. 17, McCabe Decl. ¶¶ 20–26.

⁴ There is also evidence in the record that the District fails to translate regular education documents as well. Pls.’ Resp. to Def.’s SOF ¶ 10.

The record also shows that it is necessary to have trained, qualified interpreters at every meeting between the District and the parent or guardian. *See* Pls.’ SOF ¶¶ 30–31. But the District’s policies and practices fail in this regard as well. *See* Pls.’ SOF ¶¶ 32–46. For example, while the District employs Bilingual Counseling Assistants (“BCAs”), it does not employ enough to attend each school daily, and it does not employ any that have skills “[s]pecific to special education.” *See* Ex. 8, Soderman Dep. 46:17–22, 173:24–174:13; Ex. 10, PSD006438. Even when a BCA is assigned for an IEP meeting, it is unclear whether they receive copies of necessary IEP documents in accordance with the District’s written policy. Ex. 7, Hess Dep. 140:11–141:22.⁵ More critically, BCAs only provide interpretation at some IEP meetings, and the District does not track how often they are used. *See* Pls.’ Resp. to Def.’s SOF ¶ 15.

B. Impact of the District’s Policies and Practices on Plaintiffs.

The District’s failure to provide adequate translation and interpretation services to LEP parents, as a matter of policy and practice, has had a direct impact on the Plaintiffs. Ms. Perez explained, for example, that she receives IEPs with “only the headings” and “titles [translated] to Spanish, and the summary comes in English.” Ex. 21, Perez Dep. 47:10–48:7; *see also* Ex. 6, Perez Decl. ¶¶ 11, 32–33, 36. In other words, the actual substance of the IEP is not translated for her. Therefore, “[a]lmost every time” she attends an IEP meeting she “ask[s] for translation[s] because they are in English.” Ex. 21, Perez Dep. 12:21–13:8, 80:5–6. Without these translated documents, Ms. Perez cannot later review and recall the plans for each of her children, Pls.’

⁵ Furthermore, perhaps due to the inadequate number of employed BCAs, the District also utilizes others to interpret at special education meetings, including principals, secretaries, and neighbors. *See, e.g.*, Ex. 7, Hess Dep. 46:16–48:12; Ex. 8, Soderman Dep. 137:14–138:4, 143:6–144:15, 172:4–174:19; Ex. 14, Bustamante Dep. 121:1–3, 126:23–128:3, 132:4–18. While telephonic interpretation through Language Line is also available, the District does not track how often or the purposes for which it is used and does not know the backgrounds of the interpreters providing those services. Ex. 8, Soderman Dep. 40:18–41:14, 64:18–65:2, 180:16–182:24.

Resp. to Def.'s SOF ¶ 53, or refer to them to "know what's going on," *Id.* ¶ 38; Ex. 21, Perez Dep. 52:2–12.

Furthermore, the lack of fully translated IEPs has resulted in the deprivation of educational services for Ms. Perez's children. For example, D.R. failed to receive extended school year, a special education summer program necessary for her to receive a FAPE. Ex. 21, Perez Dep. 102:1–21. Likewise, because Ms. Perez cannot understand the IEPs the District provides her, it is unclear if L.R. is receiving all of the behavior-related services he needs or if D.R. is connected with necessary resources, such as transition services. Ex. 6, Perez Decl. ¶¶ 19–24, 39–44. Ms. Lin has had similar experiences, resulting in a reduction in R.H.'s therapy services that she not only disagreed with, but in fact was not even aware took place. Ex. 5, Lin Decl. ¶¶ 36–37.

Similarly, the lack of fully translated draft IEPs has hampered Ms. Lin's and Ms. Perez's abilities to participate in IEP meetings and has hindered their children's educational processes generally. As Ms. Lin explained, "[t]he benefit of having those document[s] beforehand is that it would help me to have enough time to understand the document's contents and also be able to fully participate in the IEP meeting without any delay." Ex. 15, Lin Dep. 172:5–21; *id.* at 110:23–111:4 (explaining that she wants to receive "the IEP report, the draft and the final report in Chinese translation so that I can understand and agree with the program"). Likewise, Ms. Perez "could be a more effective advocate" for her children if she had translated documents before IEP meetings. Ex. 21, Perez Dep. 103:3–12.⁶

⁶ The District attempts to circumvent these facts by arguing that draft IEPs do not need to be provided to LEP parents because those parents can meet with an interpreter to review drafts prior to IEP meetings. Def.'s SOF ¶ 23; *see also* Def.'s Mem. at 13. But Ms. Perez was never even informed of this service. Ex. 6, Perez Decl. ¶¶ 15, 34. Moreover, when Ms. Lin received an oral interpretation of a draft report for R.H., it did not enable her to meaningfully participate in the process and did not replace the written translation because she still was not able to

Furthermore, the District has also failed to provide Ms. Perez with fully translated NOREPs—in contravention of the clear legal requirement that it translate these essential documents—and the District also has made no attempt to translate progress reports and notes for L.R. and D.R. Ex. 6, Perez Decl. ¶¶ 11, 32; Ex. 21, Perez Dep. 74:18–75:2.; Pls.’ SOF ¶ 27. Additionally, the District has not translated copies of R.H.’s Functional Behavior Assessment, Positive Behavior Support Plan, and Progress Monitor Reports for Ms. Lin. Ex. 15, Lin Dep. 68:1–69:3; Ex. 5, Lin Decl. ¶¶ 17, 25–26, 29–30, 46–47. Without such translated documents, Ms. Lin has been unable to ensure R.H. receives adequate behavioral services, and indeed “[b]ecause of the increase in R.H.’s negative behaviors during the second grade, he was unable to complete all of his classwork during the 2018-2019 school year.” Ex. 5, Lin Decl. ¶ 48; *see also id.* ¶¶ 49–58 (describing R.H.’s behavioral issues that she believes are inadequately addressed and the continued lack of receipt of related translated documents).⁷

The result has been that both Plaintiff Parents have been denied opportunities to participate in their children’s special education planning processes. For example, Ms. Lin signed the untranslated PTE without understanding that it gave consent for the District to conduct a limited evaluation of R.H. Ex. 5, Lin Decl. ¶ 10. Also, the Plaintiff Parents have not able to give input at the LEP meetings, and they have not been able to ensure that their children are receiving necessary services. Ex. 15, Lin Dep. 146:4–147:3; Ex. 6, Perez Decl. ¶ 8 (Ms. Perez was unaware that L.R.’s 2012 diagnosis of autism was not included in his IEP).

fully understand the report, in part because District personnel could not adequately interpret special education terminology. *See, e.g.*, Ex. 15, Lin Dep. 50:4–53:23, 142:12–143:21; *see also* Ex. 5, Lin Decl. ¶¶ 11–15 (explaining why oral translation of draft IEPs “is not a substitute for having a written draft in my language”).

⁷ Furthermore, in a February 2016 meeting to discuss R.H.’s kindergarten placement, the District provided Ms. Lin a Permission to Evaluate (“PTE”) (which it recognized should be translated, *see* Ex. 7, Hess Dep. 147:6–11) and other special education documents in English only and *refused* to translate them into Chinese. Ex. 15, Lin Dep. 112:17–117:8. And both parents have received evaluation reports that were not fully translated, whether before meetings or at all, despite the District’s recognition of the importance of receiving such documents in advance of related meetings. Ex. 6, Perez Decl. ¶¶ 8–9; Ex. 15, Lin Dep. 145:6–18; Ex. 7, Hess Dep. 122:16–123:8.

Likewise, the District has provided neither Ms. Lin nor Ms. Perez with adequate interpretation services. For example, Ms. Lin explained that, although telephone interpretation was used during meetings to discuss R.H.’s progress monitoring reports, the “interpretation was difficult to understand an incomplete.” Ex. 5, Lin Decl. ¶ 25. As a result, she would often “resort to just circling the numbers of percentage of mastery because I did not understand the written reports.” *Id.* Similarly, she has been unable to “effectively understand or challenge” changes to R.H.’s physical therapy services because the physical therapy progress notes were not translated or adequately interpreted for her. Ex. 5, Lin Decl. ¶ 28. And, at other times, she is simply not offered interpretation services at all. Ex. 5, Lin Decl. ¶¶ 46–47.

Also, Ms. Perez has attended several IEP meetings for which the District did not provide an interpreter, or, where interpreters were present, they did not fully sight translate IEPs. Ex. 21, Perez Dep. 70:15–23, 78:3–10. Indeed, at one IEP meeting for D.R., a principal acted as an interpreter—but only “once he was present.” And, as Ms. Perez explained, the quality “of interpretation was not the same,” and not all of the conversations were interpreted for her. The result was that she was only provided “the gist” of what was said. *Id.* at 108:1–109:4. Ms. Perez has also “experienced problems with interpretation for L.R.’s IEP meetings.” Ex. 6, Perez Decl. ¶ 25. She has found “it difficult to understand” telephonic interpretation, and has participated in at least one IEP meeting for L.R. in which the District requested that a bilingual case worker serve as an interpreter instead of a District interpreter. *Id.* ¶¶ 27, 29. The District’s failure to provide adequate interpretation services has left both Ms. Perez and Ms. Lin to their own devices to try to identify others to assist them, which is an inconsistent process at best. *See, e.g.*, Ex. 6, Perez Decl. ¶ 35; Ex. 5, Lin Decl. ¶ 37.

III. LEGAL STANDARD

A party moving for summary judgment must demonstrate that there is “no genuine dispute as to any material fact and [that] the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the burden of identifying evidence that demonstrates the “absence of a genuine issue of material fact” for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). An issue of fact is material when it “might affect the outcome of the suit under the governing law,” and the issue is genuine when “the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When deciding a motion for summary judgment, “[i]nferences should be drawn in the light most favorable to the non-moving party,” as it is “inappropriate for a court to resolve factual disputes [or] make credibility determinations.” *Big Apple BMW, Inc. v. BMW of N. Am., Inc.*, 974 F.3d 1358, 1363 (3d Cir. 1992).

IV. ARGUMENT

A. **The Court Has Subject Matter Jurisdiction Over Plaintiffs’ Claims and Plaintiffs Are Not Required to Exhaust Administrative Remedies.**

The District seeks to dismiss all of Plaintiffs’ claims for lack of subject matter jurisdiction, arguing that Plaintiffs first had to exhaust administrative remedies under the IDEA.⁸ Summary judgment should not be granted on these grounds for the several reasons discussed below:

⁸ Defendant wrongly argues that all of Plaintiffs’ claims must be exhausted, including Plaintiffs’ Title VI claim, for which exhaustion of administrative remedies is not required and is not possible. *See Blunt v. Lower Merion Sch. Dist.*, 559 F. Supp. 2d 548, 561 (E.D. Pa. 2008), *aff’d*, 767 F.3d 247 (3d Cir. 2014) (“the exhaustion requirement under § 1415(l) of the IDEA, which focuses on ‘the rights of children with disabilities,’ does not bar plaintiffs’ claims under Title VI”). Plaintiffs’ Title VI claim is a distinct cause of action regarding a violation of Plaintiffs’ civil rights based on national origin discrimination. It is predicated on the fact that the District, as a recipient of federal funding, cannot discriminate on the basis of national origin and does not encompass disability discrimination. *Id.* As a result, exhaustion of the IDEA’s administrative remedies is not required.

First, this Court previously held that Plaintiffs are not required to exhaust their administrative remedies, because it would be futile to challenge systemic legal deficiencies that cannot be remedied through the administrative process. *T.R. v. Sch. Dist. of Phila.*, 223 F. Supp. 3d at 330. Under the law-of-the-case doctrine, “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case” in order “to promote[] the finality and efficiency of the judicial process by protecting against the agitation of settled issues.” *Am. Civil Liberties Union v. Mukasey*, 534 F.3d 181, 187 (3d Cir. 2008) (citing *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988)). No recognized exception justifies a departure from this Court’s 2016 decision.⁹

First, there has been no intervening authority, and the interpretation of the futility exception to the IDEA’s exhaustion requirement is the same as it was at the time of this Court’s 2016 decision. *See, e.g., Wellman v. Butler Area Sch. Dist.*, 877 F.3d 125, 131 (3d Cir. 2017). Moreover, the decision that Plaintiffs were not required to exhaust administrative remedies is consistent with the controlling authority and not in clear error. *See, e.g., Beth V. v. Carroll*, 87 F.3d 80, 89 (3d Cir. 1996) (recognizing exception for systemic legal deficiencies seeking system-wide relief); *see also P.V. ex rel. Valentin v. Sch. Dist. of Phila.*, No. 2:11-cv-04027, 2011 WL 5127850, at *7 (E.D. Pa. Oct. 31, 2011) (“the ‘systemic legal deficiency / system-wide relief’ exhaustion exception is simply a subset of the well-established ‘futility’ and ‘no administrative relief’ exceptions”). In particular, it remains clear that an administrative process would be futile because the hearing officer cannot and does not have the authority to award Plaintiffs’ requested

⁹ A decision on a legal issue must be followed absent “extraordinary circumstances” where “(1) there has been an intervening change in the law; (2) new evidence has become available; or (3) reconsideration is necessary to prevent clear error or a manifest injustice.” *Mukasey*, 534 F.3d at 187 (internal quotations omitted). In addition, courts may take into consideration “the age of this case and the desperate need for resolution of this controversy.” *Pit River Home & Agr. Co-op. Ass’n v. United States*, 30 F.3d 1088, 1097 (9th Cir. 1994).

relief by ensuring access to requested language services through changes to the District's language services' policies and practices. *See, e.g., N.J. Protection & Advocacy v. N.J. Dep't of Educ.*, 563 F. Supp. 2d 474, 487 (D.N.J. 2008); *T.R.*, 223 F. Supp. 3d at 330 n.7; Ex. 2, Ex. B to Am. Compl.; Ex. 31, *C.D. v. Mars Area Sch. Dist.*, ODR File No. 15968-14-15 AS, at *15 (PA SEA, Oct. 31, 2015); Ex. 32, *J.S. v. Northwestern Lehigh Sch. Dist.*, ODR No. 13350-1213KE, at *12 (PA SEA, Feb. 26, 2013). As this Court noted in its earlier opinion, this was the conclusion of hearing officer who addressed the claims of the original plaintiffs in this matter. *See* Pls.' Resp. to Def.'s SOF ¶ 1. Accordingly, requiring a hearing officer to consider this claim—particularly where the record has already been developed through extensive discovery—would only waste time, delay resolution of this matter, and drain scarce judicial resources.

The District's argument that this Court's opinion regarding class certification negates its previous decision regarding exhaustion of administrative remedies is not consistent with the facts and does not comport with the controlling legal authority. A decision regarding commonality or Rule 23(b)(2) applicability does not involve the same analysis as to whether the administrative process would be futile and inadequate. Rather, this Court's decision on class certification turned on whether individualized remedies prevent certification and did not invalidate the finding that Plaintiffs were not required to exhaust administrative remedies. Moreover, as noted in its class certification opinion, this Court did not reach the merits of Plaintiffs' claims regarding the lack of system for providing language services and the "failure by the School District to provide appropriate translation services throughout the special education process." *T.R. v. Sch. Dist. of Phila.*, No. CV 15-4782, 2019 WL 1745737, at *7 (E.D. Pa. Apr. 18, 2019).

Claims alleging system and pervasive failures in a special education program can satisfy the futility exception even when they are not brought as part of a class action. *C.L. v. Hastings-*

on-Hudson Union Free Sch. Dist., No. 14-CV-4422 (NSR), 2015 WL 1840507, at *4 (S.D.N.Y. Apr. 21, 2015). The record is replete with evidence that the District lacks an adequate system for providing interpretation and translation services for LEP parents of students with disabilities. Pls.’ SOF ¶¶ 13–46. Plaintiffs’ systemic claims and requested systemic relief therefore fall within the futility exception for IDEA exhaustion. *See P.V.*, 2011 WL 5127850, at *8; *see also*, *e.g.*, *J.S. ex rel. N.S. v. Attica Central Schools*, 386 F.3d 107, 115 (2d Cir. 2004) (finding exhaustion not required for systemic claims regarding preparation and implementation of IEPs, evaluation of students, and provision of procedural safeguards); *D.L. v. Dist. of Columbia*, 450 F. Supp. 2d 11, 18 (D.C. Cir. 2006) (exhaustion not required for systemic claims regarding failure to comply with Child Find requirements).¹⁰

Finally, requiring Plaintiffs to exhaust administrative remedies would not serve the policy rationale for the IDEA’s exhaustion requirement. *See Batchelor v. Rose Tree Media Sch. Dist.*, 759 F.3d 266, 278 (3d Cir. 2014). First, there is no need for further development of the administrative record, as it has already been developed through this Court’s discovery process. Moreover, agency expertise is not required to resolve Plaintiffs’ claims of systemic deficiencies in language services. *See, e.g.*, *Scaggs v. N.Y. Dep’t of Educ.*, No. 06-CV-0799 (JFB)(VVP), 2007 WL 1456221, at *6 (E.D.N.Y. May 16, 2007) (discussing the well-established distinction between “systemic violations to be addressed by the federal courts, from technical questions of how to define and treat individual students’ learning disabilities, which are best addressed by administrators”); *D.L.*, 450 F. Supp. 2d at 15.

¹⁰ The District attempts to argue that under *J.T.*, framing a Complaint as a class action does not automatically convert the issues into systemic issues and therefore does not excuse Plaintiffs’ failure to exhaust. *See J.T. v. Dumont Pub. Sch.*, Civ. No.09-4969 (MAH), 2012 WL 1044556, at *11-12 (D.N.J. Mar. 28, 2012) (a complaint is not systemic if it involves only “limited components of a program, and if the administrative process is capable of correcting the problem”) (internal citations omitted). But, as this Court previously explained, Plaintiffs’ claims of “a failure by the School District to provide appropriate translation services *throughout the special education process*” are systemic in a way that the claims in *J.T.* were not. *See T.R.*, 2019 WL 1745737, at *7 (emphasis added).

B. The District Has Not Shown There Is No Genuine Dispute of Material Fact as to Whether Plaintiffs Have Been Injured or that Plaintiffs Lack Standing as a Matter of Law.

The District correctly recognizes that a plaintiff has standing he or she (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.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1545 (2016). However, the District’s characterization of the case law on standing leaves the incorrect impression that a substantive violation of the IDEA—or any other statute or right—is necessary in order to show standing. That is not the law, as demonstrated by the cases cited by the District.

A procedural violation of the IDEA is enough to confer standing “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”—*i.e.*, when there is injury associated with the procedural violation. *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 565 (3d Cir. 2010).¹¹ Further, the “injury-in-fact-requirement is ‘very generous’ to claimants” and demands only “some specific, ‘identifiable trifle’ of injury. It is not Mount Everest.” *Cottrell v. Alcon Labs.*, 874 F.3d 154, 162 (3d Cir. 2017) (internal citations omitted).

Moreover, contrary to the District’s sweeping assertions of no harm to the Plaintiffs, the evidence in the record shows the concrete harm caused by the denial of translation and adequate interpretation services. Ms. Perez, for example, explained that because she does not receive fully translated IEPs, she has not been aware of all of the potentially beneficial services available to her children. *See* Pls.’ Resp. to Def.’s SOF ¶ 43; Ex. 6, Perez Decl. ¶¶ 19–24, 39–44. Ms. Lin

¹¹ In *J.T. ex rel. A.T. v. Dumont Public Schools*, 533 F. App’x 44 (3d Cir. 2013), one of the cases relied on by the District, the fact that the Plaintiffs conceded “they suffered no substantive harm” was dispositive of the court’s conclusion on the issue of standing—indeed, that concession was confirmed repeatedly throughout the court’s opinion.

has similarly explained that the District's failure to provide her with translated copies of draft IEPs and other IEP-related documents hinders her ability to give input at R.H.'s IEP meetings and has resulted in her inability to ensure that R.H. is receiving necessary behavioral services. *See* Pls.' Resp. to Def.'s SOF ¶ 31; Ex. 5, Lin Decl. ¶¶ 16–57. She also explained that without translated documents and adequate interpretation services, she is not able to fully understand the documents she receives, or recall the findings and suggestions in the documents. Pls.' Resp. to Def.'s SOF ¶ 33; Ex. 5, Lin Decl. ¶ 15. The result is Ms. Lin and Ms. Perez are not able to meaningfully participate in their children's educational processes, which harms them directly. The District's actions—or lack of policies—has also resulted in harm to their children by denying them educational opportunities and depriving them of the free appropriate public education they are entitled to by law. *See supra* § II; *see generally* Ex. 5, Lin Decl.; Ex. 6, Perez Decl.

Finally, the fact that the Plaintiffs chose not to seek remedies in the form of individualized damages or changed educational services does not constitute a concession that Plaintiffs were not harmed. Rather, the systemic relief that Ms. Perez and Ms. Lin seek is what they have identified as necessary to stop the harm; *i.e.*, the District must provide them with the translation and interpretation services necessary for them to participate meaningfully in the development of their children's IEPs and reduce the risk that their children will not obtain the educational benefits and opportunities to which they are entitled. *See* Pls.' Resp. to Def.'s SOF ¶¶ 28, 38. For all of these reasons, the District has not met its burden of proving there are no genuine issues of material fact with respect to whether Plaintiffs suffered an injury in fact, nor has the District demonstrated that it is entitled to judgment as a matter of law based on lack of standing.

C. The District Has Not Demonstrated There Is No Genuine Dispute of Material Fact on the Parent Plaintiffs' IDEA Claim.

The IDEA confers a host of specific rights to parents including the right to examine their children's records, receive specific documents in writing, and "participate in meetings with respect to the identification, evaluation and education placement of the child, and the provision of [FAPE] to such child, and to obtain an independent education evaluation of the child." 20 U.S.C. § 1415(b)(1). Specifically, a district must provide an IEP—which is the centerpiece of the IDEA—*in writing*. See 20 U.S.C. § 1415(d)(1)(A)(i); 34 C.F.R. §§ 300.320, 300.323; *Sch. Comm. of Burlington v. Dep't of Educ.*, 471 U.S. 359, 368 (1985) ("The modus operandi of the Act is the already mentioned individualized education program."); *Honig v. Doe*, 484 U.S. 305, 311 (1988) (IEPs are "the centerpiece of the [IDEA's] education delivery system"). In addition, a parent is entitled to prior *written* notice when the district proposes or refuses to initiate or change a program. 20 U.S.C. § 1415(b)(3), (c).¹² A parent also is entitled to *a copy* of any evaluation or re-evaluation and copies of evaluation reports must be *disseminated* to the parents at least 10 school days prior to the meeting of the IEP team. 22 Pa. Code § 14.123(c), (d).

Indeed, "[p]arental involvement is a central feature of the IDEA." *Hoelt*, 967 F.2d at 1300.¹³ As the Supreme Court has explained, the IDEA entitles parents to participate "in the substantive formulation of their child's educational program" and *requires* IEP teams, which must include parents "to take into account any 'concerns' parents'" have when they formulate the IEP. *Winkelman*, 550 U.S. at 524 (concluding that parents are intended to play "a significant

¹² The notice required by 20 U.S.C. § 1415(b)(3) must be provided "in the native language of the parents, unless it clearly is not feasible to do so." 20 U.S.C. § 1415(b)(4). The specific circumstance described in the regulations where the written notice does not have to be in the parent's native language is when the native language is not a written language, in which case other requirements must be met to ensure the notice is communicated to the parent. See 34 C.F.R. § 300.503(c)(2).

¹³ Procedural violations that "interfere with parental participation in the IEP formulation process undermine the very essence of the IDEA." *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 892 (9th Cir. 2001).

role”). As a result, the IDEA “creates in parents an independent stake . . . in the substantive decisions to be made” and “conveys rights to parents as well as children.” *Id.* at 531; *see also Knable ex rel. Knable v. Bexley City Sch. Dist.*, 238 F.3d 755, 765 (6th Cir. 2001) (“Substantive harm occurs when the procedural violations in question seriously infringe upon the parents’ opportunity to participate in the IEP process.”) As the Third Circuit previously observed, “[p]arents are often in a position to be forceful advocates for their children and through their vigilance and perseverance to help fulfill the IDEA’s promise of a free appropriate public education. That ‘cooperative process . . . between parents and schools’ that results from a parent’s action, after all, is at the very ‘core of the statute’ itself.” *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 625-26 (3d Cir. 2015) (quoting *Schaffer v. Weast*, 546 U.S. 49, 53 (2005)).¹⁴

Here, the record is replete with evidence that the District does not translate a host of IEP-related documents, including IEPs themselves, draft IEPs, and evaluation reports. *See supra* § II; Pls.’ SOF ¶¶ 14–29. The failure to provide fully translated copies of certain of these documents, such as NOREPs, is alone a clear-cut violation of the IDEA. Ex. 6, Perez Decl. ¶¶ 11, 32, 38; 34 C.F.R. § 300.503(c)(2). Without fully translated copies of all of the IEP-related documents, LEP parents like Ms. Perez and Ms. Lin are treated in as inferior as compared to English-speaking parents. The disparity between the positions of LEP parents and English-speaking parents is magnified by the District’s failure to provide LEP parents with adequate interpretation services, including at IEP meetings. *See supra* § II; Pls.’ SOF ¶¶ 32–46. In other words, the District consistently fails to provide LEP parents with access, much less timely access, to the same

¹⁴ The Third Circuit has also explained that “[t]he IEP is so significant that the courts have characterized it as the “centerpiece” of the IDEA’s system for delivering education to disabled children.” *D.S.*, 602 F.3d at 557.

information contained in the IEP-related documents their English-speaking counterparts receive in addition to denying them quality interpretation services.

The District's failures to provide adequate translations and interpretations have prevented Ms. Lin and Ms. Perez from fully and consistently understanding the respective plans for their children. For example, Ms. Perez does not receive all IEPs fully translated, and "[a]lmost every time" she attends an IEP meeting she "ask[s] for translation[s] because they are in English." Ex. 21, Perez Dep. 12:21–13:8; Ex. 6, Perez Decl. ¶¶ 11, 32. Having these documents translated is critical because, particularly with numerous special education children, she needs to be able to review the documents, including after meetings, to "know what's going on." Ex. 21, Perez Dep. 52:2–12. These documents are also critical to the provision of services to the Student Plaintiffs, as D.R. missed a summer school opportunity because Ms. Perez did not have a fully translated IEP from which she could discern the District's position with respect to that placement and the lack of translated IEPs has left Ms. Perez without the ability to determine whether L.R. and D.R. are receiving the behavior and transition services they respectively need. Ex. 21, Perez Dep. 102:1–21; Ex. 6, Perez Decl. ¶¶ 19–24, 39–44. Likewise, Ms. Lin explained that the failure to receive a translated IEP rendered her unable "to identify or discuss significant changes to the current IEP," which then resulted in changes being made to R.H.'s program "without [her] knowledge or involvement." Ex. 5, Lin Decl. ¶ 37. Further, Ms. Lin testified to the need for translated drafts, which are available to English-speaking parents: "The benefit of having those document[s] beforehand is that it would help me to have enough time to understand the document's contents and also be able to fully participate in the IEP meeting without any delay." Ex. 15, Lin Dep. 172:5–21; Ex. 5, Lin Decl. ¶¶ 11–15. Having District personnel available before a meeting to discuss such drafts is an inadequate substitute for complete translations,

particularly when, even after the meetings, parents such as Ms. Lin still cannot fully understand the documents discussed because District personnel cannot sufficiently interpret special education terminology. *See, e.g.*, Ex. 15, Lin Dep. 50:4–53:23, 142:12–143:21; Ex. 5, Lin Decl. ¶¶ 11–15. This lack of consistently available adequate interpreters spills over into IEP meetings themselves as well, as Ms. Perez recounted attending an IEP meeting for D.R. in which a principal acted as an interpreter, but did not fully interpret the meeting and only provided “the gist” of what was said. Ex. 21, Perez Dep. 108:1–109:7.

As a result, the Parent Plaintiffs are not able to meaningfully participate in the IEP process and in the discussions regarding the services their children need—which is the fundamental purpose of the IDEA and a right to which they are entitled. *See, e.g., M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1195–99 (9th Cir. 2017) (“[w]hen a parent is unaware of the services offered to the student—and, therefore, can’t monitor how these services are provided—a FAPE has been denied, whether or not the parent had ample opportunity to participate in the formulation of the IEP”); *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 858 (6th Cir. 2004) (“The district court erred in assuming that merely because the [parents] were present and spoke at the various IEP meetings, they were afforded adequate opportunity to participate. Participation must be more than a mere form; it must be *meaningful*.”); *D.B. v. Gloucester Twp. Sch. Dist.*, 489 F. App’x 564, 566–67 (3d Cir. 2012) (affirming finding of IDEA violation when district made decisions regarding child’s education without parent input). The consequence for their children, then, is the denial of the FAPEs that the IDEA guarantees them.¹⁵

¹⁵ Count Two of the Complaint was brought on behalf of the Student Plaintiffs and some members of the putative Student Class who are LEP and were never evaluated or were not timely evaluated for special education services in their native language, in violation of 20 U.S.C. § 1414(b)(3)(A); 24 C.F.R. § 300.304(c)(1)(ii). To date, none of the remaining Student Plaintiffs appears to have been denied a timely bilingual evaluation. Accordingly, Plaintiffs are prepared to enter into a stipulation with the District, pursuant to which Count Two would be voluntarily dismissed, without prejudice to Plaintiffs reviving the claims if the Court’s Order on class certification is later reversed on appeal.

D. The District Has Not Demonstrated That It Is Entitled to Summary Judgment on Plaintiffs’ Remaining Claims.

1. The District Has Not Demonstrated It Is Entitled to Summary Judgment on Plaintiffs’ Section 504 and Chapter 15 Claims.

Subject to limited exceptions,¹⁶ claims brought under Section 504 of the Rehabilitation Act (“RA”) and the Americans with Disabilities Act (“ADA”) are governed by the same legal principles as the IDEA. To show violations of Section 504 or the ADA, plaintiffs must establish: “(1) they are handicapped or disabled as defined under the statutes; (2) they are otherwise qualified to participate in the program at issue; and (3) they were precluded from participating in a program or receiving a service or benefit because of their disability.” *CG v. Pa. Dep’t of Ed.*, 734 F.3d 229, 235 (3d Cir. 2013); *see also T.R.*, 223 F. Supp. 3d at 332.

As this Court explained, “the Third Circuit has held that the ‘failure to provide a FAPE violations Part B of the IDEA and generally violates the ADA and RA because it deprives disable students of a benefit that nondisabled students receive simply by attending school in the normal course—a free, appropriate public education.’” *T.R.*, 223 F. Supp. 3d at 333 (citation omitted); *see also Andrew M. v. Del. Cnty. Office of Mental Health & Mental Retardation*, 490 F.3d 337, 349 (3d Cir. 2007) (“[A] party may use the same conduct as the basis for claims under both the IDEA and the RA.”). As explained above, the District’s pervasive denial of Ms. Lin’s and Ms. Perez’s parental participation in the special education process has resulted in a denial of educational opportunities and benefits that are necessary for their children to receive a FAPE. *See supra* § IV.C; Ex. 6 Perez Decl. ¶¶ 24, 43; Ex. 21, Perez Dep. 102:1–21; Ex. 5 Lin Decl. ¶¶ 30, 37, 40–42, 53.

¹⁶ One notable exception frequently identified by courts is that in order to bring a claim under the RA, a plaintiff must show that the defendant receives federal funding. *CG v. Pa. Dep’t of Educ.*, 734 F.3d 229, 235 n.10 (3d Cir. 2013). There is no dispute that the District receives federal funding.

2. The District Has Not Shown It Is Entitled to Summary Judgment on Plaintiffs' EEOA Claim.

As noted by the District, under the Third Circuit's holding in *Issa v. School District of Lancaster*, 847 F.3d 121 (3d Cir. 2017), a plaintiff must establish the following elements to state a claim under Section 1703(f) of the EEOA: (1) defendant is an educational agency; (2) plaintiff faces language barriers impeding her equal participation in the defendant's instructional programs; (3) defendant failed to take appropriate action to overcome those barriers; and (4) plaintiff was denied equal educational opportunity on account of her race, color, sex, or national origin. Although the District's brief is unclear, it appears that the District argues that Plaintiffs cannot demonstrate the third and fourth elements of the *Issa* standard. This argument is clearly flawed.

First, the District argues that Plaintiffs cannot rely on Ms. Lin and Ms. Perez's denial of meaningful participation as a basis for their EEOA claim. Def.'s Mem. at 17.¹⁷ The District offers no case law to support this proposition other than an erroneous citation to *K.A.B. ex rel. Susan B. v. Downingtown Area School District*, No. CIV.A. 11-1158, 2013 WL 3742413, at *12 (E.D. Pa. July 16, 2013), which does not address the District's theory. Moreover, as the District's own personnel have acknowledged, a parent's right to meaningfully participate has a direct bearing on what educational and instructional programs a child receives. Still Dep. 47:15-48. The denial of meaningful participation by Ms. Lin and Ms. had a direct bearing on the level of services their children, R.H., D.R., and L.R., received. Ex. 6, Perez Decl. ¶ 24 (failure to fully translate IEP resulted Ms. Perez's inability to determine if the District is addressing L.R.'s deficits in socializing skills); Ex. 6, Perez Decl. ¶ 43 (failure to fully translate IEP resulted in Ms.

¹⁷ To the extent the District is arguing that Ms. Lin and Ms. Perez cannot assert EEOA claims on behalf of themselves individually, the Complaint makes clear that Plaintiffs' EEOA claim is only brought on behalf of students. Am. Compl. (Dkt. No. 53) ¶¶ 123-26.

Perez’s inability to determine if D.R. is receiving adequate transition services); Ex. 21, Perez Dep. 102:1–21 (testifying that she was unaware of what D.R.’s IEP said regarding summer school but that she believes D.R. would have benefited from summer services); Ex. 5, Lin Decl. ¶¶ 30, 37, 40–42, 53 (failure to translate IEP process documents resulted in deficient behavioral interventions, revisions to positive behavior support plans, and behavioral consultations for R.H.).

Finally, as the Court in *Issa* held, denial of an equal educational opportunity does not require a showing of discrimination of intentional any kind, intentional or otherwise, on account of an EEOA-protected characteristic. *Issa*, 847 F.3d at 139. Instead, 1703(f) only requires “that the denial of the equal educational opportunity—in § 1703(f)’s case, the language barrier that is not being overcome—must stem from race, color, sex, or national origin, rather than from, for example, a cognitive disability covered by a different remedial scheme.” *Id.*; see also *T.R.*, 223 F. Supp. 3d at 334–35. Here, Plaintiffs’ language barriers clearly stem from their racial and ethnic backgrounds as Chinese and Latino students. Ex. 21, Perez Dep. 13:15–24; Ex. 15, Lin Dep. 8:21–23, 34:10–19, 169:15–16.

3. Ms. Lin and Ms. Perez Have Standing to Bring Claims Pursuant to Title VI and All Plaintiffs Have Stated a *Prima Facie* Claim.

The District’s Title VI standing arguments are not supported by the case law it cites. In particular, none of the cases cited by the District contradict the conclusion that because parents are entitled to meaningful participation under the IDEA and are intended beneficiaries of that statute, they have standing for Title VI claims in the context of claims involving violations of the IDEA. See e.g., *Brown-Dickerson v. City of Philadelphia*, No. 15-4940, 2016 WL 1623438, at *8 (E.D. Pa. Apr. 25, 2016) (Title VI claim failed because plaintiffs could not establish a link between any federal funding received by the defendant police department and any benefits

intended for the plaintiff that caused her harm); *Williams v. Lenape*, No. 17-7482 (RBK/JS), 2018 WL 916364 (D.N.J. Feb. 16, 2018); *H.B. v. Monroe Woodbury Central Sch. Dist.*, No. 11-5881 (CS), 2012 WL 4477552 (S.D.N.Y. Sept. 27, 2012); *R.W. ex rel. Williams v. Delaware Department of Education*, No. 05-662, 2008 WL 4330461 (D. Del. Sept. 22, 2008) (alternative school placement for a child focused on involvement in physical altercations at school, not allegations that the parents did not receive the benefits they are entitled).

As explained above, under the IDEA, Ms. Perez and Ms. Lin are entitled to meaningful participation in their children's IEP processes. *See supra* § IV.C; *see also* 20 U.S.C. § 1415(b)(1), (b)(3), (c); *Winkelman*, 550 U.S. at 524; *G.L.*, 802 F.3d at 625–26; *D.B.*, 489 F. App'x at 566. Thus, Ms. Perez and Ms. Lin are among the intended beneficiaries of these rights as parents under the IDEA and as individuals entitled to participate in their child's educational program, which is federally funded. Indeed, this Court recognized the Parent Plaintiffs' ability to assert Title VI claims when denying the District's motion to dismiss. *See, e.g., T.R.*, 223 F. Supp. 3d at 335; *see also H.P. v. Bd. of Educ. of Chicago*, 385 F. Supp. 3d 623 (N.D. Ill. 2019).¹⁸ Accordingly, they have standing to assert their Title VI claims here.

Furthermore, the evidence in the record is sufficient to show that, at a minimum, there is a genuine dispute of material fact as to whether the District has discriminated against Plaintiffs on the basis of their national origin. *See Lau*, 414 U.S. at 568. The District does not—and cannot—dispute that parents whose native language is English and who have students with disabilities generally timely receive NOREPs, draft IEPs, IEPs, and other IEP-process documents. Timely receipt of these documents enable native-English speaking parents to review

¹⁸ The District's motion also fails to address this Court's previous explanation that "the Supreme Court's pronouncement in *Lau v. Nichols*, 414 U.S. 563 (1974),] instructs that language based discrimination can constitute an actionable form of national origin discrimination." *T.R.*, 223 F. Supp. 3d at 335.

the documents prior to IEP meetings, and to review them again after the meetings. There is no question that these parents can participate directly in their children's IEP meetings. Def.'s SOF ¶¶ 22–23; Ex. 23, Winterbottom Dep. 140:11–25. In contrast to this, the record is clear that the District was aware that Ms. Perez and Ms. Lin both needed interpretation and translation services. *See* Ex. 5, Lin Decl. ¶ 3; Ex. 6, Perez Decl. ¶ 3. Yet, despite this knowledge, Ms. Perez and Ms. Lin either did not receive or did not timely receive translated NOREPS, draft IEPs, IEPs, and other IEP-process documents. Nor was there sufficient interpretation services during the IEP meetings they attended. The result is their children miss out on educational opportunities and services, such as summer school, and are denied a FAPE. *See, e.g.*, Ex. 6, Perez Decl. ¶¶ 24, 43; Ex. 21, Perez Dep. 102:1–21; Ex. 5 Lin Decl. ¶¶ 30, 37, 40–42, 53.

4. Translation of Evaluations Are Required Under the Pennsylvania Code.

The District argues that it is entitled to summary judgment on Plaintiffs' claim under the Chapter 14 of the Pennsylvania Code because the Code does not require the translation of evaluation reports. As an initial matter, the District misrepresents Plaintiffs' claim. Plaintiffs actually asserted that the District has violated Chapter 14 by failing "to provide sufficient oral interpretation and complete and timely translated IEP process documents," in addition to the failure "to provide complete and timely translated evaluations and reevaluations ten days prior to IEP team meetings." Am. Compl. ¶¶ 136–137. More critically, however, the District concedes that "Chapter 14 of the Pennsylvania Code incorporates and implements the substantive provisions of the IDEA." Def.'s Mem. at 19 (quoting *A.W. et al. v. H.W. v. Middletown Area Sch. Dist.*, No. 1:13-cv-2379, 2015 WL 390864, at *10 (M.D. Pa. Jan. 28, 2015)). It follows then, that the Pennsylvania Code requires the District to provide all of its students with a FAPE and parents of disabled children must have the opportunity to meaningfully participate in their

children's educational processes. *See A.W.*, 2015 WL 390864, at *10-14 (analyzing IDEA and Chapter 14 claims together because "[t]he court's analysis of plaintiffs' Chapter 14 claim is subsumed by its analysis of their IDEA claim"). It is inconsequential that the text of Chapter 14 does not explicitly require translations of evaluations; what is consequential is the evidence that the District's failure to provide such translations, along with complete and timely translations of IEP process documents and sufficient oral interpretation services, resulted in the denial of parents' meaningful participation in their children's educational processes. *See supra* § IV.C.

V. CONCLUSION

For the foregoing reasons and those set forth in Plaintiffs' Response to the School District of Philadelphia's Statement of Undisputed Facts and Statement of Additional Facts that Preclude Summary Judgment, Plaintiffs respectfully request that this Court deny Defendant's Motion for Summary Judgment in its entirety.

Dated: November 4, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment has been served via ECF upon counsel for the Defendant School District of Philadelphia on the date indicated below at the following addresses:

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s/ Paul H. Saint-Antoine
Paul H. Saint-Antoine

**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

**PLAINTIFFS' RESPONSE TO THE SCHOOL DISTRICT OF PHILADELPHIA'S
STATEMENT OF UNDISPUTED FACTS AND STATEMENT OF ADDITIONAL FACTS
THAT PRECLUDE SUMMARY JUDGMENT**

Plaintiffs L.R. and D.R. and their mother, Madeline Perez, and R.H. and his mother, Manqing Lin (collectively, "Plaintiffs") submit this Response to Defendant the School District of Philadelphia's (the "District") 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).

RESPONSE: Undisputed. By way of further response, the administrative proceedings filed by both Ms. Galarza and Ms. Peralta included requests for findings that the District has a policy and practice of not providing adequate translation and interpretation services throughout the special education process in violation of federal law. The Hearing Officer found that in both cases, the District did not provide IEP documents in "an accessible form" to Ms. Galarza and Ms. Peralta and that, as a result, each of these guardians was denied her right to meaningfully participate in the IEP process under the Individuals with Disability Education Act ("IDEA"), 20 U.S.C. § 1440 *et seq.* The Hearing Officer concluded, however, that he lacked authority to order systemic relief. *See*

Am. Compl. (Dkt. No. 53), Exhibits A and B (attached hereto as Exhibit 1 and 2).

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

RESPONSE: Undisputed.

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).

RESPONSE: Undisputed, except as to the date Plaintiffs filed their First Amended Class Action Complaint. Plaintiffs' First Amended Class Action Complaint was filed on April 10, 2017. Dkt. No. 53. While Plaintiffs' First Amended Complaint added Manqing Lin and her son R.H. and Madeline Perez and her children L.R., D.R., and J.R. as Plaintiffs, it also added details of their experiences with the District's provision of language services and allegations concerning the inadequacy of those services as applied to them.

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

RESPONSE: Disputed as stated. On October 18, 2017, the parties filed a stipulation to dismiss with prejudice A.G.'s and his guardian, Margarita Peralta's claims against the District as set forth in Counts One through Seven of the First Amended Complaint "with the exception of their request for past costs and attorneys' fees in the underlying due process administrative hearings." Dkt. No. 73. The Court signed this stipulation on October 19, 2017. Dkt. No. 74.

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

RESPONSE: Disputed as stated. On August 3, 2018, the parties filed a stipulation to dismiss with prejudice T.R.'s and her guardian, Barbara Galarza's claims against the District as set forth in

Counts One through Seven of the First Amended Complaint “with the exception of their request for past costs and attorneys’ fees in the underlying due process administrative hearings.” Dkt. No. 82. The Court signed this stipulation on August 8, 2018. Dkt. No. 84.

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

RESPONSE: Undisputed.

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

RESPONSE: Disputed as stated. On September 26, 2019, the parties filed a stipulation to dismiss without prejudice J.R.’s claims against the District as set forth in Counts One through Seven of the First Amended Complaint. Dkt. No. 107. The Court signed this stipulation on September 30, 2019. Dkt. No. 110.

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.

RESPONSE: Undisputed.

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.

RESPONSE: Disputed in part and undisputed in part. Plaintiffs acknowledge that some translated school documents are currently available through the District’s website. By way of

further response, however, the District’s reference to “standard documents” is ambiguous, and the District’s citation does not support the stated proposition. To the extent “standard” means commonly used, many documents are not translated. *See* Ex. 3, Perng Decl. ¶ 26, Aug. 2, 2018; *see also* Ex. 4, Del Toro Vargas Decl. ¶ 34, Nov. 4, 2019 (“Many of the families I work with do not have internet and do not know how to navigate the website to request a translated document on line.”).

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.

RESPONSE: Disputed in part and undisputed in part. While the District may to some extent translate some documents that are distributed school-wide, there is evidence that other documents, including report cards, are not translated. Ex. 5, Lin Decl. ¶ 8, Nov. 4, 2019; Ex. 6, Perez Decl. ¶ 7, Nov. 4, 2019; Ex. 3, Aug. 2, 2018 Perng Decl. ¶ 26 (“Many general school documents - report cards, service logs, positive behavior support plans, progress reports, progress monitoring reports, etc. — are not translated, even when parents have affirmatively requested that information in their native language.”). Further, Ms. Hess testified that documents such as those concerning transitioning students from one grade to another initially go out to all parents in English. Ex. 7, Hess Dep. 82:24–84:3, Jan. 25, 2018. By way of further response, Ms. Hess also testified the District communicates information to families via e-mails and text messages, which are all in English. *Id.* 87:14–23. She also testified that the homebound instruction forms provided to T.R. and A.G. were not translated. *Id.* 230:2–8.

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.

RESPONSE: Disputed in part and undisputed in part. By way of further response, it is unclear whether all District employees are able to make requests for translation or utilize BCAs. The District does not track requests for translation at the school building level. *See* Ex. 8, Soderman Dep. 105:1–17, Dec. 6, 2017. Moreover, simply because requests can be made does not mean that they will be fulfilled. *See* Ex. 9, Capitolo Dep. 146:7–151:13, Feb. 21, 2018 (“We don’t let the school team just arbitrarily send documents to be translated without some oversight of it.”). Furthermore, BCAs are not available every day at each District school. *See* Ex. 8, Soderman Dep. 173:24–174:13 (testifying that there are approximately 216 schools in the District, BCAs cover approximately 78 school buildings, and BCAs are, on average, assigned to three different schools); Ex. 10, PSD006438 (listing the District BCAs from 2011-2017, which ranged from 56-60, and their assigned schools); Ex. 11, PSD003605 at PSD003607 (“[W]e do not have a BCA available to go.”). And BCA’s schedules are only made available to building level staff upon request. Ex. 8, Soderman Dep. 152:4–9. Moreover, Ms. Soderman testified that while BCAs may translate short one-page documents (e.g. flyers) into some languages if they have the technical capability to generate the characters required, that is disfavored and they would not translate or sight interpret anything more extensive than that because demands on them are high and they do not have the time or appropriate space to do so. *Id.* 124:12–20.

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.

RESPONSE: Disputed in part and undisputed in part. Plaintiffs do not dispute that the availability of translation and interpretation services is not confined to specific portions of the

school year and that such services are used in some meetings and for some communications. The District's translation and interpretation services, however, are not always available and utilized for "key meetings," nor are sufficient services made available to meet the needs of District families. *Compare* Special Education Parental/Guardian Rights (Def.'s Ex. B) ("For example, Bilingual Counseling Assistants (BCAs) will be made available to provide interpretation services as needed.") *with* Ex. 12, PSD003864 at PSD003865 ("We will do our best to assign an interpreter. Please, be aware that at this moment the demand for interpreters exceeds the number of staff available."); Ex. 13, PSD003626 (indicating a "shortage of staff" on an Interpretation Referral Log); *see also* Ex. 8, Soderman Dep. 58:18–59:2 (testifying that she did not know if the District had "a sufficient number of BCAs to attend all of the meetings that are requested of [her] office for Limited-English Proficient parents" and listing individuals who might attend a meeting "[i]f we don't have BCAs"). For example, Ms. Soderman indicated that interpretation services are not prioritized for special education meetings, but rather, all requests are treated the same. *See* Ex. 8, Soderman Dep. 75:5–9 (testifying that there are no "written policies or standards[] regarding making decisions as to who will be assigned to a particular interpretation request"). Furthermore, the sources cited by the District do not speak to the use of translation and interpretation services in report card conferences or for "attendance issues" or "permission slips."

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.

RESPONSE: Disputed in part and undisputed in part. Plaintiffs do not dispute that BCAs may at times translate documents without involving the FACE office. By way of further response, however, BCAs are not available every day at each District school. *See* Ex. 8, Soderman Dep. 173:24–174:13 (testifying that there are approximately 216 schools in the District, BCAs cover

approximately 78 school buildings, and BCAs are, on average, assigned to three different schools); Ex. 10, PSD006438 (listing the District BCAs from 2011-2017, which ranged from 56-60, and their assigned schools); Ex. 11, PSD003605 at PSD003607 (“[W]e do not have a BCA available to go.”); *see also* Ex. 8, Soderman Dep. 51:21–23 (“I have an idea of what BCA [sic] should do, but schools will also determine how they are going to be used.”); *id.* at 71:14–19 (testifying that principals are the BCAs “boss”).

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.

RESPONSE: Disputed in part and undisputed in part. Plaintiffs do not dispute that BCAs receive training in some special education terminology. The District, however, has not cited evidence that BCAs and school staff generally are trained “on best practices for providing interpretation” or “special education issues.” Furthermore, Plaintiffs dispute that all individuals and staff that provide translation and interpretation services are appropriately trained. *See, e.g.*, Ex. 7, Hess Dep. 46:16–48:12 (testifying that staff such as secretaries are used, as needed, to provide interpretation in IEP meetings, even though they have received no training to provide language assistance); Ex. 8, Soderman Dep. 45:4–46:22 (testifying that while BCAs might receive some training on IEP meetings and/or receive “a glossary of special education terms,” there are no BCAs on her staff that have skills “[s]pecific to special education”); *id.* at 137:14–138:4 (testifying that she recommended that a school principal utilize her Spanish-speaking secretary or the Spanish-speaking school psychologist); *id.* at 143:6–144:15 (testifying that she asked her next door neighbor if he would be willing to provide interpretation services at a special education evaluation even though he was neither a District employee nor a trained interpreter); *id.* at 172:4–174:19 (testifying that Nancy Velez of the Office of Specialized Services also encouraged building level

staff to utilize untrained bilingual district employees in lieu of a BCA); Ex. 14, Bustamante Dep. 121:1–3, 126:23–128:3, 132:4–18, Feb. 22, 2018 (testifying that BCAs are often ineffective because they are not trained in special education and that the District will often use school staff with no interpretation training as translators during meetings with LEP parents); Ex. 15, Lin Dep. 142:12–143:21, Jan. 30, 2018 (“At the time I requested for the draft to be translated into Chinese, but however the school district disagreed. So they said they instead have send me, provided me with an interpreter and a teacher to translate for me. However, the content of the report was having many details, so I couldn’t fully understand the report. . . . Mr. Tang had go through the draft with me. However, there was so many vocabulary that he also need time to look up online. And he also explained it to me that there were too many terminology in the report that he himself couldn’t fully comprehend[.]”); *see also id.* at 50:4–53:23 (describing this meeting and the fact that she did not completely understand the draft even after others tried to assist the interpreter in interpreting special education terminology); Ex. 16, Perng Decl. ¶ 19, Nov. 4, 2019; Ex. 4, Del Toro Vargas Decl. ¶¶ 27–30, 53. By way of further response, Ms. Soderman, as the person responsible for all BCAs, does not provide any oversight of the services they are providing. In addition, she does not keep track of whether they fulfill any of their recognized duties and does not oversee the quality of their work performance. Ex. 8, Soderman Dep. 105:1–17; *see also* Ex. 3, Aug. 2, 2018 Perng Decl. ¶ 18 (“The District doesn’t consistently ensure high quality interpretation at IEP meetings.”).

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.

RESPONSE: Disputed in part and undisputed in part. It is undisputed that Language Line is available to be used by a school. It is disputed that it is always used “as a backup option, including when the parent’s language is not spoken by a BCA.” Ms. Soderman testified that she does not

keep track of when the District uses live interpretation for IEP meetings versus when telephonic interpreters are used, that she does not believe anyone at the District keeps track of that information, and that the decision to use either live interpretation or telephonic interpretation is made at the building level. Ex. 8, Soderman Dep. 40:18–41:14; *see also* Ex. 4, Del Toro Vargas Decl. ¶ 26. Furthermore, she testified that although invoices for telephonic interpretation contain the name of the person who used the service, those invoices do not track the purpose of the call or why the service was utilized, and she did not know the background of the interpreters who provided services via Language Line. Ex. 8, Soderman Dep. 64:18–65:2, 180:16–182:24. Moreover, there is evidence that parents are not made aware that Language Line is available. *See* Ex. 15, Lin Dep. 38:7–12 (testifying that the District did not inform her at a meeting that Language Line interpretation was available).

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.

RESPONSE: Disputed in part and undisputed in part. It is undisputed that the District provides some translation and interpretation services to LEP parents; Plaintiffs dispute the adequacy of the quantity, quality, and consistency of those services resulting from the District’s policies and practices. *See* Pls.’ Pls.’ Mem. of Law in Support of Their Mot. for Class Cert. (Dkt. No. 83) at 15 & n.10; *see also* Ex. 3, Aug. 2, 2018 Perng Decl. ¶¶ 17–29 (describing her experiences with the District’s inadequate translation and interpretation services); Ex. 17, McCabe Decl. ¶¶ 10–26, Aug. 2, 2018 (“The District’s practice of failing to provide quality interpretation services denies LEP parents the ability to engage in the special education process and the educational process of their children, more generally.”); Ex. 8, Soderman Dep. 105:18–22 (testifying that there are no protocols “in place with regard to how BCAs provide interpretation services in the special education context”); *id.* at 51:21–23 (“I have an idea of what BCA [sic] should do, but schools will also

determine how they are going to be used.”); *see generally* Ex. 16, Nov. 4, 2019 Perng Decl.; Ex. 4, Del Toro Vargas Decl. By way of further response, there are a number of translation and interpretation services that the District does not provide LEP parents of special education students, including the complete translation of any draft IEP documents and in most cases translating only the headings and form portions of IEPs, without any information regarding the individual student. *See, e.g.*, Ex. 8, Soderman Dep. 169:6–170:7 (testifying that only headings and “no individual information” of IEPs is translated and that she does not believe such translation is “sufficient for a parent to understand and participate”); Ex. 7, Hess Dep. 94:2–15 (“[T]he documents that are produced, the standard information is translated into that language, because IEP’s are individualized and . . . the student-specific information is not translated.”); *id.* at 269:5–7 (testifying that draft IEPs are not translated); Ex. 4, Del Toro Vargas Decl. ¶ 16. In addition, the District does not translate functional behavioral assessments or positive behavior support plans. *See* Ex. 5, Lin Decl. ¶¶ 17, 30; *see also* Ex. 4, Del Toro Vargas Decl. ¶ 44.

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.

RESPONSE: Disputed. Plaintiffs dispute that the Special Education Parental/Guardian Rights notice (Def.’s Ex. B) sufficiently apprises LEP parents of their right to obtain adequate translation and interpretation services. Specifically, that notice provides that parents have a right “to enlist the District’s interpretation and/or translation services,” but only provides one specific example of such services, *i.e.* that BCAs “will be made available to provide interpretation services as needed.” Plaintiffs further dispute that all LEP parents are aware of the translation and interpretation services the District may offer in part because the District does not track which parents are LEP and ensure that this information is provided to them. *See* Ex. 18, Sharer Dep. 28:19–29:10, Dec. 8,

2017 (testifying that identification of parents or guardians who have English proficiency is done on a “case by case” basis); Ex. 19, Still Dep. 88:9–89:5, 95:13–20, 97:5–99:13, Jan. 23, 2018 (testifying that the District does not systematically ask specific questions designed to identify “parents as limited English proficient” and relies in part on ad hoc student feedback given to teachers (which is not systematically recorded) to identify parents as LEP); Ex. 7, Hess Dep. 79:24–80:16 (“We don’t keep track of the parents that are what you are describing as limited English proficient.”); Ex. 16, Nov. 4, 2019 Perng. Decl. ¶¶ 8, 18. Furthermore, it is disputed that LEP parents are always made aware of their rights to request translation of IEP plans or evaluations. *See* Ex. 9, Capitolo Dep. 209:13–20 (“Q. Is it the practice of the district to tell parents with respect to IEPs or evaluations that translation[s] of those documents is available? [Objection omitted.] A. We wait for the parent to request the documents in translated form”); Ex. 14, Bustamante Dep. 113:22–115:6 (testifying that LEP parents are generally not made aware of their right to receive translation and interpretation services from the District); Ex. 3, Aug. 2, 2018 Perng Decl. ¶¶ 7–12, 26, 28 (discussing the District’s lack of communication to LEP parents and their resulting lack of awareness of services for their children); Ex. 16, Nov. 4, 2019 Perng Decl. ¶ 8 (“[I]n my experience, most parents do not receive this fact sheet.”); Ex. 6, Perez Decl. ¶ 6 (stating that she has “not received any document that summarizes my rights regarding translation of IEP documents or interpretation” and that she continues “to fail to receive translated special education documents for my children, L.R. and D.R.”).

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).

RESPONSE: Disputed in part and undisputed in part. It is undisputed that the District’s Quick

Reference Guide states that “NOREPs, Procedural Safeguards, Permission to Evaluate, and Permission to Re-evaluate must be in the parents/guardians native language.” While the District’s policies distributed to some administrators state that parents receive these documents in their native languages, Plaintiffs dispute that that is done in practice. *See, e.g.*, Ex. 14, Bustamante Dep. 117:18–24, 126:15–22, 133:13–20 (testifying that LEP parents routinely do not receive NOREPs translated into their native language prior to IEP meetings, if at all); Ex. 20, Oct. 31, 2018 Ltr. from Pa. Dep’t of Ed., Complaint Investigation Report issued by the Pennsylvania Department of Education (“CIR”) at 2 (finding that in twenty-three out of a random sample of twenty-five files reviewed, parents did not receive the required forms—including PTREs, and NOREPs—in their native languages as required under the IDEA); Ex. 16, Nov. 4, 2019 Perng Decl. ¶ 13; Ex. 4, Del Toro Vargas Decl. ¶ 13. For example, Ms. Perez never received a fully translated NOREP (or IEP) in connection with her children. Ex. 6, Perez Decl. ¶¶ 11, 32, 38; *see also* Ex. 4, Del Toro Vargas Decl. ¶ 41. Additionally, in a February 2016 meeting to discuss R.H.’s kindergarten placement, the District provided Ms. Lin a Permission to Evaluate (“PTE”) and other special education documents in English only and refused to translate them into Chinese. Ex. 15, Lin Dep. 112:17–117:8. Furthermore, District employees are not uniformly aware of the protocol cited by the District as evidencing these procedures. *See, e.g.*, Ex. 18, Sharer Dep. 111:3–17 (testifying that she was not familiar with a “quick reference guide [for] translation and interpretation services”).

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.

RESPONSE: Disputed in part and undisputed in part. While this may occur in some cases, it is not a procedure that is followed with regard to every evaluation. Instead of providing a bilingual evaluation, in some cases, BCAs or others may act as interpreters during evaluations in lieu of

using bilingual psychologists. *See* Ex. 8, Soderman Dep. 106:7–108:4; 144:22–145:17; *see also* Ex. 7, Hess Dep. 184:17–185:7 (testifying that children whose native language is not English do not necessarily need to be evaluated by a bilingual psychologist). In other cases, bilingual evaluations are not conducted. *See* Ex. 20, CIR at 1–2 (“Only one of the 25 files reviewed, or four percent of the files indicated that the evaluation was conducted in the student’s native language. 24 of the 25 files or 96% of the files reviewed revealed that the evaluations were not conducted in the students’ native languages. . . . Three of the files reviewed were for speech and language evaluations. None of these evaluations were conducted in a student’s native language, used a BCA, or non-verbal measures.”); Ex. 4, Del Toro Vargas Decl. ¶ 14. By way of further response, there are no records maintained with respect to bilingual evaluations conducted by the District and this information is not tracked. Ex. 7, Hess Dep. 316:6–11.

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).

RESPONSE: Disputed in part and undisputed in part. While this may occur sometimes, it is not a procedure that is followed for all LEP parents. For example, since L.R. has attended Devereaux, Ms. Perez has not received the Procedural Safeguards in Spanish. Ex. 6, Perez Decl. ¶ 6.

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).

RESPONSE: Disputed. The source cited by the District does not stand for this proposition. Plaintiffs also dispute whether the District complies with the referenced protocol. For example,

there is evidence that LEP parents have not been given notice of the availability of translated documents or of interpretation services by BCAs of IEP documents prior to meetings as called for by the protocols. *See* Ex. 3, Aug. 2, 2018 Perng Decl. ¶¶ 17–31; Ex. 17, McCabe Decl. ¶¶ 20–26; *see also, e.g.*, Response to ¶ 22 *infra*. In addition, Ms. Perez has received IEP meeting invitations solely in English that she cannot understand. Ex. 6, Perez Decl. ¶¶ 11, 28; *see also* Ex. 4, Del Toro Vargas Decl. ¶ 17. She also was not given notice of the availability of translated documents or interpretation services. Ex. 6, Perez Decl. ¶ 6.

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.

RESPONSE: Disputed in part, and undisputed in part. While it may generally be the practice to prepare draft IEPs, the draft IEPs are not fully translated for LEP parents. Ex. 7, Hess Dep. 269:5–7. And IEPs are not fully translated even when they are specifically requested. *See, e.g.*, Ex. 15, Lin Dep. 190:5–13; Ex. 21, Perez Dep. 12:21–13:8, Feb. 12, 2018 (“Almost every time I go to the IEPs I ask for translation because they are in English.”); *id.* at 72:3–73:7 (describing an IEP for D.R. for which she requested but did not receive a full translation and was told the partial translation “was the best [the District] could have translated”); Ex. 6, Perez Decl. ¶¶ 11, 30, 32; Ex. 5, Lin Decl. ¶¶ 11, 18–20, 33; This is contrary to the District’s protocol. Def.’s Mot. Ex. E at 2 (“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 participation, 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. . . . A parent/guardian may also request written translation of the special education documents, whether drafts or finals, at the IEP meeting.”). Furthermore, while the District’s protocol indicates that a draft IEP must be provided 10 days before the IEP meeting, *see* Def.’s Mot. Ex. E, LEP parents cannot read the document in English, and the draft

IEP, in practice, is not always provided to LEP parents 10 days before the IEP meeting—if at all. *See, e.g.*, Ex. 5, Lin Decl. ¶ 18 (“For the December 5, 2017 IEP meeting, I did not receive any draft IEP in any language prior to the scheduled meeting.”); *id.* ¶¶ 19–20 (stating that she received a draft IEP “which only contained translations of the IEP headings in Chinese” three days prior to an IEP meeting in May 2018); Ex. 16, Nov. 4, 2019 Perng Decl. ¶¶ 15–16.

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.).

RESPONSE: Disputed in part and undisputed in part. Plaintiffs do not dispute that the District’s Quick Reference Guide states that this is the District’s protocol. Plaintiffs dispute, however, whether this protocol is followed in practice. For example, Ms. Perez has never been offered the opportunity to meet with a BCA to review a draft IEP. Ex. 6, Perez Decl. ¶¶ 15, 34; *see also* Ex. 4, Del Toro Vargas Decl. ¶ 20. While Ms. Lin has been offered this opportunity, such meetings do not always include the Special Education Liaison for her child’s school. Ex. 5, Lin Decl. ¶¶ 19–20. Moreover, as stated above, while the District’s protocol indicates that a draft IEP must be provided 10 days before the IEP meeting, *see* Def.’s Ex. E, that is not always done in practice. *See, e.g.*, Ex. 5, Lin Decl. ¶ 18 (“For the December 5, 2017 IEP meeting, I did not receive any draft IEP in any language prior to the scheduled meeting.”); *id.* ¶¶ 19–20 (stating that she received a draft IEP “which only contained translations of the IEP headings in Chinese” three days prior to an IEP meeting in May 2018). By way of further response, the draft IEPs are never fully translated for LEP parents. Ex. 7, Hess Dep. 269:5–7; *see also* Ex. 21, Perez Dep. 103:3–12 (testifying that she

“could be a more effective advocate” for her children if she had translated documents before IEP meetings); Ex. 5, Lin Decl. ¶ 11; Ex. 6, Perez Decl. ¶¶ 11, 32, 34. Even when meetings to review draft documents are held, parents’ questions and concerns may not be fully addressed because the BCA doesn’t understand the special education documents and the appropriate teacher may not be present to answer questions. *See, e.g.*, Ex. 15, Lin Dep. 142:12–143:21 (“At the time I requested for the draft to be translated into Chinese, but however the school district disagreed. So they said they instead have send me, provided me with an interpreter and a teacher to translate for me. However, the content of the report was having many details, so I couldn’t fully understand the report. . . . Mr. Tang had go through the draft with me. However, there was so many vocabulary that he also need time to look up online. And he also explained it to me that there were too many terminology in the report that he himself couldn’t fully comprehend[.]”); *see also id.* at 50:4–53:23 (describing this meeting and the fact that she did not completely understand the draft even after others tried to assist the interpreter in interpreting special education terminology); Ex. 5, Lin Decl. ¶¶ 11–15, 19–20.

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.

RESPONSE: Disputed in part and undisputed in part. The portion of Ms. Capitolo’s and Ms. Hess’s depositions that the District’s cites do not stand for this proposition. Rather, in discussing parent involvement in IEP meetings, Ms. Capitolo was answering the question of what her “own understanding of what meaningful parental participation entails,” Ex. 9, Capitolo Dep. 41:18–42:14, and Ms. Hess was describing the “best practice” for ensuring meaningful participation, Ex. 7, Hess Dep. 165:12–167:7. Neither was providing an account of what happens in each IEP

meeting in the District. By way of further response, while parents may be given the opportunity at IEP meetings to ask questions and provide input, the IEP documents discussed at such meetings are not always fully translated. *See* Ex. 8, Soderman Dep. 169:6–18 (testifying that she has attended IEP meetings in which only the headings of IEPs were translated, and none of the individual information unique to students is translated into parents’ native languages); *see also* Ex. 7, Hess Dep. 94:6–11 (testifying that student-specific information in IEPs is not translated). In at least one District employee’s opinion, that practice is insufficient to allow parents meaningful participation in their children’s education. Ex. 8, Soderman Dep. 169:1–170:4; *see also* Ex. 21, Perez Dep. 80:5–12 (“[T]he problem is, I don’t have the papers to read in Spanish. . . . Yes, I can ask questions, but if something happens like I forget, I’d like to have the documents in Spanish so I can go over them.”); *id.* at 103:3–12 (testifying that she “could be a more effective advocate” for her children if she had translated documents before IEP meetings). The absence of any translated student specific information in the IEP in a language the parent understands certainly undermines the parent’s ability and encouragement to ask questions. *See, e.g.,* Ex. 6, Perez Decl. ¶ 27.

Furthermore, when special education documents are being discussed at meetings, there is evidence that only the portions of the information in the IEP document, specifically the statements that are read aloud in the meeting by those participating in the meeting are orally interpreted for an LEP parent. As one of the District’s witnesses, explained, a special education document will only be read to a parent in an IEP meeting “[i]f the IEP facilitator is reading the document” Ex. 7, Hess Dep. 120:4–121:18. Moreover, no data is maintained regarding the percentage of IEP meetings that include a BCA, *Id.* at 122:7–10, and the quality of language services provided at IEP meetings impacts a parent’s ability to participate, *see, e.g.,* Ex. 21, Perez Dep. 108:1–109:4 (describing an IEP meeting for D.R. in which a principal acted as an interpreter and only provided the “gist” of what was said).

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.

RESPONSE: Disputed. The District has not cited evidence that all “special education staff are trained on all District practices and procedures, including those aimed at encouraging parental participation.” By way of further response, district employees are not uniformly aware of the protocol cited by the District as evidencing its translation and interpretation procedures. *See, e.g.*, Ex. 8, Sharer Dep. 111:3–17 (testifying that she was not familiar with a “quick reference guide [for] translation and interpretation services”); *id.* at 102:8–12 (testifying that she was not aware of “any policies or procedures that informed parents of their rights to either translation services, or interpretation services, or both”); *id.* at 113:12–18 (testifying that she was unaware of “any policy or procedure within the School District currently that specifically addresses the rights of LEP parent[s] or student[s] with disabilities to language services”).

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.

RESPONSE: Undisputed. Plaintiffs do not dispute that Ms. Lin and R.H. have not raised the claims set forth in Counts One through Seven of the First Amended Complaint to an administrative hearing officer. By way of further response, in ruling on the District’s motion to dismiss, the Court held that exhaustion of administrative remedies was not required in certain circumstances and subject matter jurisdiction was proper in this case, because an administrative hearing officer could not grant the translation relief requested, as the Hearing Officer in T.R.’s and A.G.’s hearings had found. *See* Exs. 1-2, Exhibits A and B to Am. Compl. (Dkt. No. 53). The Court also held that Plaintiffs sufficiently alleged that the District had systemic failures in its translation and

interpretation policies and practices, and that they had adequately identified corresponding relief to remedy these systemic failures. Nov. 30, 2016 Mem. Op. (Dkt. No. 30) at 8–14.

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).

RESPONSE: Undisputed. By way of further response, the Mediation Agreement dated August 18, 2016 related specifically to Ms. Lin’s request for an independent educational evaluation (“IEE”). In it, the District agreed to “fund an IEE” and “implement the early intervention IEP . . . until such time that the IEE is completed.” The District further agreed to furnish Ms. Lin with “a hard copy and email copy of *the* IEP and any reports . . . ; competent language interpretation services to review *these* documents; . . . [and] *the* final copy of *the* IEP.” Def.’s Mot. Ex. J (emphasis added). By its express terms, the Mediation Agreement only contemplated and addressed the IEE and explicitly referenced the development of the subsequent IEP emanating therefrom; the Agreement does not address all of R.H.’s special education documents in perpetuity or permanently determine the language access services to be provided to Ms. Lin.

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.

RESPONSE: Undisputed. By way of further response, Plaintiffs are seeking declaratory and injunctive relief requiring changes to the policies, practices and procedures of the District with respect to its provision of language services, which will enable Ms. Lin to participate meaningfully in the development of her child’s IEP plans. Pls.’ Mem. of Law in Support of Their Mot. for Class

Cert. (Dkt. No. 83) at 17–18. For example, Ms. Lin is seeking systemic changes to the District’s policies, practices and procedures that would allow her to receive “the IEP report, the draft and the final report in Chinese translation so that I can understand and agree with the program.” Ex. 15, Lin Dep. 110:23–111:4.

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

RESPONSE: Disputed. By way of further response, Ms. Lin has not understood the behavioral interventions and related services R.H. received at different times due to the fact that she has not received R.H.’s IEP documents in her native language. Ex. 5, Lin Decl. ¶¶ 16–58. In addition, Ms. Lin testified that an interpreter failed to translate and explain the term “ABA” which refers to “applied behavior analysis” as a behavior intervention. Ex. 15, Lin Dep. 171:9–20.

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.

RESPONSE: Disputed in part and undisputed in part. Although Ms. Lin has the opportunity to meet with District staff, these meetings do not consistently contribute to her understanding of R.H.’s condition in ways that allow her to give input at the IEP meeting. For example, there were times when she met with District staff and did not understand the services being offered in the proposed IEP. Ex. 5, Lin Decl. ¶¶ 16–58. There were times when she met with District staff who provide related services, but there was insufficient time for Ms. Lin to ask questions. *Id.* ¶ 43.

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.

RESPONSE: Disputed in part and undisputed in part. While Ms. Lin may give some input at IEP meetings, her ability to do so is hampered by the fact that she does not received translated copies of

the draft IEPs before meetings or translated copies of other IEP-related documents such as R.H.'s Functional Behavior Assessment, Positive Behavior Support Plan, and Progress Monitor Report. Ex. 15, Lin Dep. 68:1–69:3, 142:6–24, 172:5–21, 190:5–13; *see also id.* at 146:4–147:3 (“The school have mention of their plan, but because I could not understood the document, so I could not give any input on my thinking, my thought.”); Ex. 5, Lin Decl. ¶¶ 11–15.

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.

RESPONSE: Undisputed. By way of further response, however, Ms. Lin credited constant communication with the school and the presence of her friend, attorney, and an independent evaluator in enabling her to provide input and changes to R.H.'s IEP. Ex. 15, Lin Dep. 157:12–158:12. As stated in response to Paragraph 31, *supra*, the lack of fully translated documents has denied Ms. Lin the ability to participate more fully. *See also* Ex. 15, Lin Dep. 146:9–13 (“I did express some of my concern to the IEP meeting. However, because the document at the IEP meeting was not translated into Chinese, so I couldn’t fully understand what the report said was exactly what was being said in the meeting, or I could not have any opinion on the report.”).

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.

RESPONSE: Disputed in part and undisputed in part. Paragraphs 7–10 of the Lin Affidavit (Def.’s Mot. Ex. K) describe the circumstances surrounding Ms. Lin meeting with District personnel prior to one IEP meeting. Even after those meetings, however, Ms. Lin still was not able to fully understand the report provided on R.H. *See, e.g.*, Ex. 15, Lin Dep. 142:12–143:21 (“At the

time I requested for the draft to be translated into Chinese, but however the school district disagreed. So they said they instead have send me, provided me with an interpreter and a teacher to translate for me. However, the content of the report was having many details, so I couldn't fully understand the report. . . . Mr. Tang had go through the draft with me. However, there was so many vocabulary that he also need time to look up online. And he also explained it to me that there were too many terminology in the report that he himself couldn't fully comprehend[.]"); *see also id.* at 50:4–53:23 (describing this meeting and the fact that she did not completely understand the draft even after others tried to assist the interpreter in interpreting special education terminology); Ex. 5, Lin Decl. ¶¶ 11–15 (explaining why these meetings alone are “not a substitute for having a written draft in my language”); *id.* ¶ 33 (“No one offered to provide oral interpretation of the draft IEP prior to the May 17, 2019 IEP meeting.”).

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.

RESPONSE: Disputed in part and undisputed in part. Ms. Lin responded to questions about her ability to meet with members of R.H.'s IEP team for the 2016–2017 and 2017–2018 school years. Ex. 15, Lin Dep. 41:9–44:19. The frequency of her meetings varied with the service provider and school year. For example, Ms. Lin only met with the OT once in 2017–2018. *Id.* at 41:9–12. In contrast, Ms. Lin had meetings with R.H.'s speech therapists once per month in the 2016–2017 school year, but these meetings decreased to every three months in the 2017–2018 school year. *Id.* at 42:23, 43:22–44:1.

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.

RESPONSE: Disputed in part and undisputed in part. By way of further response, the claims Ms.

Lin raises concern the inadequate provision of language services that deny parents an opportunity to meaningfully participate in their child's IEP. Ex. 15, Lin Dep. 172:15–19 (“The benefit of having those document beforehand is that it would help me to have enough time to understand the document's contents and also be able to fully participate in the IEP meeting without any delay.”); *see also id.* at 171:9–20, 142:12–143:21, 176:11–16 (describing instances where the interpreters struggled with translating IEP documents and at IEP meetings, and where IEP documents were not translated).

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.

RESPONSE: Undisputed. Plaintiffs do not dispute that Ms. Perez, D.R. and L.R. have not raised the claims set forth in Counts One through Seven of the First Amended Complaint to an administrative hearing officer. By way of further response, in ruling on the District's motion to dismiss, the Court held that exhaustion of administrative remedies was not required in certain circumstances and subject matter jurisdiction was proper in this case, because an administrative hearing officer could not grant the translation relief requested, as the Hearing Officer in T.R.'s and A.G.'s hearings had found. *See* Exs. 1-2, Exhibits A and B to Am. Compl. (Dkt. No. 53). The Court also held that Plaintiffs sufficiently alleged that the District had systemic failures in its translation and interpretation policies and practices, and that they had adequately identified corresponding relief to remedy these systemic failures. Nov. 30, 2016 Mem. Op. (Dkt. No. 30) at 8–14.

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).

RESPONSE: Disputed in part and undisputed in part. Ms. Perez has previously been represented by counsel in connection with issues pertaining to her children's special education services, including the undersigned counsel; however, by way of further response, Plaintiffs dispute the premise of the District's statement that Ms. Perez has not raised any issues relating to language services and that the issues she has raised were all resolved to her satisfaction. *See, e.g.*, Responses to ¶¶ 38–43 *infra*; Pls.' State of Additional Facts that Preclude Summ. J. ¶¶ 49–63 *infra*; *see generally* Ex. 6, Perez Decl.

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.

RESPONSE: Undisputed. By way of further response, Plaintiffs are seeking declaratory and injunctive relief requiring changes to the policies, practices and procedures of the District with respect to the provision of language services, which will enable Ms. Perez to participate meaningfully in the development of her children's IEP plans. Pls.' Mem. of Law in Support of Their Mot. for Class Cert. (Dkt. No. 83) at 17–18. Furthermore, Ms. Perez is seeking systemic changes to the District's policies, practices and procedures that would allow her to receive documents from the District related to her children in Spanish. *See* Ex. 21, Perez Dep. 52:2–12 (“Q: What do you want out of this case? A: To have the documents in Spanish in order to get more help for my children. I can be more helpful if I have everything in Spanish. So I say it again, it's three different children with three different needs. Having it in Spanish, I can go refer to it and know what's going on.”); *id.* at 80:5–12 (“[T]he problem is, I don't have the papers to read in Spanish. . . .

Yes, I can ask questions, but if something happens like I forget, I'd like to have the documents in Spanish so I can go over them."); *see also id.* at 80:13–17 (“Q. Isn’t there someone you can talk to if something happens? A. I don’t have anybody around the clock to read to me what it says in English.”).

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.

RESPONSE: Disputed in part and undisputed in part. While Ms. Perez has been able to ask some questions at some meetings, Ms. Perez has been unable to understand the evaluations conducted by the District and resulting reports because the complicated evaluation reports were not translated into a language she could understand. As a result, she did not know, for example, that L.R.’s diagnosis of autism was never even included in his 2012 evaluation report. Because this information was not provided she was unable to ask questions about this. Ex. 6, Perez Decl. ¶ 8.

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.

RESPONSE: Disputed. While Ms. Perez knows some of the areas in which her children need special education assistance and has provided some input to the District, Ms. Perez also testified that she has attended several IEP meetings for which the District did not provide an interpreter, or, where interpreters were present, they did not fully sight translate IEPs. Ex. 21, Perez Dep. 70:15–23, 78:3–10; *see also id.* at 108:1–109:4 (describing an IEP meeting for D.R. in which a principal

acted as an interpreter and only provided the “gist” of what was said). Since her son L.R. has been at Deveraux, Ms. Perez has received no documents at all in Spanish, including the invitation to the IEP meeting and has no knowledge of the services he receives, nor has she had the opportunity to ask questions. Ex. 6, Perez Decl. ¶¶ 11, 14–17, 27. Furthermore, Ms. Perez testified that while she can ask questions of the District, she would benefit and be able to contribute more fully if she received translated IEPs. Ex. 21, Perez Dep. 80:5–12 (“[T]he problem is, I don’t have the papers to read in Spanish. . . . Yes, I can ask questions, but if something happens like I forget, I’d like to have the documents in Spanish so I can go over them.”).

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.

RESPONSE: Disputed in part and undisputed in part. By way of further response, while there have been issues as to which Ms. Perez and the District collaborated, there have also been many occasions on which Ms. Perez has not fully understood educational issues relating to her children due to lack of adequate interpretation services. Ex. 21, Perez Dep. 108:1–109:7 (describing an IEP meeting for D.R. in which a principal acted as an interpreter and only provided the “gist” of what was said). There have also been occasions when she has not been informed about services available to her children. *Id.* (testifying that she was unaware of what D.R.’s IEP said regarding summer school but that she believes D.R. would have benefited from summer services); Ex. 6, Perez Decl. ¶¶ 11, 14–24, 39–44 (explaining that she has received no information in a language she can understand about L.R. and that she has concerns about his behavior and educational program and concerns about D.R.’s transition plans).

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

RESPONSE: Disputed in part and undisputed in part. While Ms. Perez testified that she has eventually received some progress reports translated, she also testified that she sometimes initially receives them in English and they are only made “available to [her] later through J.R. in Spanish.” Ex. 21, Perez Dep. 74:18–75:2. By way of further response, Ms. Perez does not receive other documents translated concerning her children’s education. *Id.* at 12:21–13:8 (“Almost every time I go to the IEPs I ask for translation because they are in English.”); *id.* at 47:10–48:7 (“When we asked documents to be translated into Spanish, mostly what they translate is only the headings, the titles to Spanish, and the summary comes in English nonetheless. I don’t think that’s a translation into Spanish. To me, to translate it to Spanish is that everything is in Spanish.”); Ex. 6, Perez Decl. ¶¶ 11, 22, 23, 30 (describing the lack of translated progress reports for L.R. or D.R.).

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.

RESPONSE: Disputed. As a result of failing to receive fully translated IEPs, Ms. Perez has been unaware of potentially beneficial services available to her children. *See* Ex. 21, Perez Dep. 102:1–21 (testifying that she was unaware of what D.R.’s IEP said regarding summer school but that she believes D.R. would have benefited from summer services); *see also id.* at 103:3–12 (testifying that she “could be a more effective advocate” for her children if she had translated documents before IEP meetings); Ex. 6, Perez Decl. ¶¶ 11, 15–24, 40–44 (explaining her concerns about whether D.R. is receiving the services she needs to transition from high school and her concerns about her son L.R., his need for social skills and whether additional services are needed for him to make progress.).

STATEMENT OF ADDITIONAL FACTS THAT PRECLUDE SUMMARY JUDGMENT

Plaintiffs L.R. and D.R. and their mother, Madeline Perez, and R.H. and his mother, Manqing Lin submit this Statement of Additional Facts that Preclude Summary Judgment, pursuant to Rule 11 of the Court's Policies and Procedures.

I. THE EVALUATION AND IEP PROCESS.

1. It is the District's policy to provide parents with draft IEPs and evaluations in English 10 days prior to an IEP meeting. Ex. 7, Hess Dep. 122:16–123:8, 188:20–189:9, 191:11–192:8; Ex. 22, Winterbottom Expert Report at 11, May 11, 2018. Ex. 23, Winterbottom Dep 140:11–25, June 6, 2018.

2. Personnel within the District have acknowledged that parents' access to written IEPs directly bears on their ability to participate meaningfully in the educational planning process. Ex. 19, Still Dep. 47:15–48:5 (testifying "[t]hat parents have to have meaningful participation" in the IEP planning process and that she believes "that they have to be informed about what programs and instructional programs that their children are receiving and be able to contribute to the decision making on that"); *id.* at 51:10–14 (testifying that she was not aware of a situation "where a parent's right to meaningful participation would be fulfilled even [though] they were denied access to [a] written IEP"); *id.* at 116:5–13 (failing to identify a situation in which "a non-English speaking parent would [not] also benefit from a written document in the language they could read"); Ex. 18, Sharer Dep. 72:9–73:17 ("I think the IEP is important to parents. The IEP at a glance is very important for the teacher and the parents because that tells me, as a teacher, what accommodations and modifications I have to make. So, the IEP at a glance is what is actualized . . . The parents need to know all along why the students being evaluated, what's the procedure, the possible consequences.").

3. LEP parents cannot fully participate in their children's IEP meeting with a draft IEP

they cannot read. Ex. 5, Lin. Decl. ¶ 10, 14; Ex. 6, Perez Decl. ¶ 27.

4. The District does not as a matter of policy or practice require that IEPs be fully translated for LEP parents. *See* Ex. 7, Hess Dep. 148:2–8; 149:13–16; Ex. 8, Soderman Dep. 169:6–170:7; Ex. 5, Lin Decl. ¶.36; Ex. 6, Perez Decl. ¶¶ 11, 32.

5. The District maintains that a sufficient substitute for translated IEPs is for LEP parents to be offered the opportunity to meet with District personnel to review the English version of the draft documents prior to IEP meetings. *See* Ex. 7, Hess Dep. 192:20–193:1; Ex. 23, Winterbottom Dep. at 66:21–67:12, June 6, 2018; *id.* at 80:20–81:7 (maintaining that LEP parents have access to information in draft IEPs “because they have the ability to enlist the services through interpretation at the schools”); *id.* at 111:10–21 (testifying that one component of ensuring that LEP parents take part in the IEP process is to make “available to them the IEP draft with an interpretation process before the meeting”).

6. The District does not uniformly advise parents of the availability of District personnel to review the English version of draft documents prior to IEP meetings, Ex. 6, Perez Decl. ¶ 15, and its own expert acknowledged that some parents may not be able to take advantage of it. Ex. 23, Winterbottom Dep. 111:23–112:1.

7. The District’s expert acknowledged that a translated draft IEP prior to an IEP meeting would be helpful to LEP parents, even if they met with an interpreter regarding the draft IEP before the meeting. Ex. 23, Winterbottom Dep. 139:1–25.

8. It is clear that in order to meaningfully participate in their children’s educational processes, in addition to written IEPs, LEP parents need certain information, including (1) “to know what special education is”; (2) “to know what their rights are”; (3) “to know how they can best help their children at home, so that whatever deficit or room for improvement, they can support at home”; (4) “to understand an evaluation of their child that was conducted” by the District; (5) to

understand “the special education services being offered” by the District; (6) to know “whether or not the[ir] child is making progress”; (7) to know “the proposed classroom placement of the[ir] child”; (8) to know whether “the School District identifies [a child’s] behavior as interfering with learning”; (9) “to understand progress monitoring reports”; (10) to understand their child’s report cards; and (11) to understand their child’s behavior plan. Ex. 8, Soderman Dep. 88:18-91:2.

II. POLICIES AND PRACTICES OF THE DISTRICT TRANSLATION AND INTERPRETATION SERVICES OFFERED BY THE DISTRICT.

A. LEP Status and Notification of Translation and Interpretation Services.

9. The District as a matter of practice does not consistently advise parents of their right to request translated documents and interpretation of IEP process documents. Ex. 21, Perez Dep. 45:14-18; Ex. 6, Perez Decl. ¶ 15 (stating that she has never received any notice of her right to translations and interpretation and was not verbally apprised of these rights); Ex. 17, McCabe Decl. ¶¶ 20–21 (“Parents are not informed of any right to ask for translated documents and therefore they do not request translated documents.”); Ex. 14, Bustamante Dep. 113:22–115:6 (testifying that LEP parents are generally not made aware of their right to receive translation and interpretation services from the District); Ex. 3, Aug. 2, 2018 Perng Decl. ¶¶ 7–12, 26, 28 (discussing the District’s lack of communication to LEP parents and their resulting lack of awareness of services for their children); Ex. 9, Capitolo Dep. 209:13–20 (“Q. Is it the practice of the district to tell parents with respect to IEPs or evaluations that translation[s] of those documents is available? [Objection omitted.] A. We wait for the parent to request the documents in translated form.”); Ex. 8, Sharer Dep. 102:8–12 (testifying that she was not aware of “any policies or procedures that informed parents of their rights to either translation services, or interpretation services, or both”).

10. The District does not track whether parents are LEP. *See* Ex. 24, Nov. 21, 2017 Ltr. from M. Obod to P. Saint-Antoine at 1; Ex. 7, Hess Dep. 80:14–16 (“We don’t keep track of the parents that are what you are describing as limited English proficient).

11. During the 2015–2016 school year, there were 3,507 special education students who lived in a household with a home language other than English. *See* Ex. 24, Nov. 21, 2017 Ltr. from M. Obod to P. Saint-Antoine at 1. The number of special education students that live in a household with a home language other than English increased to 3,783 during the 2016–2017 school year. *Id.*

12. It is the District’s policy and practice to track parents and guardians’ English proficiency on an *ad hoc* basis. Ex. 18, Sharer Dep. 28:19-29:10 (testifying that identification of parents or guardians who have English proficiency is done on a “case by case” basis); Ex. 19, Still Dep. 88:9-89:5, 95:13-20, 97:5-99:13 (testifying that the District does not systematically ask specific questions designed to identify “parents as limited English proficient” and relies in part on *ad hoc* student feedback given to teachers (which is not systemically recorded) to identify parents as LEP).

B. Translation Services.

13. A key component of ensuring that LEP parents are able to participate in the IEP process is the high quality translation of IEP process documents. Ex. 8, Soderman Dep. 169:6–170:7 (testifying that she does not believe only translating headings and “no individual information” of IEPs is “sufficient for a parent to understand and participate”); Ex. 25, Expert Report of Nelson L. Flores, Ph.D. at 11, April 13, 2018.

14. Personnel within the District have acknowledged the importance of parents’ access to written IEPs to ensure their ability to participate meaningfully in the educational planning process. Ex. 7, Hess Dep. 122:16–123:8; 191:24–192:4. Allison Still, the District’s Chief of Multilingual Curriculums and Programs, testified that she is not aware of a situation “where a parent’s right to meaningful participation would be fulfilled even [though] they were denied access to [a] written IEP,” or “where a non-English speaking parent would also benefit from a written document in the language they could read.” Ex. 19, Still Dep. 51:10–14, 116:5–13.

15. It is the District's policy and practice not to provide LEP parents and students with complete translations of IEP documents. Ex. 8, Soderman Dep. 169:6–170:7 (testifying that only headings and “no individual information” of IEPs is translated and that she does not believe such translation is “sufficient for a parent to understand and participate”); Ex. 7, Hess Dep. 94:2–15 (“[T]he documents that are produced, the standard information is translated into that language, because IEP's are individualized and . . . the student-specific information is not translated.”); Ex. 14, Bustamante Dep. 113:12–21, 117:18–24, 126:15–22, 133:13–20 (testifying that LEP parents routinely do not receive evaluations, IEPs, or NOREPs translated into their native language prior to IEP meetings, if at all); Ex. 17, McCabe Decl. ¶¶ 20–26 (affirming that the District routinely fails to translate documents for non-English speaking parents despite knowing their status as LEP); Ex. 5, Lin Decl. ¶¶ 6–7, 17, 30, 33, 36; Ex. 6, Perez Decl. ¶¶ 6, 8–9, 12, 30, 32–33, 36–38.

16. The District, in many instances, only translates IEP headings and does not translate student-specific information contained in IEPs. Ex. 8, Soderman Dep. 169:6–170:7 (testifying that only headings and “no individual information” of IEPs is translated and that she does not believe such translation is “sufficient for a parent to understand and participate”); Ex. 7, Hess Dep. 94:2–15 (“[T]he documents that are produced, the standard information is translated into that language, because IEP's are individualized and . . . the student-specific information is not translated.”); Ex. 21, Perez Dep. 47:10–48:7 (“[T]here were several parents like me who don't get the documents in Spanish. . . . At Philadelphia HUNE there were several parents with the same problem, we talked about it there. When we asked documents to be translated into Spanish, mostly what they translate is only the headings, the titles to Spanish, and the summary comes in English nonetheless. I don't think that's a translation into Spanish. To me, to translate it to Spanish is that everything is in Spanish. . . . [T]here were two or three parents there . . . we were talking about how important it

would be to have the documents translated.”); Ex. 5, Lin Decl. ¶¶ 7, 20, 33, 51; Ex. 6, Perez Decl. ¶¶ 33, 36.

17. Even when translations of IEPs are provided, parents and guardians routinely do not receive them in a timely manner that allows them to adequately prepare for and meaningfully participate in IEP meetings. Ex. 5, Lin Decl. ¶ 51 (affirming that the fully translated IEP was not provided until four months after the IEP meeting and she routinely receives IEP documents in English without sufficient time for oral interpretation prior to meetings); Ex. 21, Perez Dep. 12:21–13:8 (“Almost every time I go to the IEPs I ask for translation because they are in English.”); *id.* at 72:3–73:7 (describing an IEP for D.R. for which she requested but did not receive a full translation and was told the partial translation “was the best [the District] could have translated”).

18. Although the District has a policy of providing written IEPs in English to parents 10 days before an IEP meeting occurs, it does not translate draft IEPs. Ex. 7, Hess Dep. 269:5–7; *see also* Ex. 21, Perez Dep. 103:3–12 (testifying that she “could be a more effective advocate” for her children if she had translated documents before IEP meetings).

19. In addition to IEPs, it is the District’s policy and practice not to translate other IEP process documents for LEP parents, such as Functional Behavior Assessments and Positive Behavior Support Plans. Ex. 5, Lin Decl. ¶ 17, 30; Ex. 14, Bustamante Dep. 113:12–21, 117:18–24, 126:15–22, 133:13–20.

20. The District does not comprehensively track the number of requests for the translation of IEPs and other IEP process documents; despite the large number of special education students with a household language other than English, the District only documented 50 or fewer requests annually for translations of all IEP process documents directed to the District's Translation & Interpretation Center. *See* Ex. 24, November 21, 2017 Ltr. from M. Obod to P. Saint-Antoine at 2

(providing that during the years 2015, 2016, and 2017, there were 16, 47, and 50 requests respectively directed to the District’s Translation & Interpretation Center and identifying a spreadsheet containing tabs for the 2015-2016, 2016-2017, and 2017-2018 school years that “sets forth requests for translation of IEP process documents that were directed to the Office of Specialized Services and granted”).

21. Even for NOREPs, which the District admits it is required to translate for LEP parents, it does not keep track of how many are actually being translated. Ex. 7, Hess Dep. 145:6–9.

22. Nancy Velez, the Bilingual Special Projects Assistant for the District, testified regarding specific requests for translation of IEP-related documents that have no record of being submitted for translation by the District. Ex. 27, Velez Dep. 188:24–192:16, 203:12–205:9, 216:14–222:1, 223:13–228:1, Feb. 16, 2018; *see also* Ex. 28, PSD014957 (Exhibit 3 to Valez Deposition); Ex. __, Marino Dep. at 33:21–34:1, March 16, 2018 (testifying that Nancy Velez is responsible for tracking whether required translations are completed).

23. The District does not have or implement any evaluation process to assess whether LEP parents of students with disabilities are receiving adequate translation and interpretation services to meaningfully participate in their child’s special education program. Ex. 8, Soderman Dep. 191:16–22 (testifying that she is unaware of “any kind of evaluation of whether [LEP] parents of students with disabilities are receiving the interpretation and translation services that they need to participate in the special education process”).

24. The District does not have any policy or practice for prioritizing translation or interpretation services for LEP parents of students with disabilities and ensuring that they receive language services to meaningful participate in the special education process. Ex. 7, Hess Dep.

160:13-22 (testifying that if a parent has not used interpretation services, the response to that LEP parent's request for translation "depends on...the parent, and the IEP process so far").

25. Although the District maintains that it instituted a new protocol regarding translation and interpretation services during the course of this litigation, the District's policy is inadequate, lacks objective standards, is not consistently followed, and is not uniformly communicated to families. Ex. 19, Still Dep. 103:3-18 (testifying that the protocol for determining if an IEP process document should be translated has not substantively changed but simply recently become more formalized); Ex. 17, McCabe Decl. ¶¶ 20-26 (affirming that the District routinely fails to translate documents for non-English speaking parents despite knowing their status as LEP); Ex. 5, Lin Decl. ¶¶ 30, 36; Ex. 6, Perez Decl. ¶¶ 6, 11, 15, 30, 36-38.

26. The District's policy and practice deprives many LEP parents of translated documents. *See, e.g.*, Ex. 14, Bustamante Dep. 113:12-21, 117:18-24, 126:15-22, 133:13-20 (testifying that LEP parents routinely do not receive evaluations, IEPs, or NOREPs translated into their native language prior to IEP meetings, if at all); Ex. 20, CIR at 2 (finding that in twenty-three out of a random sample of twenty-five files reviewed, parents did not receive the required forms in their native language as required under the IDEA); Ex. 5, Lin Decl. ¶¶ 30, 36; Ex. 6, Perez Decl. ¶¶ 6, 11, 15, 30, 36-38.

27. Ms. Perez has received NOREPs and IEPs that were not fully translated and has never been told she can receive interpretation of a draft IEP before a meeting. Ex. 6, Perez Decl. ¶¶ 6, 15, 36-38; Ex., Notice of Recommended Educational Placement ("NOREP") for D.R., May 20, 2019.

28. In a February 2016 meeting to discuss R.H.'s kindergarten placement, the District provided Ms. Lin a Permission to Evaluate ("PTE") (which it recognized should be translated, *see*

Ex. 7, Hess Dep. 147:6–11) and other special education documents in English only and refused to translate them into Chinese. Ex. 15, Lin Dep. 112:17–117:8.

29. District employees are not uniformly aware of the protocol cited by the District for translation and interpretation services. *See, e.g.*, Ex. 18, Sharer Dep. 111:3–17 (testifying that she was not familiar with a “quick reference guide [for] translation and interpretation services”).

C. Interpretation Services.

30. To ensure that LEP parents and guardians are able to meaningfully participate in their child’s education, it is necessary to have trained, qualified interpreters at every meeting between the District and the parent or guardian. Ex. 8, Soderman Dep. 97:15–23 (“Interpreters are needed when the parent is Limited-English Proficient”); Ex. 25, Expert Report of Nelson L. Flores, Ph.D. at 13.

31. On the day of an IEP meeting, it is essential to have a highly qualified interpreter who has expertise in special education and is well-informed of the student’s case. Ex. 25, Expert Report of Nelson L. Flores, Ph.D. at 13; Ex. 19, Still Dep. 47:15-48:5.

32. The District’s oral interpretation services are sometimes provided by Bilingual Counseling Assistants (“BCAs”). Ex. 26, Monley Dep. at 76:23-79:2-14, March 19, 2019; Ex. 8, Soderman Dep. 30:7-13.

33. The District has an insufficient number of BCAs to provide interpretation services to LEP parents during IEP meetings. Ex. 8, Soderman Dep. 173:24–174:13 (testifying that there are approximately 216 schools in the District, BCAs cover approximately 78 school buildings, and BCAs are, on average, assigned to three different schools); Ex. 10, PSD006438 (listing the District BCAs from 2011-2017, which ranged from 56-60, and their assigned schools).

34. Between 2011 and 2017, the number of District BCAs ranged from 56-60. Ex. 10, PSD006438.

35. BCAs are not available at each District school every day. Ex. 8, Soderman Dep. 173:24–174:13.

36. The District does not have written policy or standard for making decisions of how BCAs will be assigned. Ex. 8, Soderman Dep. 75:5–9 (testifying that there are no “written policies or standards, regarding making decisions as to who will be assigned to a particular interpretation request”). Even when a BCA is assigned for an IEP meeting, it is unclear whether they receive copies of necessary IEP documents in accordance with the District’s written policy. Ex. 7, Hess Dep. 140:11–141:22.

37. BCAs do not receive adequate training regarding special education. Ex. 14, Bustamante Dep. 125:8-126:5; 132:4-18; *see also* Ex. 8, Soderman Dep. 46:17–22 (testifying that there are no BCAs on her staff that skills “[s]pecific to special education”); Ex. 15, Lin Dep. 142:12–143:21.

38. Due to the insufficient number of BCAs, the District utilizes school personnel that speak the parents’ native languages, who are not BCAs, to act as interpreters during IEP meetings. Ex. 21, Perez Dep. 108:1–109:4 (describing an IEP meeting for D.R. in which a principal acted as an interpreter and only provided the “gist” of what was said); Ex. 14, Bustamante Dep. 126:23–128:3 (testifying that District personnel will be used as interpreters at meetings).

39. School personnel are used as interpreters for LEP parents on an “as needed” basis. Ex. 7, Hess Dep. 47:9–48:1 (testifying that “bilingual teachers, principals and staff” were used “in IEP meetings” on an “as needed” basis).

40. The school personnel used during IEP meetings do not have any training on providing interpretation during IEP meetings. Ex. 7, Hess Dep. 47:18–48:1.

41. In other instances, the District will use Language Line services to act as an interpreter for parents. Ex. 8, Soderman Dep. 39:4–40:17.

42. The District does not track how often BCAs are used in IEP meetings as opposed to Language Line. Ex. 7, Hess Dep. 122:1–10.

43. BCAs do not provide word for word translations of documents, rather, their function is to interpret what is said at the IEP meetings. Ex. 8, Soderman Dep. 27:1–30:6.

44. IEPs are complex documents with technical language and may be unfamiliar to an interpreter without any background training in special education, such a Language Line interpreter. Ex. 25, Expert Report of Nelson L. Flores, Ph.D. at 15; Ex. 4, Del Toro Decl. ¶¶ 23–25.

45. Language Line interpreters do not have an opportunity to review IEP documents during or prior to meetings, which can prevent them from providing effective interpretation services. Ex. 25, Expert Report of Nelson L. Flores, Ph.D. at 15.

46. Sight translation at an IEP meeting is not an adequate substitute for a translated IEP, in part because it is not possible to orally translate an entire IEP during a normal meeting. Ex. 8, Soderman Dep. at 98:12–99:6 (“If you want me to site-translate the whole document, that is completely inefficient, I think, because it would take forever. . . . I wouldn’t recommend anyone to do a whole IEP with site translation.”); Ex. 16, Nov. 4, 2019 Perng Decl. ¶ 11.

III. MADELINE PEREZ AND HER CHILDREN, L.R. AND D.R.

47. Ms. Perez is LEP and has three children—D.R., J.R.¹ and L.R.—that are special education students and one child who is not in special education. Ex. 21, Perez Dep. 13:15–24, 16:16–17:11, 20:10–19, 21:5–9.

48. Ms. Perez and her children moved from Puerto Rico to Philadelphia in 2012. Ex. 21, Perez Dep. 14:7–9.

49. L.R. is fifteen years old and was placed by the District at Deveraux, an approved private school placement. Ex. 6, Perez Decl. ¶ 10.

50. When L.R. moved from Puerto Rico to Philadelphia in 2012, he was evaluated at the Center for Autism and diagnosed with autism. Ex. 21, Perez Dep. 17:9–18:11 (testifying that L.R. has ODD, ADHD and autism); Ex. 6, Perez Decl. ¶ 8.

51. Subsequently, the District performed its own evaluation of L.R. and did not provide the evaluation report to Ms. Perez in Spanish, despite her request for translations. Ex. 21, Perez Dep. 13:2–8 (“When I came here to Philadelphia . . . I requested that all documents be translated[.]”); Ex. 6, Perez Decl. ¶ 8.

52. Ms. Perez testified that “almost every time I go to the IEPs I ask for translation because they are in English.” Ex. 21, Perez Dep. 12:23–13:1.

53. The District has refused to fully translate L.R.’s IEP process documents and would only translate the documents’ section headings, including for NOREPs where translation is required. Ex. 21, Perez Dep. 43:15–44:24; Ex. 6, Perez Decl. ¶ 11. Without these translated documents, Ms. Perez cannot later review and recall the plans for each of her children. Ex. 21, Perez Dep. 80:7–17; Ex. 6, Perez Decl. ¶ 17.

¹ On September 26, 2019, the parties filed a stipulation to dismiss without prejudice J.R.’s claims against the District as set forth in Counts One through Seven of the First Amended Complaint. Dkt. No. 107. The Court signed this stipulation on September 30, 2019. Dkt. No. 110.

54. Ms. Perez has never been informed that a BCA will provide interpretation of the proposed IEP before the meeting. Ex. 6, Perez Decl. ¶ 15.

55. With the assistance of an attorney, in February 2017, Ms. Perez signed a settlement agreement with the District related to L.R.,² so that L.R. could move to a private school. Ex. 21, Perez Dep. 23:13–20, 26:13–27:11.

56. The agreement released the District of liability for legal claims through the date it was signed; however, Ms. Perez did not waive her or L.R.’s rights to future claims against the District, and the agreement did not entitle her or L.R. to any language services. *See Confidential Settlement Agreement and General Release re: L.R.*

57. Since her deposition on February 12, 2018, Ms. Perez has continued to attend IEP meetings for L.R., still has requested translations, and has continued to receive IEPs where all the information about her son’s needs, assessments, programing services, and progress are in English. Ex. 6, Perez Decl. ¶ 6.

58. D.R. is seventeen years old and attends Kensington High School for Creative & Performing Arts. Ex. 6, Perez Decl. ¶ 31.

59. Ms. Perez also requested translated IEPs for D.R., but received IEPs with only the headings translated. Ex. 21, Perez Dep. 71:19–73:7 (testifying that she was told she would receive a translated IEP for D.R., and that, when she only received an IEP with translated headings, the teacher apologized and acknowledged the inadequacy of the translation).

60. In several meetings Ms. Perez attended, the District did not provide an interpreter or, when interpreters were present, they did not fully sight translate the IEPs. Ex. 21, Perez Dep. 70:15–23, 78:3–10 (on occasion, she had to bring her own interpreter); *id.* at 107:2–8, 108:1–109:4 (the principal served as interpreter and only offered the “gist” of what was being said).

² Plaintiffs note that this agreement contains a confidentiality provision restricting the disclosure of its terms and contents; however, if requested by the Court, Plaintiffs will provide a copy of the agreement under seal.

61. Since her deposition on February 12, 2018, Ms. Perez has continued to attend IEP meetings for D.R., still has requested translations, and has continued to receive IEPs where all the information about her daughter's needs, assessments, programing services and progress are in English. At the IEP meeting, she relies on interpreters provided by HUNE. Ex. 6, Perez Decl. ¶¶ 6, 32, 35.

IV. MANQING LIN AND HER SON, R.H.

62. Ms. Lin is LEP and has one child in the District, R.H. Ex. 15, Lin Dep. 8:21–23, 34:10–19.

63. R.H. is eight years old and attends McCall Elementary. Ex. 5, Lin Decl. ¶ 3.

64. Although Ms. Lin is able to understand and speak some English words, she has limited English proficiency and speaks only Mandarin at home with R.H.'s father and their children. Ex. 15, Lin Dep. 8:21–23, 34:10–19, 169:15–16.

65. R.H.'s father understands little English and does not read or write English. Ex. 5, Lin Decl. ¶ 4.

66. In a February 2016 meeting to discuss R.H.'s kindergarten placement, the District provided Ms. Lin a PTE and other special education documents in English only and refused to translate them into Chinese. Ex. 15, Lin Dep. 112:17–117:8.

67. Ms. Lin relied on a friend and an interpreter from R.H.'s early intervention provider, whose assistance was nevertheless insufficient to guide Ms. Lin in completing the PTE form. *Id.* She later signed the PTE without understanding that it gave consent for the District to conduct a limited evaluation of R.H. Ex. 5, Lin Decl. ¶ 10.

68. Due to the District's lack of translation and interpretation services, Ms. Lin requested assistance from R.H.'s preschool teacher to complete forms integral to his evaluation, but she learned later that the teacher had omitted necessary information. Ex. 15, Lin Dep. 180:6–22.

69. R.H.'s initial evaluation determined qualified for speech services, but it omitted his needs for therapy and a functional behavior assessment or a behavior plan. Ex. 15, Lin Dep. 136:12–137:20.

70. After the District conducted its reevaluation of R.H., it sent Ms. Lin an Evaluation Report which was not translated into Chinese. Ex. 15, Lin Dep. 144:15–147:3.

71. With the assistance of a friend, Ms. Lin requested mediation regarding the District's evaluation of R.H. and his need for an Independent Educational Evaluation ("IEE"). Ex. 15, Lin Dep. 136:2–137:20.

72. On or about August 18, 2016, the District entered into a Mediation Agreement, attached, whereby the District agreed to provide translated copies of the IEE and other documents, which allowed Ms. Lin and her husband to understand R.H.'s diagnosis and complex academic and behavioral needs. *See* Def.'s Ex. J, Lin Mediation Agreement. The District also agreed to provide translated versions of "final" IEPs and evaluations. *Id.*

73. Despite the mediation with Ms. Lin, the District refused and continues to refuse to provide translated versions of any proposed or draft IEPs or evaluations for her son, R.H. Ex. 15, Lin Dep. 190:5–13.

74. In the absence of these fully translated documents, Ms. Lin is unable to prepare for or meaningfully participate in R.H.'s IEP meetings, where these documents and proposed changes to her son's special education program are discussed. Ex. 5, Lin Decl. ¶¶ 11, 41; Ex. 15, Lin Dep. at 172:5–21; Ex. 8, Soderman Dep. 169:6–170:7.

75. While it is the District's policy to provide draft IEPs and evaluations to English-speaking parents prior to their attendance at IEP meetings, the District has refused to provide draft IEPs in Chinese to Ms. Lin prior to the IEP meetings for R.H. Ex. 15, Lin Dep. 142:6–24, 190:5–13.

In addition, the District has failed to translate for Ms. Lin other IEP-related documents, such as R.H.'s Functional Behavior Assessment, Positive Behavior Support Plan, and Progress Monitor Report. Ex. 15, Lin Dep. at 68:1–69:3.

Dated: November 4, 2019

Respectfully submitted:

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**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

[PROPOSED] ORDER

AND NOW, this _____ day of _____ 2019, upon consideration of Defendant The School District of Philadelphia's Motion for Summary Judgment [ECF No. 108] and Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment, including Plaintiffs' Response to the School District of Philadelphia's Statement of Undisputed Facts and Statement of Additional Facts that Preclude Summary Judgment, it is HEREBY ORDERED that Defendant's Motion is DENIED.

Hon. Mitchell S. Goldberg, J.

**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

**PLAINTIFFS' MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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| 2. | <i>A.G. v. Sch. Dist. of Phila.</i> , ODR File No. 15166-13-14 (May 26, 2015) (Ex. B to Pls.' First Am. Compl.) |
| 3. | Declaration of Anna Perng, August 2, 2018 |
| 4. | Declaration of William Del Toro Vargas, November 4, 2019 |
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| EXHIBIT | DESCRIPTION |
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| 29. | Excerpts from Deposition of Christopher Marino, March 16, 2018 |
| 30. | D.R. NOREP, May 20, 2019 |
| 31. | <i>C.D. v. Mars Area Sch. Dist.</i> , ODR File No. 15968-14-15 AS (PA SEA, Oct. 31, 2015) |
| 32. | <i>J.S. v. Northwestern Lehigh Sch. Dist.</i> , ODR No. 13350-1213KE (PA SEA, Feb. 26, 2013) |

EXHIBIT 1

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: T.R.

Date of Birth: redacted

Dates of Hearing: 8/4/2014, 9/22/2014, 9/24/2014, 11/3/2014, 11/7/2014, 11/10/2014, 11/12/2014, 1/21/2015, 1/22/2015, 1/23/2015, 1/26/2015, 1/27/2015, 1/28/2015, 1/30/2015, 2/23/2015, 2/27/2015, 3/17/2015, 3/23/2015, 3/25/2015, 3/26/2015, 3/31/2015, 4/6/2015 and 4/7/2015

OPEN HEARING

ODR File No. 15181-13-14

Parties to the Hearing:

Parents

Parent[s]

Representative:

Parent Attorney

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Public Interest Law Center

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Date Record Closed: May 4, 2015

Date of Decision: May 26, 2015

Hearing Officer: Brian Ford, Esquire

Introduction

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and Section 504 of the Rehabilitation Act of 1973 (Section 504), 34 C.F.R. Part 104.4. It is the companion to the case at ODR No. 15166-1314KE. Both hearings were heard together.

The Parent, who speaks [a language other than English], alleges that the District violated the Parent's right to meaningfully participate in meetings concerning the provision of FAPE to the Student. The Parent also alleges that the District failed to implement an IEP that carried over from the Student's prior charter school enrollment, failed to properly evaluate the Student, incorrectly identified the Student as a student with an intellectual disability, and failed to offer an appropriate program and placement for the Student.

Issues

1. Did the District seriously infringe upon the Parent's meaningful parental participation in the IEP Process, by its failure to provide her with vital IEP documents and other school documents in [her native language] and in a timely manner?
2. Did the District deny the Student a free and appropriate public education during the 2013-14 and/or 2014-15 school year by its overall by failing to implement the Student's IEP?
3. Did the District err in identifying the Student as having an Intellectual Disability and propose an inappropriate and unspecified out of district placement in June, 2014?
4. What placement is currently appropriate for the Student?

Findings of Fact

The very large record of this hearing and its companion case was carefully reviewed in its entirety. In special education due process hearings, there is a world of difference between what is technically admissible and what is truly necessary to resolve the issues presented. I have limited my findings of fact to what is necessary to resolve the parties' dispute.

1. "Interpretation" describes the act of restating spoken language in a different language. Interpretation can either be simultaneous (in which the interpreter restates the communication as it is said) or consecutive (in which the interpreter restates the communication just after it is said).
2. "Translation" describes the act of re-writing a document in another language.
3. It is not disputed that the Parent's native language is [not English], or that the Parent has limited English proficiency.
4. Based on *the totality of the record*, I find that the Student¹ is best able to communicate using a combination of [mother's native language] and English, and switches between the two depending on the circumstances of the communication and the vocabulary involved.
5. Based on *the totality of the record*, I find that the Student's ability to communicate is impaired if the Student is required to communicate in either [mother's native language] or English exclusively.
6. The Student attended a charter school (Charter) within the District during the 2010-11 and 2012-13 school years.

¹ Typically, identifying information is not included in due process decisions. For reasons that will be apparent, the Student's gender cannot be omitted from this decision without yielding vague or overly-wrought findings.

7. The Student enrolled in the District for the 2013-14 school year. The District became the Student's Local Educational Agency (LEA) at that time, and has remained the Student's LEA since.
8. The Student was evaluated for special education eligibility shortly before leaving the Charter. An evaluation report (ER) was drafted on May 23, 2013. The ER concluded that the Student was a "child with a disability" as defined by the IDEA. S-9C
9. The ER concluded that the Student fell under the disability category of Other Health Impairment (OHI). S-9C.
10. The Charter drafted an IEP for the Student dated June 27, 2013. S-9E.
11. The Charter's IEP called for:
 - a. 2000 minutes (33 hours) a month of counseling support as a related service.
 - b. 60 minutes of skills training (2 sessions at 30 minutes each) per week.
 - c. Counseling in the counselor's office.
 - d. Implementation of a 5 point rating scale to address behaviors.
 - e. Implementation of a truancy elimination plan.
12. The Charter's IEP contemplated the immediate development and implementation of a positive behavior support plan (PBSP). S-9E.
13. The Student did not receive special education from the Charter but rather transferred to the District.
14. On July 30, 2013, parent, via her attorney, placed the District on notice that the Student would enroll for the coming 2013-14 school year, and requested special education programming. P-5.
15. In response to parent's July 30, 2013 letter, the District convened a meeting. Counsel for both parties attended.
16. During the August 20, 2014 meeting, the District offered programming at [a District] High School ("High School"), the Student's neighborhood school. More specifically, the District offered programming at High School if the Student enrolled. S-3, S-7,
17. Language Line is a service available to District personnel that provides interpreter services by phone. The District used Language Line during the August 20, 2014 meeting. NT 3086-3087.
18. The Parent rejected placement at High School prior to the Student's enrollment, and requested other placement options. S-7.
19. On September 4, and 12, and October 3, 2013, the District proposed five different alternative placements. Four of those five placements were located on the same campus (one of the District's high schools). These placements were proposed prior to the Student's enrollment. NT 3061-3062, 3090-3091, S-7.
20. The Parent did not register the student immediately after receiving the District's alternative placement proposals. *Id.*

21. The District translated the Charter's ER and IEP into [mother's native language] and provided the translation to the Parent on September 23, 2013. S-5, S-7, S-9, S-21.
22. On September 25, 2013, the District sent Parent's attorney a Notice of Recommended Educational Placement (NOREP) dated September 24, 2013 in English and [mother's native language]. The NOREP was an offer of special education. Specifically, the District offered supplemental learning support with services in accordance with the Charter's IEP. NT 1096, 1098-1099, 3090-3091, 3090-3091, 3108, S-6, S-21.
23. On October 2, 2013, via counsel, the District invited the Parent to participate at an IEP meeting. The same invitation was sent to the Parent on October 3, 2013. The meeting was scheduled for October 9, 2013 at High School. The meeting convened as scheduled with counsel for both parties in attendance. S-9A through S-9J, S-10, S-13.
24. The District employs Bilingual Counseling Assistants (BCA) who, among other job duties, provide interpretation services. NT 14014-1405.
25. A [mother's native language-speaking] BCA attended the October 9, 2013 IEP meeting.
26. During the October 9, 2013 IEP meeting, all of the placements previously offered by the District were still on the table. After the meeting, on October 15 and 16, the Parent and Student toured two of those placements. The Parent and Student were accompanied by a [mother's native language-speaking] BCA on both tours. NT 1415, 1419-1421 3094-3095, S-10, S-13.
27. Another meeting convened, with counsel for both parties in attendance, on October 16, 2013. During that meeting, the District proposed [another] High School (Second High School) a sixth potential placement (or a seventh potential placement including High School). S-13.
28. On October 24, 2013, the District sent a Permission to Re-Evaluate (PTRE), seeking the Parent's consent for the District to conduct a multidisciplinary evaluation of the Student. The District also sent a NOREP proposing placement at Second High School. These forms were sent in both English and [mother's native language] to both the Parent and the Parent's attorney. S-12, S-13, S-14, P-14.
29. On November 1, 2013, the District sent additional paperwork (an EH-36 form) to the Parent to complete as part of the placement into Second High School. The Parent completed and returned the form on November 8, 2013. *Id.*
30. On December 3, 2013, the District sent an invitation to participate in an IEP team meeting, along with a revised NOREP. The meeting was scheduled for December 19, 2013. The NOREP proposed implementation of the Charter's IEP at Second High School (until the District could complete its own evaluation and offer its own IEP). The revised NOREP also provided yellow bus service. S-21.
31. The Parent enrolled the Student on December 3, 2013 and the Student started attending school on December 4, 2013. S-18, S-21, S-21, S-50, S-61. This enrollment was accomplished with the help of Second High School's Special Education Liaison (SEL), who speaks [mother's native language], and a BCA.
32. On December 4, 2013, the Parent also approved the NOREP of December 3, 2013. *Id.*
33. An IEP meeting convened on December 19, 2013 as scheduled. A [mother's native language-speaking] BCA was in attendance. The Parent approved the District's PTRE the same day.

34. The Student [had a physical condition] from December of 2013 through March of 2014. [Redacted.] NT *passim*.
35. The District evaluated the Student on February 26, March 18 and March 25, 2014. Based on the evaluation, the District concluded that the Student is a student with an Intellectual Disability (ID), not OHI, an emotional disturbance (ED), or a speech and language impairment. S-24, S-25, S-29.
36. Prior to conducting the reevaluation, the District concluded that a bilingual reevaluation was not necessary, and so the evaluation was conducted in English by English speaking evaluators. NT *passim*.
37. On March 25, 2014, the District convened an IEP meeting with a [mother's native language-speaking] BCA in attendance. The District's reevaluation, the ID diagnosis, and the Student's need for [redacted reason for] homebound instruction were discussed at the meeting. NT 679, 688-689, 760-761, 1142-1148, 1228-1229, 2775, 2778-2781, 3069-3070, 3073-3075, 3122, S-25, S-26, S-29.
38. The District translated its evaluation report into [mother's native language], and provided a [mother's native language], copy to the Parent via counsel.
39. The District offered [redacted] homebound instruction to the Student in April of 2014. S-28, S-29, S-30, S-32.
40. The Student returned to Second High School on May 5, 2014.
41. After the Student's return in May of 2014, the parties agree that the Student was absent from school several times. The parties disagree about whether those absences should have been marked as excused or unexcused.
42. After the Student's return in May of 2014, the Student frequently came to class late or skipped class. The parties disagree about what specifically constitutes a "tardy" or "late" or "cut" etc. I find that the Student frequently did not attend the entirety of class periods, regardless of the reason (or the legitimacy of the reason).
43. On June 6, 2014, the District issued English and [mother's native language], invitations to participate in an IEP meeting on June 12, 2014. S-33. The meeting convened as scheduled with a [mother's native language-speaking] BCA in attendance.
44. During the June 12, 2014 IEP meeting, the District provided a draft IEP, offered extended school year (ESY) services for the summer of 2014, discussed the Student's current behavioral needs and strategies for the Student to attend class more frequently, and discussed various placement options for the 2014-15 school year.
45. One placement option discussed during the June 12, 2014 IEP meeting was placement at an approved private school (APS). APSs are private schools in Pennsylvania that have been approved to educate students with disabilities. The record is ambiguous as to whether specific APSs were discussed during the meeting, or whether the general idea of an APS placement was discussed.
46. The District finalized an IEP and drafted a NOREP on June 17, 2014. Both documents were provided to the Parent's counsel and were later translated and provided to the Parent. The NOREP proposed full time learning support at an unspecified APS. S-35, S-39. Although the APS was not specified, the District communicated (via counsel) that four specific schools were under consideration, pending the Student's acceptance.

47. On June 25, 2014, the Parent rejected the NOREP and requested this due process hearing.
48. After this hearing was requested, the Parent obtained an independent educational evaluation (IEE) at the District's expense. The IEE was conducted by a bilingual evaluator. The bilingual evaluator deviated from standard testing protocols in an effort to obtain accurate information about the Student's abilities. P-34, P-42.

Legal Principles

Credibility

During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary

responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); *See also generally David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009).

In this case, I find that all witnesses testified to the best of their ability, relaying facts as they recalled them. To whatever extent one witness's testimony is inconsistent with another's, they legitimately remembered events differently.

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the Parent the party seeking relief and must bear the burden of persuasion.

Free Appropriate Public Education (FAPE)

As stated succinctly by former Hearing Officer Myers in *Student v. Chester County Community Charter School*, ODR No. 8960-0708KE (2009):

Students with disabilities are entitled to FAPE under both federal and state law. 34 C.F.R. §§300.1-300.818; 22 Pa. Code §§14.101-14 FAPE does not require IEPs that provide the maximum possible benefit or that maximize a student's potential, but rather FAPE requires IEPs that are reasonably calculated to enable the child to achieve meaningful educational benefit. Meaningful educational benefit is more than a trivial or *de minimis* educational benefit. 20 U.S.C. §1412; *Board of Education v. Rowley*, 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982); *Ridgewood Board of Education v. M.E. ex. rel. M.E.*, 172 F.3d 238 (3d Cir. 1999); *Stroudsburg Area School District v. Jared N.*, 712 A.2d 807 (Pa. Cmwlth. 1998); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3rd Cir. 1988) *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031 (3d Cir. 1993); *Daniel G. v. Delaware Valley School District*, 813 A.2d 36 (Pa. Cmwlth. 2002)

The essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time

it is issued to offer a meaningful educational benefit to the Student in the least restrictive environment.

Compensatory Education

Compensatory education is an appropriate remedy where a LEA knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only a trivial

educational benefit, and the LEA fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Courts in Pennsylvania have recognized two methods for calculating the amount of compensatory education that should be awarded to remedy substantive denials of FAPE. The first method is called the "hour-for-hour" method. Under this method, students receive one hour of compensatory education for each hour that FAPE was denied. *M.C. v. Central Regional*, arguably, endorses this method.

More recently, the hour-for-hour method has come under considerable scrutiny. Some courts outside of Pennsylvania have rejected the hour-for-hour method outright. *See Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005). These courts conclude that the amount and nature of a compensatory education award must be crafted to put the student in the position that she or he would be in, but for the denial of FAPE. This more nuanced approach was endorsed by the Pennsylvania Commonwealth Court in *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) and, more recently, the United States District Court for the Middle District of Pennsylvania in *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 (M.D. Pa. 2014). It is arguable that the Third Circuit also has embraced this approach in *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010) (quoting *Reid* and explaining that compensatory education "should aim to place disabled children in the same position that they would have occupied but for the school district's violations of the IDEA.").

Despite the clearly growing preference for the "same position" method, that analysis poses significant practical problems. In administrative due process hearings, evidence is rarely presented to establish what position the student would be in but for the denial of FAPE – or what amount of what type of compensatory education is needed to put the Student back into that position. Even cases that express a strong preference for the "same position" method recognize the importance of such evidence, and suggest that hour-for-hour is the default when no such evidence is presented:

"... the appropriate and reasonable level of reimbursement will match the quantity of services improperly withheld throughout that time period, unless the evidence shows that the child requires more or less education to be placed in the position he or she would have occupied absent the school district's deficiencies."

Jana K. v. Annville Cleona Sch. Dist., 2014 U.S. Dist. LEXIS 114414 at 36-37.

Finally, there are cases in which a denial of FAPE creates a harm that permeates the entirety of a student's school day. In such cases, full days of compensatory education (meaning one hour of compensatory education for each hour that school was in session) may be warranted if the LEA's "failure to provide specialized services permeated the student's education and resulted in a progressive and widespread decline in [the Student's] academic and emotional well-being" *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 at 39. *See also Tyler W. ex rel. Daniel W. v. Upper Merion Sch. Dist.*, 963 F. Supp. 2d 427, 438-39 (E.D. Pa. Aug. 6, 2013); *Damian J. v. School Dist. of Phila.*, Civ. No. 06-3866, 2008 WL 191176, *7 n.16 (E.D. Pa. Jan. 22, 2008); *Keystone Cent. Sch. Dist. v. E.E. ex rel. H.E.*, 438 F. Supp. 2d 519, 526 (M.D. Pa. 2006); *Penn Trafford Sch. Dist. v. C.F. ex rel. M.F.*, Civ. No. 04-1395, 2006 WL 840334, *9

(*W.D. Pa. Mar. 28, 2006*); *M.L. v. Marple Newtown Sch. Dist.*, ODR No. 3225-11-12-KE, at 20 (Dec. 1, 2012); *L.B. v. Colonial Sch. Dist.*, ODR No. 1631-1011AS, at 18-19 (Nov. 12, 2011).

Whatever the calculation, in all cases compensatory education begins to accrue not at the moment a child stopped receiving a FAPE, but at the moment that the LEA should have discovered the denial. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Usually, this factor is stated in the negative – the time reasonably required for a LEA to rectify the problem is excluded from any compensatory education award. *M.C. ex rel. J.C. v. Central Regional Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. N.J. 1996)

In sum, I subscribe to the logic articulated by Judge Rambo in *Jana K. v. Annville Cleona*. If a denial of FAPE resulted in substantive harm, the resulting compensatory education award must be crafted to place the student in the position that the student would be in but for the denial. However, in the absence of evidence to prove whether the type or amount of compensatory education is needed to put the student in the position that the student would be in but for the denial, the hour-for-hour approach is a necessary default – unless the record clearly establishes such a progressive and widespread decline that full days of compensatory education is warranted. In any case, compensatory education is reduced by the amount of time that it should have taken for the LEA to find and correct the problem.

Meaningful Parental Participation

The IDEA requires schools to use procedures that afford parents an “opportunity ... to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child...” 20 U.S.C. § 1415(b)(1). Similarly, parents must receive prior written notice whenever a school district proposes to the educational placement of a child. 20 U.S.C. § 1415(b)(3). The IDEA explicitly details the type of information that must be contained in such prior written notice. See, e.g. 20 U.S.C. § 1415(c)(1)(A)-(B), (E)-(F). This includes an explanation of why the change is proposed, what other options were considered and why those other options were rejected. *Id.* These participation requirements are in addition to the procedural safeguards notice requirements found at 20 U.S.C. § 1415(c)(1)(C).

In Pennsylvania, the NOREP is the document that provides the prior written notice to parents that is contemplated by the IDEA. As explained by the Pennsylvania Training and Technical Assistance Network (PaTTAN), “The NOREP explains the recommended educational placement or class for [a] child, and explains [parental] rights.” <http://parent.pattan.net/iep/WhatisaNOREP.aspx>. Moreover, the United States Supreme Court has recognized that parents have a right to receive prior written notice whenever a school district intends to alter a student’s “program or placement.” *Honing v. Doe*, 484 U.S. 305, 311-12 (1988); see also *Petties v. District of Columbia*, 238 F.Supp.2d 114, 123 -124 (D.D.C., 2002).

Parent’s Native Language

The notification required by 20 U.S.C. § 1415(b)(3) must be sent “in the native language of the parents, unless it clearly is not feasible to do so.” 20 U.S.C. § 1415(b)(4). The same is true for the IDEA’s procedural safeguards. 20 U.S.C. § 1415(d)(2).

As applied individuals with limited English proficiency, the term “native language” is defined as the “language normally used by that individual.” 34 C.F.R. § 300.29.

As drafted, these rules do not permit consideration of the individual’s ability to understand written or spoken English. If the individual has limited English proficiency (as the Parent does in

this case), procedural safeguards and prior written notices must be sent in the individual's native language.

Evaluation Criteria – Language

The IDEA and its regulations set forth extensive criteria for evaluations and reevaluations See 20 U.S.C. § 1414. Of those, one is pertinent here:

Each local educational agency shall ensure that – assessments and other evaluation materials used to assess a child under this section... are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer...

20 U.S.C. § 1414(3)(A)(ii).

In drafting this language, congress did not focus on any student's native language. Rather, congress explicitly instructs schools to administer tests in whatever language is most likely to yield accurate results. Moreover – perhaps in recognition that not all tests are offered in multiple languages – congress also instructs schools to administer tests in the *form* most likely to yield accurate information. As such, given the choice between strict adherence to testing protocols, or variation to assess a child's actual abilities, the IDEA unsurprisingly favors accurate information.

Discussion

Meaningful Parental Participation

At the outset of this hearing, there was significant discussion about the District's obligation to translate documents into [mother's native language]. The District is correct that the IDEA's regulations require translation of only the procedural safeguards notice and the prior written notices issued pursuant to 20 U.S.C. § 1415(b)(3) – NOREPs in Pennsylvania. The IDEA does not explicitly require the translation of any other documents.

However, the IDEA requires schools to facilitate meaningful parental participation in the IEP development process. Unlike the strict translation rules, meaningful participation requires inquiry into the Parent's ability to participate in meetings without translation. In this case, it is not possible for the Parent to meaningfully participate in meetings concerning the provision of FAPE to the Student unless the documents presented at that meeting are fully translated.

The purpose of an IEP meeting is to develop an IEP for the student. This requires more than a recitation of an IEP. Rather, it requires a conversation about the Student's needs, and what program and placement will satisfy those needs. Reading a mostly-English document in [mother's native language], is not the dialogue contemplated by the IDEA. The Parent's ability to follow along in documents while participating in the required dialogue is essential.

In this case, the District put people in place so that the Parent could engage in dialogue during the meetings (either through Language Line or by having a BCA in the room). Moreover, the District fully translated its evaluations, IEPs and NOREPs for the Parent. However, the IEP and NOREP from the June 17, 2014 meeting ready in [mother's native language], at the time of the meeting, and were often provide later only after parental request.

District witnesses agreed, and I explicitly find, that having the documents in an accessible form either during the meeting was critical to meaningful participation. (see, e.g. NT at 2995-2997).

Given the parties' vastly different views regarding the Student's needs and abilities, the Parent was placed at an obvious disadvantage.

The heavy participation of counsel for both parties at every turn is somewhat confounding. The Parent's attorneys speak English.² It is reasonable for the District to assume that anything communicated to the Parent's attorney will be relayed to the Parent in a way that the Parent will understand the information. I also have no doubt that communicating via counsel was often the fastest, easiest way for the parties to communicate with each other. Even so, it is the District's obligation to ensure meaningful parental participation. The Parent has no obligation to retain services, let alone hire an attorney, in order to meaningfully participate.

In sum, I find that the District satisfied the IDEA's narrow *translation* requirements but, even in doing so, did not satisfy the IDEA's requirements for meaningful parental participation during the June 17, 2014 meeting. The District put personnel in place so that the Parent could literally speak during that meeting, but did not make meaningful accommodations so that the Parent could prepare for it, or participate as it was happening. This is a violation of the Parent's rights.

Denial of FAPE – 2013-14 School Year

When a student places a school district on notice that he or she will leave a charter school and return to the district, the district is obligated to put an IEP in place for the Student's return even before the Student enrolls. See *I.H. v. Cumberland Valley Sch. Dist.*, 2012 U.S. Dist. LEXIS 101056 (M.D. Pa. July 20, 2012). This can be accomplished by simply offering to implement the charter's IEP until the district can evaluate and offer its own. However, even in those very rare cases in which a school district is required to do something more than adopt the charter's program, districts have no liability to provide a FAPE to a student before the student enrolls in the district. See *id.*³

In this case, tragically, the Student received nothing from the start of the 2013-14 school year through December 4, 2013 (the date that the Student started attending school). During this period of time, despite substantial communication between the District and the Parent – the bulk of which was via counsel – the Parent never actually enrolled the Student. I do not question the Parent's choice to not enroll until acceptable services were in place, but that choice comes with consequences. Even if the facts of this case were completely analogous to the facts of *I.H. v. Cumberland Valley* (and they are not), the District's only obligation is to say what program and

placement it would offer upon the Student's enrollment. The District not only satisfied that obligation, but went a step further to negotiate many placement options. As such, the District's obligation to provide a FAPE was not triggered until December 3, 2013 (the date that the Parent enrolled the Student).

From the time of the Student's enrollment through this due process hearing, the District has been obligated to implement the Charter's IEP because the Parent has rejected the District's subsequent proposals.

From December of 2013 through March of 2014 the District insists that the Student made progress. The question that I am called upon to answer, however, is whether the District implemented the Charter's IEP. I have no doubt that the Parent did not meaningfully participate in the development of the Charter's IEP, and I question the appropriateness of that document. However, again, the issue that I must resolve is whether the District implemented the Charter's IEP. If the District did not implement the Charter's IEP, the Student's right to a FAPE has been violated *per se*.

² I do not know if any of the Parent's attorneys also speak [mother's native language], but that is not relevant.

³ In *I.H. v. Cumberland Valley*, the school district was required to draft an IEP for a student who was potentially returning to from a charter school. Even then, Cumberland Valley had no obligation to actually provide a FAPE until the Student returned.

In this case, there is evidence that the District placed the student into learning support classes. There is no evidence that the District provided any of the services explicitly required by the Charter's IEP. Technically, it is the Parent's burden to establish what the District did not do. In this case, the near-absolute lack of persuasive evidence suggesting that the Charter's IEP was implemented is more than ample proof of the District's inaction.

This does not imply that the District made no effort to educate the Student. The record is to the contrary. The District placed the Student into its own program and honestly thought that it was doing right by the Student. But the District's obligation was to implement the Charter's program until it evaluated the Student and offered its own program. The District's failure to implement the Charter's program from December 3, 2013 through the end of the 2013-14 school year is a violation of the Student's right to a FAPE.

The exception to the foregoing is the period of time during which the Student received homebound instruction after [redacted]. Although there is no extensive record about the Student's actual ability to attend school immediately after [that event], none is needed. It was appropriate for the District to offer homebound instruction, and the District cannot be faulted for any failure to implement the Charter's IEP during this time.

Appropriateness of the District's Evaluation

The District's evaluation was inappropriate because it was conducted in English only. Per FF #4, English is not the language most likely to yield accurate information about the Student. Rather, permitting the Student to hear questions in both English and [mother's native language], and allowing the Student to respond to questions in English, [mother's native language], or both is the "language" that will yield the most accurate information.

Although this finding is based on the totality of the record, I make special note of the testimony of an independent, bilingual evaluator who assessed the student on behalf of the parent and at the District's expense. This was the only person who testified who is bilingual and who evaluated the Student. The District's evaluators spoke English only, and consulted with bilingual evaluators prior to evaluating the Student in English. This consultation did not give the District's evaluators any ability to determine how restricting the Student to English impacted upon the

Student's ability to communicate. Further, none of the District's bilingual evaluators evaluated the Student. Their conclusion that a bilingual evaluation was not necessary is both conclusory and, as presented in this case, mostly hearsay.

The record reveals that there are [mother's native language], versions of some common, standardized assessments. These [mother's native language], versions are not literal translations, but a [mother's native language], version normed against a [mother's native language], speaking sample population. When administering either the English or [mother's native language], tests, translating or interpreting questions and answers from language to language is (generally) a violation of testing protocols. Yet this is precisely the sort of deviation in form that the IDEA contemplates. Deviation for the purpose of getting accurate information is not only permitted, but required.

Whenever deviating from standardized testing protocols, evaluators are wise to proceed with extreme caution. Deviation, and the reason for it, must be explicitly noted in the final evaluation report. Also, the deviation must be carefully considered when an evaluator interprets the testing results for the purposes of providing a diagnosis or educational recommendations.

In sum, the District failed to evaluate the Student in the language most likely to yield accurate information, and failed to make necessary deviations from testing protocols to enable testing in that language. As a result, the District's evaluation was inappropriate, even assuming that all other requirements of 20 U.S.C. § 1414 were met.

Intellectual Disability

In substance, any student's eligibility category is not determinative of what services the student will receive. Programming is driven by need, not by label. This applies even to students with an intellectual disability. However, unlike the other disability categories, students who are classified as having an ID receive enhanced protections in disciplinary proceedings, and are evaluated more frequently.

I do not discount the mental toll that hearing an ID diagnosis puts on parents. In this case, to hear those words for the first time at the Student's age was no doubt shocking to the Parent. The Parent's legitimate surprise, however, is not a factor in determining whether the District applied the proper disability category.

In this case, the only evaluations concluding that the Student has an ID are the District's evaluations. I have concluded that the District's evaluations are inappropriate. Consequently, the ID label must be removed immediately.

Both parties should note that my determination is based exclusively on the inappropriateness of the District's evaluation. It is possible that an appropriate evaluation could conclude that the Student is a student with an ID. I find only that no such evaluation has occurred.

Denial of FAPE – 2014-15 School Year

The District was obligated to implement the Charter's IEP until it evaluated the Student and offered its own. After evaluating the Student, the District offered an IEP with a NOREP on June 17, 2014. That IEP was inappropriate.

The District's IEP was based on the District's evaluation. The District's evaluation was not calculated to yield accurate information about the Student. An IEP can only be as good as the evaluation upon which it is based. The IEP in this case is inappropriate as a matter of law, because it was based upon an inappropriate evaluation.

The fact that the District's only evaluation of the Student is inappropriate compels the conclusion that all subsequently offered programs are inappropriate for the same reason. This makes the District's subsequent offers irrelevant to show mitigation.

Current Placement

The issue of where the Student should go to school, and what services the Student must receive, are properly before me. I have concluded that the District's evaluations of the Student were not appropriate and, as a result, the District's placement offers were not appropriate as a matter of law.

The Parent urges that I should determine that IEE was appropriate, and that I should compel the District to offer what the IEE recommends. I decline to do so. LEAs are obligated to consider IEEs, they are not obligated to adopt them as their own. However, the IEE in this case satisfies the deficiencies of the District's evaluation. The District, therefore, is free to either adopt the IEE and modify its IEP accordingly. The District may also consider the IEE and reevaluate the Student in accordance with this decision. Either way, the ID label must be removed unless or until an appropriate evaluation yields a conclusion that ID is the proper classification for the Student.

Remedies

For reasons articulated above, the Student was denied a FAPE during these periods of time:

- December 4, 2013 through April of 2014
- May of 2014 through the end of the 2013-14 school year
- The start of the 2014-15 school year through the present (ongoing).

Prior to June 17, 2014, the denial of FAPE was based on the District's failure to implement the Charter's IEP. With no better evidence, I find that the portions of the IEP that were not provided come to 37 hours per month (33 hours per month of counseling in a counselor's office and 1 hour per week of social skills training), or 1.85 hours per school day.

After June 17, 2014, the denial of FAPE was based on the District's offer of programming based on inappropriate evaluations. From the time of the District's own offer forward, the Charter's IEP sheds no light on a compensatory education award. The standard is either what services it will now take to remediate the Student, or how much the District failed to offer. With little evidence to conduct the calculation either way, I find that the Student was denied 2.5 hours of compensatory education per school day from June 17, 2014 through the present.

In addition, the Parent was denied meaningful participation during one IEP meeting. The IDEA explicitly makes violation of meaningful participation rules a *substantive* violation. 20 U.S.C. § 1415(f)(3)(E)(ii)(II). Compensatory education is the remedy for substantive violations.

Neither party presented evidence as to how much compensatory education is owed to the Student to compensate for the parental participation violation on its own. It could be argued that this lack of evidence indicates that compensatory education should not be awarded at all, given the Guardian's burden of proof. I decline to reach this conclusion. In the absence of better evidence, I look to the meeting that the Parent could not meaningfully participate in and award one (1) additional hour of compensatory education as a remedy.

Regardless of whether the Student's absences should have been excused or unexcused, in this case I find that the District is not liable to provide services when the Student does not attend

school. Compensatory education shall be awarded only on the days that the Student actually attended school, or will attend school until a FAPE is offered.

The Parent may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental remedial or enriching educational service, product or device. The Compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided through the Student's IEP, or via dual enrollment or equitable participation should the Student remain in private school, to assure meaningful educational progress.

ORDER

Now, May 26, 2015, it is hereby **ORDERED** as follows:

1. The Intellectual Disability classification shall be immediately removed from any IEP offered by the District.
2. The District may either adopt the Parent's IEE as its own evaluation, or may propose a reevaluation of the Student consistent with this order. If choosing to reevaluate, the District must complete its evaluation and offer programming expeditiously.

3. The Student was denied a FAPE as described above.
4. The Parent was denied meaningful parental participation as described above.
5. The Student is awarded 1.85 hours of compensatory education for each day that the Student attended school between December 4, 2013 and June 17, 2014, excluding the period during which the Student received homebound instruction in April of 2014.
6. The Student is awarded 2.5 hours of compensatory education for each day that the Student attended school between June 17, 2014 and the present.
7. The Student is awarded one (1) hour of compensatory education to remedy the denial of meaningful parental participation during the June 17, 2014 IEP meeting.
8. Compensatory education is subject to the limitations described above.
9. Compensatory education shall continue to accrue at the rate of 2.5 hours for each day that the Student attends school after the date of this order until the District proposes programming in accordance with #2 of this order.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER

EXHIBIT 2

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: A.G.

Date of Birth: [redacted]

Dates of Hearing: 7/28/2014, 7/29/2014, 8/1/2014, 9/3/2014, 9/4/2014, 9/5/2014, 9/29/2014, 9/30/2014, 10/1/2014, 10/2/2014, 11/3/2014, 11/7/2014, 11/10/2014, 11/12/2014, 1/21/2015, 1/22/2015, 1/23/2015, 1/26/2015, 1/27/2015, 1/28/2015, 1/30/2015, 2/23/2015, 2/27/2015, 3/17/2015, 3/23/2015, 3/25/2015, 3/26/2015, 3/31/2015, 4/6/2015 and 4/7/2015

CLOSED HEARING

ODR File No. 15166-13-14

Parties to the Hearing:

Parents

Parent[s]

Local Education Agency

Philadelphia City School District
Office of General Counsel
Philadelphia, PA 19130

Representative:

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Date Record Closed: May 4, 2015

Date of Decision: May 26, 2015

Hearing Officer:

Mr. Brian Ford Esq.

Introduction

This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* and Section 504 of the Rehabilitation Act of 1973 (Section 504), 34 C.F.R. Part 104.4. It is the companion to the case at ODR No. 15181-1314KE. Both hearing were heard together.

The Parent, who speaks [a language other than English], alleges that the District violated the Parent's right to meaningfully participate in meetings concerning the provision of FAPE to the Student. The Parent also alleges that the District violated Child Find, failed to provide an appropriate IEP, and denied the Student a FAPE.

Issues¹

1. Did the District violate its Child Find responsibilities?
2. Did the District deny the Guardian's right to meaningful parental participation?
3. Did the District violate the Student's rights by failing to provide an appropriate IEP or Section 504 plan?
4. Is the Student entitled to compensatory education?

Findings of Fact

The very large record of this hearing and its companion case was carefully reviewed in its entirety. In special education due process hearings, there is a world of difference between what is technically admissible and what is truly necessary to resolve the issues presented. I have limited my findings of fact to what is necessary to resolve the parties' dispute.

1. "Interpretation" describes the act of restating spoken language in a different language. Interpretation can either be simultaneous (in which the interpreter restates the communication as it is said) or consecutive (in which the interpreter restates the communication just after it is said).
2. "Translation" describes the act of re-writing a document in another language.
3. "Sight translation" describes the act of reading text in one language out loud in another language.
4. The Student's native language is [not English]. The Student has limited English proficiency.
5. The Guardian is the Student's legal guardian and "parent" for purposes of the IDEA.
6. The Guardian's native language is [not English]. The Guardian has limited English proficiency.

January 2011 to November 2012

- 1 The issues identified flow from the Guardian complaint and opening statement. The Complaint includes claims regarding the District's systemic practices, which were dismissed at the start of this hearing, and a demand for IEE reimbursement that is now moot. The Complaint does not include a demand for compensatory education. The Guardian argued at the hearing that if the District was permitted to present evidence of mitigation arising after the hearing was requested, the Guardian must also be permitted to include demands that were not apparent at the time that the Complaint was filed. I accept this argument, as the Guardian presents a new remedy, not a new issue, entitlement to which was not clear when the Complaint was filed.

7. The Student first arrived in Philadelphia from [another country] in January of 2011. NT 32, 832.
8. The student enrolled in 7th grade at [redacted parochial school] from February 21, 2011 until March 30, 2011 S-42. The Student lived with the Student's [relative] during this time.
9. From March 30, 2011 through sometime shortly prior to November 5, 2012, the Student moved back to the [other country]. The Student did not attend school while in the [other country].

November 2012 to February 2013

10. When the Student came back to Philadelphia, the Student lived with [another relative], who was [the Student's] guardian at that time.
11. On November 5, 2012, the Student enrolled in the District and was placed into [a District] High School. S-29, S-30.
12. The Student stopped attending school on February 8, 2013. S-29.
13. During the 57 school days between the Student's enrollment and withdraw, the Student was absent or late on 28 days. S-29.
14. While enrolled at [the high school], the Student spent 90 minutes per day in English for Speakers of Other Languages (ESOL) classes.
15. The District did not identify the Student as in need of special education or propose to evaluate the Student to determine a need for special education while attending [the high school].

February 2013 to October 2013

16. On or around February 8, 2013, the Student moved back to the [the other country] and stayed there for about a year. NT 836.²

October 2013 to End of 2013-14 School Year

17. On October 25, 2013, the Student re-enrolled in the District. The Student was re-enrolled by the Guardian, who had become the Student's legal guardian.
18. Upon re-enrollment, the Student was placed in [a second] High School. From enrollment through the end of the school year, there were 148 days. The student was late or absent during 97 of those days. S-29.
19. At [the second High School], the Student was placed in ESOL classes for three periods per day. While the Student attended, teachers reported that the Student was able to comprehend the classroom instruction and participate appropriately. S-29, NT 1839, 1851.
20. On March 28, 2014, the Guardian presented a letter and Court Order to [the second High School] staff. In the context of an IDEA proceeding, these documents are tantamount to a written request for a special education evaluation. S-22, S-23.

2 The timeline of the Student's travels to and from the [other country] were highly disputed. I find the Student's testimony regarding the Student's own whereabouts to be the most persuasive. While testifying, the Student was forthright and honest about what the Student could and could not remember. The Student is commended for this notable candor.

21. On April 4, 2014, the District sent a permission to evaluate form (PTE), to the Guardian, seeking consent to conduct a special education evaluation. S-19. The PTE was sent in English. The Guardian denies receiving the PTE, but recalls attending meetings concerning the evaluation request.
22. Between April of 2014 and the end of the 2013-14 school year the Student was absent or late about 40 times. The Student's attendance was such an issue that some of the Student's teachers wondered if the Student had withdrawn from school. S-29, NT 1840-1846.

Summer of 2014

23. On June 23, 2014 the Guardian requested this due process hearing.
24. The District employs Bilingual Counseling Assistants (BCA) who, among other job duties, provide interpretation services. NT 14014-1405.
25. The Parties communicated, mostly via counsel, in the summer of 2014. It was agreed that the District would fund an independent educational evaluation for the Student conducted by a bilingual evaluator selected by the Guardian.
26. The IEE was completed on July 17, 2014 and was provided to the District shortly thereafter. The evaluator concluded that the Student was eligible for special education as a student with a specific learning disability (SLD). S-15.
27. The IEE mentions that the Student was scheduled for surgery during the week of July 21, 2014, to address an issue with the Student's knee. According to the independent evaluator, the Student's knee never developed properly. *Id.*
28. The Student by that time had been diagnosed with Blount's Disease, a condition that causes [a physical condition] and, in some cases, pain. Blount's Disease is corrected through a complex surgical procedure followed by intense physical rehabilitation, both of which can be painful. During rehabilitation, the patient's bones are screwed into a brace, which is adjusted during rehabilitation and ultimately removed.
29. The Student was first diagnosed with Blount's Disease sometime in 2014. NT 3268.
30. There is no preponderant evidence on the record to suggest when the Student first started experiencing the symptoms of Blount's Disease. The symptoms can appear in childhood or adolescence, and may progress rapidly. There is no preponderant evidence that anybody at [the second High School] noticed a problem with the Student's mobility prior to the summer of 2014. There is no preponderant evidence that the Guardian or Student alerted the District to the Student's condition prior to the IEE. NT, *passim*.
31. According to the Student's surgeon, the Student's case of Blount's Disease may not have been readily apparent to a layperson. NT 3268-3278.
32. The Student did not have surgery during the week of July 21. Some testimony indicates that the District was under the impression that the Student had surgery during the week of July 21 up until the start of the 2014-15 school year.
33. On August 18, 2014, in response to the IEE, the District issued a Notice of Recommended Educational Placement (NOREP) and another PTE. Both documents were provided in English and in Spanish. The purpose of the NOREP was to obtain parental consent to provide specially designed instruction in the areas of literacy and mathematics as a stopgap until a full IEP could be developed. Literacy and math are areas identified in the IEE. The

purpose of the PTE was to both enable the District to review and consider the IEE³, and to conduct a bilingual speech evaluation recommended in the IEE. S-10.

2014-15 School Year

34. During the summer and early fall of 2014, the District and Parents continued to meet and negotiation via counsel. Several placement options for the 2014-15 school year were discussed. Ultimately, it was agreed that the Student should attend the [a] Learning Academy (LA), which is housed within [a third] High School.
 35. LA is a program primarily for students who have just immigrated to the United States from other countries and have little to no English. LA is an ESOL placement, not a special education placement. However, the District can provide special education to LA students.
 36. The Student had surgery to correct Blount's Disease just a few days after the start of the 2014-15 school year. The District was not immediately informed about the Student's surgery, but was aware of the Student's absence from school. The District was notified about the surgery in late September of 2014. NT 2069, 2685.
 37. On October 6, 2014, the District provided forms in English and [Guardian's native language] so that the Student could receive homebound instruction. S-6. It is not clear whether these forms were provided just before or just after the Guardian presented a doctor's note requesting homebound services. S-6. Regardless of the timing, the District informed the Guardian that the doctor's note was insufficient, and gave the Guardian the proper forms in both English and [Guardian's native language].
 38. On October 6, 2014, the District also sent forms in English and [Guardian's native language] inviting the Parent to an IEP meeting. The purpose of the meeting was to review the District's reevaluation report ("RR" - mostly a copy of the IEE plus the bilingual speech evaluation), and to draft an IEP. S-6.
 39. The IEP meeting convened as scheduled on October 16, 2014. A [Guardian's native language] speaking BCA was in attendance, as was the Guardian and counsel for both parties. S-44.
 40. The District had a copy of its RR translated into [Guardian's native language] and provided that the Guardian. S-44.
 41. The District agreed with the IEE's conclusion that the Student was a student with a disability, specifically SLD, as evidenced by the Student's deficits in literacy and mathematics. S-3. The District disagreed with the IEE's conclusion that the Student should be placed in either 11th or 12th grade. *Id.*
 42. The IEE recommended placement in 11th or 12th grade in consideration of the Student's age and to (in essence) foster the Student's positive perception of both school and the Student's own abilities. Through March of 2015, the District refused this recommendation on the basis that grade placement was only available to students who earned sufficient credits, and the Student was lacking credits for an 11th or 12th grade placement. S-1, S-3, NT 1730-1731.
 43. From October 16, 2014 onward, the District has consistently proposed that the Student should graduate on IEP goals, as opposed to academic credits. *See, e.g.* S-1. The Student's principal testified that students who graduate on IEP goals could be placed into any grade,
- 3 It is a common misconception that LEAs need any further consent to "review" or "consider" evaluations that are handed to them by parents. If review and consideration prompts the need for more testing, further consent must be sought. This distinction is not entirely pertinent to this case, as the District proposed a speech evaluation in the August 18, 2014 IEE.

regardless of academic credits. This testimony notwithstanding, the District refused to place the Student into 11th or 12th grade until May of 2015. NT 2669.

44. The District also disagreed with the IEE's recommendation for "private language school courses." S-3. That recommendation was based on the independent evaluator's understanding that the Student had not made progress towards mastery of English after two years with ESOL services. *Id.* At the time of the IEE, based on number of days of full attendance, the Student had spent less than one full school year in an ESOL (155 days).
45. For many of the same reasons, the District also disagreed with the IEE's recommendation to provide instruction to the Student in [Guardian's native language]. During the hearing, the independent evaluator clarified that her preference would be for the ESOL instructor to be bilingual, but that actual instruction in ESOL programming need not be in [Guardian's native language]. S-4, NT 2278-2279.
46. During the October 16, 2014 IEP meeting, the District maintained that LA was an appropriate placement for the Student. NT *passim*.
47. Although the District intended to discuss an IEP for the Student during the October 16, 2014 meeting, the Guardian had to leave after the evaluations were discussed and so an IEP was not discussed in the Guardian's absence. NT 1618.
48. On October 21, 2014 the District scheduled a second IEP meeting for October 28, 2014. Invitations were sent in English and [Guardian's native language] to the Guardian and counsel. On the October 28, 2014, the Guardian was not able to attend and the meeting was canceled. S-1, S-2.
49. On November 3, 2014, the Guardian returned the homebound instruction forms. S-50.
50. The Student's surgeon testified that the Student could have returned to school in November of 2014. NT 3279. It is not clear whether the Guardian knew this. This was never communicated to the District prior to this hearing.
51. On November 19, 2014, the District scheduled a third IEP meeting for December 2, 2014. Invitations were sent in English and [Guardian's native language] to the Guardian and counsel. A [Guardian's native language] speaking BCA was present at the meeting. S-54. The Guardian arrived late to the meeting and had to leave early. Consequently, the IEP team could not review the entire IEP. NT 1624-1628.
52. The majority of the IEP meeting on December 2, 2014 was a discussion of the Student's need for, and the District's obligation to provide, homebound instruction or instruction in the home. NT 1626, P-25. The record does not enable a definite conclusion about which terms were used during the meeting.
53. During the December 2, 2014 meeting, the parties agreed to meet again on December 17, 2014 (the District's fourth attempt to discuss the IEP). S-55. The District issued invitations in English and [Guardian's native language]. S-55.
54. The Guardian canceled the December 17, 2014 IEP meeting due to illness. S-55.
55. On December 22, 2014 the District issued invitations in English and [Guardian's native language] to an IEP meeting on January 6, 2015 (the District's fifth attempt to convene). The Guardian canceled the meeting due to concerns about the weather. S-55.
56. Pursuant to its homebound instruction policy the District offered to provide three hours per week of homebound instruction to the Student.

57. The District's policy permits certain District personnel to authorize up to three hours of homebound instruction to high school students who are expected to be out of school for more than four weeks. See NT at 2046, 2102, 2640-2643.
58. Despite the District's policy, the District increased the Student's level of homebound instruction to four hours per week, and sometimes instructors stayed longer. As a result, from December 2014 through February 2015, the Student received 3.5 to 4.5 hours of homebound instruction per week. S-56.
59. In February of 2015, the Student returned to LA with bus transportation and elevator access, but with no IEP in place. S-58.
60. The Student's IEP team convened again in March of 2015. It is not clear if the IEP in its entirety was reviewed during this meeting, which was the District's sixth attempt to discuss the IEP. NT 2669.
61. Starting with the first attempt to convene the Student's IEP team in October of 2014 through its latest attempt in March of 2015, the District has always prepared a draft IEP to discuss at the meetings.
62. In the course of six attempts to convene the IEP team in as many months, the District did not fully translate the draft IEP into [Guardian's native language]. Rather, the District relied upon its IEP writing software to translate portions of the IEP. Specifically, in Pennsylvania, IEPs are drafted on a form promulgated through PaTTAN. The District's software translated the form, but not the content written on it. For example, the text identifying a section of the IEP as goals was translated but the goals themselves were not. The District intended to rely upon [Guardian's native language] speaking BCAs to sight translate the English portions of IEPs during IEP meetings. S-1, S-51, S-44; NT 161-167, 248, 256-258, 1614, 1625-1627.
63. Other than IEPs, all other IDEA documents were fully translated into [Guardian's native language].

Legal Principles

Credibility

During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make "express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses". *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); See also generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009).

In this case, I find that all witnesses testified to the best of their ability, relaying facts as they recalled them. To whatever extent one witness's testimony is inconsistent with another's, they legitimately remembered events differently.

As stated above, the Student's candor is both noteworthy and commendable.

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. See *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir.

2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the Parent the party seeking relief and must bear the burden of persuasion.

Child Find

The IDEA statute and regulations require school districts to have in place procedures for locating all children with disabilities, including those suspected of having a disability and needing special education services although they may be "advancing from grade to grade." 34 U.S.C. §300.311(a), (c)(1).

Free Appropriate Public Education (FAPE)

As stated succinctly by former Hearing Officer Myers in *Student v. Chester County Community Charter School*, ODR No. 8960-0708KE (2009):

Students with disabilities are entitled to FAPE under both federal and state law. 34 C.F.R. §§300.1-300.818; 22 Pa. Code §§14.101-14 FAPE does not require IEPs that provide the maximum possible benefit or that maximize a student's potential, but rather FAPE requires IEPs that are reasonably calculated to enable the child to achieve meaningful educational benefit. Meaningful educational benefit is more than a trivial or *de minimis* educational benefit. 20 U.S.C. §1412; *Board of Education v. Rowley*, 458 U.S. 176, 73 L.Ed.2d 690, 102 S.Ct. 3034 (1982); *Ridgewood Board of Education v. M.E. ex. rel. M.E.*, 172 F.3d 238 (3d Cir. 1999); *Stroudsburg Area School District v. Jared N.*, 712 A.2d 807 (Pa. Cmwlth. 1998); *Polk v. Central Susquehanna Intermediate Unit 16*, 853 F.2d 171 (3d Cir. 1988); *Fuhrmann v. East Hanover Board of Education*, 993 F.2d 1031 (3d Cir. 1993); *Daniel G. v. Delaware Valley School District*, 813 A.2d 36 (Pa. Cmwlth. 2002).

The essence of the standard is that IDEA-eligible students must receive specially designed instruction and related services, by and through an IEP that is reasonably calculated at the time it is issued to offer a meaningful educational benefit to the Student in the least restrictive environment.

Compensatory Education

Compensatory education is an appropriate remedy where a LEA knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only a trivial educational benefit, and the LEA fails to remedy the problem. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Courts in Pennsylvania have recognized two methods for calculating the amount of compensatory education that should be awarded to remedy substantive denials of FAPE. The first method is called the "hour-for-hour" method. Under this method, students receive one hour of compensatory education for each hour that FAPE was denied. *M.C. v. Central Regional*, arguably, endorses this method.

More recently, the hour-for-hour method has come under considerable scrutiny. Some courts outside of Pennsylvania have rejected the hour-for-hour method outright. See *Reid ex rel. Reid v. District of Columbia*, 401 F.3d 516, 523 (D.D.C. 2005). These courts conclude that the amount and nature of a compensatory education award must be crafted to put the student in the position that she or he would be in, but for the denial of FAPE. This more nuanced approach was endorsed by the Pennsylvania Commonwealth Court in *B.C. v. Penn Manor Sch. District*, 906 A.2d 642, 650-51 (Pa. Commw. 2006) and, more recently, the United States District Court for the Middle District of Pennsylvania in *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 (M.D. Pa. 2014). It is arguable that the Third Circuit also has embraced this approach in *Ferren C. v. Sch. District of Philadelphia*, 612 F.3d 712, 718 (3d Cir. 2010)(quoting

Reid and explaining that compensatory education “should aim to place disabled children in the same position that they would have occupied but for the school district’s violations of the IDEA.”).

Despite the clearly growing preference for the “same position” method, that analysis poses significant practical problems. In administrative due process hearings, evidence is rarely presented to establish what position the student would be in but for the denial of FAPE – or what amount of what type of compensatory education is needed to put the Student back into that position. Even cases that express a strong preference for the “same position” method recognize the importance of such evidence, and suggest that hour-for-hour is the default when no such evidence is presented:

“... the appropriate and reasonable level of reimbursement will match the quantity of services improperly withheld throughout that time period, unless the evidence shows that the child requires more or less education to be placed in the position he or she would have occupied absent the school district’s deficiencies.”

Jana K. v. Annville Cleona Sch. Dist., 2014 U.S. Dist. LEXIS 114414 at 36-37.

Finally, there are cases in which a denial of FAPE creates a harm that permeates the entirety of a student’s school day. In such cases, full days of compensatory education (meaning one hour of compensatory education for each hour that school was in session) may be warranted if the LEA’s “failure to provide specialized services permeated the student’s education and resulted in a progressive and widespread decline in [the Student’s] academic and emotional well-being” *Jana K. v. Annville Cleona Sch. Dist.*, 2014 U.S. Dist. LEXIS 114414 at 39. See also *Tyler W. ex rel. Daniel W. v. Upper Perkiomen Sch. Dist.*, 963 F. Supp. 2d 427, 438-39 (E.D. Pa. Aug. 6, 2013); *Damian J. v. School Dist. of Phila.*, Civ. No. 06-3866, 2008 WL 191176, *7 n.16 (E.D. Pa. Jan. 22, 2008); *Keystone Cent. Sch. Dist. v. E.E. ex rel. H.E.*, 438 F. Supp. 2d 519, 526 (M.D. Pa. 2006); *Penn Trafford Sch. Dist. v. C.F. ex rel. M.F.*, Civ. No. 04-1395, 2006 WL 840334, *9 (W.D. Pa. Mar. 28, 2006); *M.L. v. Marple Newtown Sch. Dist.*, ODR No. 3225-11-12-KE, at 20 (Dec. 1, 2012); *L.B. v. Colonial Sch. Dist.*, ODR No. 1631-1011AS, at 18-19 (Nov. 12, 2011).

Whatever the calculation, in all cases compensatory education begins to accrue not at the moment a child stopped receiving a FAPE, but at the moment that the LEA should have discovered the denial. *M.C. v. Central Regional Sch. District*, 81 F.3d 389 (3d Cir. 1996). Usually, this factor is stated in the negative – the time reasonably required for a LEA to rectify the problem is excluded from any compensatory education award. *M.C. ex rel. J.C. v. Central Regional Sch. Dist.*, 81 F.3d 389, 397 (3d Cir. N.J. 1996)

In sum, I subscribe to the logic articulated by Judge Rambo in *Jana K. v. Annville Cleona*. If a denial of FAPE resulted in substantive harm, the resulting compensatory education award must be crafted to place the student in the position that the student would be in but for the denial. However, in the absence of evidence to prove whether the type or amount of compensatory education is needed to put the student in the position that the student would be in but for the denial, the hour-for-hour approach is a necessary default – unless the record clearly establishes such a progressive and widespread decline that full days of compensatory education is warranted. In any case, compensatory education is reduced by the amount of time that it should have taken for the LEA to find and correct the problem.

Meaningful Parental Participation

The IDEA requires schools to use procedures that afford parents an “opportunity ... to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child...” 20 U.S.C. § 1415(b)(1). Similarly, parents must receive prior written notice whenever a school district proposes to the educational placement of a child. 20 U.S.C. § 1415(b)(3). The IDEA explicitly details the type of information that must be contained in such prior written notice. See, e.g. 20 U.S.C. § 1415(c)(1)(A)-(B), (E)-(F). This includes an explanation of why the change is proposed, what other options were considered and why those other options were rejected. *Id.* These

participation requirements are in addition to the procedural safeguards notice requirements found at 20 U.S.C. § 1415(c)(1)(C).

In Pennsylvania, the NOREP is the document that provides the prior written notice to parents that is contemplated by the IDEA. As explained by the Pennsylvania Training and Technical Assistance Network (PaTTAN), "The NOREP explains the recommended educational placement or class for [a] child, and explains [parental] rights." <http://parent.pattan.net/iep/WhatisaNOREP.aspx>. Moreover, the United States Supreme Court has recognized that parents have a right to receive prior written notice whenever a school district intends to alter a student's "program or placement." *Honing v. Doe*, 484 U.S. 305, 311-12 (1988); see also *Petties v. District of Columbia*, 238 F.Supp.2d 114, 123 -124 (D.D.C., 2002).

Parent's Native Language

The notification required by 20 U.S.C. § 1415(b)(3) must be sent "in the native language of the parents, unless it clearly is not feasible to do so." 20 U.S.C. § 1415(b)(4). The same is true for the IDEA's procedural safeguards. 20 U.S.C. § 1415(d)(2).

As applied individuals with limited English proficiency, the term "native language" is defined as the "language normally used by that individual." 34 C.F.R. § 300.29.

As drafted, these rules do not permit consideration of the individual's ability to understand written or spoken English. If the individual has limited English proficiency (as the Parent does in this case), procedural safeguards and prior written notices must be sent in the individual's native language.

Discussion

Child Find

The District did not violate its child find obligations. There is no serious dispute in this case as to whether the District has a system in place to identify students who may have disabilities. There is a debate in this case as to whether the District's child find materials are easily averrable in [Guardian's native language]. Regardless, it is the Student's right to be found, not the Guardian's obligation to seek out child find information.

In this case, I accept the District and Student's account of when the Student was in Philadelphia and when the Student was in the [other country]. I also accept the District's accounting of the Student's attendance. There was some dispute as to whether the District properly marked the Student's absences as excused or unexcused. Whether the Student's absences were lawful does not change the fact that the Student's inconsistent school attendance inhibited the District's ability to form an opinion as to the need to evaluate any suspected disability.⁴

The Student did not enroll in the District until November 5, 2012, and left the District 57 school days later. The Student was absent or late for much of those 57 days, but appear to participate well when present. The record does not indicate any Child Find triggers during this time.

The Student re-enrolled in the District on October 25, 2013. The Guardian requested a special education evaluation on April 4, 2014. The pertinent question, therefore, is whether the District should have seen any child find triggers between those two dates. Again, the record does not preponderantly reveal child find triggers or "red flags" during this period of time. Consequently, the Guardian has not established by preponderant evidence that the District violated its child find obligations.

Meaningful Parental Participation

⁴ In some cases, chronic absenteeism can be a child find trigger in and of itself. The evidence in this case does not indicate that the Student's absences were a child find trigger.

At the outset of this hearing, there was significant discussion about the District's obligation to translate documents into [Guardian's native language]. The District is correct that the IDEA's regulations require translation of only the procedural safeguards notice and the prior written notices issued pursuant to 20 U.S.C. § 1415(b)(3) – NOREPs in Pennsylvania. The IDEA does not explicitly require the translation of any other documents.

However, the IDEA requires schools to facilitate meaningful parental participation in the IEP development process. Unlike the strict translation rules, meaningful participation requires inquiry into the Parent's ability to participate in meetings without translation. In this case, it is not possible for the Parent to meaningfully participate in meetings concerning the provision of FAPE to the Student unless the documents presented at that meeting are fully translated.

The purpose of an IEP meeting is to develop an IEP for the student. This requires more than a recitation of an IEP. Rather, it requires a conversation about the Student's needs, and what program and placement will satisfy those needs. Reading a mostly-English document in [Guardian's native language] is not the dialogue contemplated by the IDEA. The Parent's ability to follow along in documents while participating in the required dialogue is essential.

In this case, the District put people in place so that the Parent could engage in dialogue during the meetings. It is significant that the District went out of its way in its effort to schedule an IEP meeting six separate times. I must note, however, that by the time that the team actually got to addressing the IEP, that time would have been better spent discussing the draft IEP than reading the English sections of the document to the Guardian out loud in [Guardian's native language]. To the extent that meetings were devoted to reading documents out loud in [Guardian's native language], the requisite discussion did not happen at all.

District witnesses agreed, and I explicitly find, that having the documents in an accessible form either during the meetings, or prior to the meetings when mandated, is critical to meaningful participation. (see, e.g. NT at 2995-2997). The Parent was placed at an obvious disadvantage by effectively not having access to these documents.

The heavy participation of counsel for both parties at every turn is somewhat confounding. The Parent's attorneys speak English.⁵ It is reasonable for the District to assume that anything communicated to the Parent's attorney will be relayed to the Parent in a way that the Parent will understand the information. I also have no doubt that communicating via counsel was often the fastest, easiest way for the parties to communicate with each other. Even so, it is the District's obligation to ensure meaningful parental participation. The Parent has no obligation to retain services, let alone hire an attorney, in order to meaningfully participate.

In sum, I find that the District satisfied the IDEA's narrow *translation* requirements but, even in doing so, did not satisfy the IDEA's requirements for meaningful parental participation. The District put personnel in place so that the Parent could literally speak during meetings, but did not make meaningful accommodations so that the Parent could prepare for meetings or participate in meetings as they were happening. This is a violation of the Parent's rights.

Provision of an Appropriate IEP

After accepting the IEE's findings that the Student was a student with an SLD and in need of special education, it was the District's obligation to offer an appropriate IEP. The District drafted an IEP for the meeting on October 16, 2014 (S-1). There is some ambiguity in the record as to when the District formally proposed that IEP with a NOREP, but the totality of the record leaves no doubt whatsoever that the District was ready to implement that IEP the moment it received parental consent.⁶

⁵ I do not know if any of the Parent's attorneys also speak [Guardian's native language], but that is not relevant.

⁶ It must be noted that the District has no right to request a hearing to override parental rejection of a proposed initial placement.

The District has no right to request a hearing to override parental rejection of a proposed initial placement. 22 Pa. Code § 14.162(c). Since the Guardian has never consented to the District's proposed IEP, the Student cannot claim a denial of FAPE if 1) the proposal was appropriate and 2) the District did not implement the IEP based on the Guardian's rejection of it.

The District's offered IEP was appropriate. It is derived in substantial part from the undisputed portions of the IEE (which was most of the IEE), and paints an accurate picture of the Student's abilities and needs at the time the document was drafted. The IEP's goals are directly related to those needs, and present clear statements as to how the Student's progress is to be monitored.⁷ The IEP also includes short term goals and objectives despite the fact that none are technically required. Further, the IEP provides modifications and specially designed instruction, both in an absolute sense and targeted on a goal-by-goal basis. In short, the IEP clearly explains where the Student is, where the team wants the student to be by the expression of the IEP, and what the District will do to get the Student from here to there. This is what the IDEA requires.

The most significant testimony challenging the IEP came from the independent evaluator. I find the independent evaluator's critique to be hypercritical in the sense that her quarrel with the IEP was that it is sub-optimal. Assuming *arguendo* that the independent evaluator is correct, the independent evaluator argues for a standard beyond the District's legal obligations. I am not persuaded by this testimony. The Student could derive a meaningful educational benefit from the District's offered IEP.

The Guardian also challenges the IEP on the basis that it does not provide extended school year (ESY) services. I find no preponderant evidence in the record to substantiate a claim that the Student is entitled to ESY based on regression/recoupment data or that ESY services are required in order for the Student to complete IEP goals.

I also consider whether the District should have provided instruction in the home. As discussed at various points during this hearing, homebound instruction is a regular education service that LEAs may provide to students who are unable to attend school for a finite period of time. Instruction in the home is an IDEA placement (part of the IDEA's continuum of placements) for Students who cannot be educated in school. In this case, although unbeknownst to the parties, the Student's surgeon opined that the Student was able to attend school around the same time

that the Guardian was completing the homebound instruction forms. It is, therefore, unlikely that the Student should have qualified for homebound instruction, let alone instruction in the home, which is the most restrictive of all IDEA placements. When a student is able to attend school and receive appropriate special education there, that student has no right to the IDEA's most restrictive placement option.

The District's offered IEP is appropriate. By offering an appropriate IEP, the District has also discharged its obligations under Section 504.

Compensatory Education

The Student is not entitled to compensatory education for any failure on the District's part to offer appropriate programming. However, the IDEA explicitly makes violation of meaningful participation rules a substantive violation. 20 U.S.C. § 1415(f)(3)(E)(ii)(II). Compensatory education is the remedy for substantive violations.

Neither party presented evidence as to how much compensatory education is owed to the Student to compensate for the parental participation violation on its own. It could be argued that this lack of evidence indicates that compensatory education should not be awarded at all, given

⁷ The IEP is not *flawless* in regard to its measurability or objectivity, but that is not the standard. The IEP's goals are appropriately measurable, objective and baselined.

the Guardian's burden of proof. I decline to reach this conclusion. In the absence of better evidence, I look to the meetings that the Parent could not meaningfully participate in. Of the six scheduled IEP meetings, the Guardian attended three. I therefore award three hours of compensatory education to the Student to compensate for the District's denial of the Guardian's right to manfully participate in IEP meetings.

The Guardian may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental remedial or enriching educational service, product or device. The Compensatory education shall be in addition to, and shall not be used to supplant, educational and related services that should appropriately be provided through the Student's IEP, or via dual enrollment or equitable participation should the Student remain in private school, to assure meaningful educational progress.

ORDER

Now, May 26, 2015, it is hereby **ORDERED** as follows:

1. The Parent was denied meaningful parental participation as described above.
2. The Student is awarded three (3) hours of compensatory education as described above.
3. Compensatory education is subject to the limitations described above.
4. All other claims are denied.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER

EXHIBIT 3

**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

DECLARATION OF ANNA PERNG

I, Anna Perng, hereby declare as follows:

1. I am a community organizer. I have helped families of children with disabilities in Philadelphia since 2013. Over these years, I have predominantly worked with limited English proficient (“LEP”) parents of children with disabilities. These families either attend schools in School District of Philadelphia or receive early intervention services.
2. As an unpaid, volunteer advocate, I have counseled parents, attended dozens of IEP meetings with LEP parents, organized and participated in numerous community meetings, and presented at national and statewide conferences, such as the National Autism Conference and PEAC Inclusion Conference.
3. I have worked with a number of community organizations in Chinatown, including Chinese Christian Church and Center, Chinatown Learning

Center, and Chinatown Medical Services, as well as participated in several interagency collaboratives such as the Philadelphia Autism Project.

4. Between 2015 and 2017, I served as a Commissioner on the Governor's Advisory Commission on Asian Pacific American Affairs and participated in its Education Committee. In that capacity, I attended town halls held with Asian American Pacific Islander community members and leaders across the state. Last year, the Executive Director of the Commission invited me to testify before the Pennsylvania Human Relations Commission about the challenges facing LEP students and families, including students with disabilities and their LEP families, particularly in my experience working with LEP families in Philadelphia.
5. I have connected with many LEP parents of students with disabilities through my involvement and leadership role in a volunteer-run coalition known as "Asian Family Health Resource of Philadelphia" (a/k/a "Temple University Cultural and Linguistic Diversity Project" and "Chinatown Project"). This coalition of predominantly immigrant-serving organizations organizes frequent meetings to provide education, training, and support to families of children with disabilities.

6. While I am not a paid advocate, I have been requested by many providers, medical professionals, community organizations, and education professionals to help LEP parents understand their rights, assist them in obtaining evaluations and special education services, and support them to navigate the special education system. I often meet with LEP families prior to IEP meetings to read their special education documents, tell them what those documents say, itemize the areas of disagreement they have with those documents, draft an email or an outline of their concerns, and then prepare them for those meetings so they feel more confident in sharing their parent input. I have also personally attended dozens of IEP meetings with LEP parents. When I am not able to attend an LEP parent's IEP meeting, I will follow up with them afterward to learn what took place.
7. When LEP parents disagree with their child's special education supports, services, or placement, they do not know how to register those complaints with the School District., I have had to help LEP families understand the grievance procedures for early intervention and school-age special education services. If a parent disagrees with the IEP team, they must note disagreement on the NOREP and then choose mediation or due process.

8. The District does not provide sufficient information to assist LEP parents in Philadelphia to understand their right to IEP facilitation, mediation, or due process. Therefore, District LEP parents have difficulty knowing about these resources which would enable to them to resolve disagreements with their IEP teams to help make their children's IEPs more appropriate.
9. Some of the challenges facing LEP parents include their inability to understand the special education process due to lack of language access.
10. LEP parents have complained to me about the transition process from the transition from preschool age special education services to school-age special education. For example, due to lack of translation and interpretation services, LEP parents do not know that they have the option of keeping their child for an extra year in early intervention.
11. LEP parents don't know who to go to with questions and concerns. As a result, LEP parents struggle to secure basic services – before, during, and after IEP meetings.
12. LEP parents have trouble simply requesting an IEP meeting due to the failure to provide language access. For example, during the transition to school age special education, LEP families are often confused about who

is responsible for convening an IEP meeting to discuss evaluation results, services, and placement: the neighborhood school special education liaison, the neighborhood school principal, or School District headquarters. Because they don't speak English, LEP parents often find that they are ignored, or treated with less respect than their white English-speaking counterparts. LEP parents often don't know who to contact or how to request a meeting.

13. LEP Parents have told me that they often feel intimidated and sometimes even unwelcome at IEP meetings. Some report that they feel ignored because teachers and administrators talk over them and disregard them because they cannot speak English. In the power dynamics between the LEP parent and teacher, LEP parents are much more deferential than non-LEP parents. In some cultures, parents are naturally deferential to educators as well as any state authority, and are taught to go along with whatever the "government" -- school district -- says.

14. As compared to non-LEP parents, LEP parents have less access to information about special education. For example, LEP parents and I have attended the District's Extended School Year ("ESY") workshop. For one ESY workshop, the flyer was in English only and I had to notify families and interpret for them at the workshop. For the second ESY

workshop, the interpreter showed up late. For the third ESY workshop, the PowerPoint and printed materials were in English only. LEP parents in attendance requested that this information be translated into Mandarin. The District agreed to translate a one-page notice which was the result of the ESY settlement agreement, but declined to translate the ESY brochure.

15. Additionally, because LEP parents cannot access basic information on special education in a language that they understand, they are unaware of their children's right to special education. LEP parents will mistakenly tell me that because they are not paying for special education services, they lack the standing to disagree with what is being offered by the School District, even if they feel that what is being offered is inappropriate. For example, an LEP parent reported that her child received just 6 minutes of speech therapy weekly. Her son failed to make progress, but she believed she could not request additional services or supports since she was not directly paying for the services.

16. Even parents who have support systems and come to meetings prepared often feel that they are discouraged from speaking at IEP meetings. For example, a parent with whom I worked was well-prepared for her IEP meeting but later reported that a teacher had immediately dismissed her

view when she tried to explain it through an interpreter. The parent felt that she had no choice but to accept what was being offered.

17. Instead of providing quality interpretation services from trained staff, many schools improperly rely on students for communications with LEP parents. For example, I helped a Mandarin-speaking mother who was trying to enroll her child, who had an IEP. The special education liaison only communicated with the English-speaking older sister. The older sister told me that she provided the school with her brother's early intervention IEP. A week before school began, she and her mother met with the kindergarten teacher, who was unaware that her brother had a learning disability and an IEP. At that time, the school's special education liaison gave the parent a Permission to Evaluate form in English for the parent to sign. The school's BCA orally interpreted the request but did not sight translate the form.

18. The District doesn't consistently ensure high quality interpretation at IEP meetings. Many Bilingual Counseling Assistants ("BCAs") do not know special education terminology and are unable to explain special education concepts to LEP parents. They need regular training on special education and disability terminology.

19. Both BCAs and outside interpreters routinely paraphrase and don't fully interpret what is said at meetings. At two different District ESY meetings, both I and the District ESY director had to ask the outside interpreters to interpret during the meeting because the interpreters stopped interpreting. At IEP meetings at one school, I observed that the BCA and interpreters have needed to pause the meeting and ask District personnel and the parents to explain special education and disability terminology. When IEP team members and LEP parents are on limited schedules, the delays and pauses can result in an IEP meeting ending before LEP parents are able to hear from different team members and share their input.
20. In my experience, interpreters may insert their opinions and interpret incorrectly. This causes LEP parents to doubt the accuracy what was being conveyed regarding her child and their own parent input.
21. Because interpreters don't interpret everything that is provided in written documents, interpreters can relay misinformation provided by District personnel. Families receive this information and have no way of verifying it. For instance, a father of a student with disabilities was concerned that the District appeared to be working on the same goal for years. His son showed no signs of progress. He wanted his son to have a

re-evaluation. However, he was told verbally that his son could only be re-evaluated every 6 years, which is incorrect. Understandably, he assumed this was correct and didn't question it. The father was unable to read English and therefore couldn't read any of the documents provided which were provided solely in English. Therefore, he didn't know that his son had a right to be evaluated every three years nor did he know that he could disagree with the proposed IEP or seek mediation or due process. If the documents had been translated into the parent's native language, the parent would have known how to disagree with his child's IEP team, and that his child had a right to a re-evaluation every three years.

22. The use of Language Line interpreters is also problematic. They are not trained on special education terminology and don't know how to explain it to the LEP parent.

23. The District's practice of failing to provide quality interpretation services negatively impacts LEP parents because parents feel shut out of the special education process. Special education parents need to have input into their children's evaluations in order to render an accurate portrait of their child's development, their child's IEP goals and specially designed instruction (SDIs), which are strategies to support their children's

learning in order for them to access their education. Without language access, LEP parents may not be able to communicate with their children's teachers. In one instance, a parent said the teacher was not aware of Language Line as an available resource and instead, the teacher opened up a document in Word and used Google Translate to communicate with the parent about their child's progress. The Google Translate results were too literal and the result was nonsensical gibberish. Frustrated, LEP families report that they are concerned that they are unable to help their child make progress in school and cannot be effective partners to support their child.

24. The District has BCAs, but greater scrutiny should be applied to determine the allotment by language. For example, at McCall, the parent population is composed of 58% Chinese families – the majority of whom are Mandarin-speaking and many are LEP. In 2017-2018, the District assigned a Cantonese interpreter to support the school 3 days per week. The Cantonese interpreter could not assist the Mandarin speaking families. She told the Mandarin speaking families that she could not interpret or assist them. Securing interpretation services was very difficult for the entire year.

25. In my experience, the District routinely presents important documents such as evaluation reports, mediation agreements, IEPs, and settlement agreements to LEP parents in English, even when the parent has affirmatively requested documents in their native language. LEP parents I have worked with report that they do not receive special education documents in a language other than English. The burden has been and continues to be on community advocates, relatives, and friends to help parents understand documents for LEP parents.

26. Based on my experience, LEP parents are unaware of and not informed of their right or option to request that special education documents be translated into a language they can read or understand. As a result, parents fail to request translated documents. Many general school documents – report cards, service logs, positive behavior support plans, progress reports, progress monitoring reports, etc. -- are not translated, even when parents have affirmatively requested that information in their native language.

27. In some instances, the District does not translate documents they are specifically required to translate such as NOREPs or Permission to Evaluate Forms. For example, I worked with a family where a parent signed a consent form for a re-evaluation. Because the document was in

English, the parent didn't understand what she was signing. The parent was very confused about what services her son was receiving and whether she had agreed to services or agreed to an evaluation. Parents in our support group will often say they do not know what they signed or agreed to, as the documents were in English.

28. I am not aware of a new policy regarding interpretation and translation services. If a new policy exists, it is not being implemented to my knowledge. In my experience, the District still doesn't inform parents of their right to request translated documents and most LEP parents are not aware of it on their own. To illustrate this point, LEP parents reported to our coalition that they could not communicate with their schools or participate in their IEPs due to language access. They did not know they had any right to these services.

29. Without translated documents, LEP parents are in the dark and cannot understand the basis for which the District has denied the parent's request for a multidisciplinary evaluation, or if the District agreed that the child qualifies for an IEP, the frequency, duration, and type of special education services, school placement that the District has proposed. LEP parents do not know that they can refuse to consent to services or challenge a school's decisions. This denies LEP parents the ability to

participate in their child's education and make informed decisions regarding their child's program, placement, and services.

30. It is important to understand that the vast majority of LEP parents have no advocates to support them through the special education process. A majority of the advocacy organizations listed in the Procedural Safeguards report that they lack the financial resources to provide individual representation or support for LEP parents who speak languages other than Spanish or English. The District BCAs are not trained about special education terminology, concepts, or rights and do not sight translate written documents. Most LEP parents do not ask for translated documents because they have no basis to think this is an option.
31. Providing LEP parents with translated documents would permit parents to understand their children's strengths, aptitude, skills, and challenges. It would permit LEP parents to engage in a dialogue about their child, to identify what resources and services their child needs, what strategies work at home or at school. It would permit parents to make informed decisions about their child's education, but also enable them to better support their children's generalizations of those skills by using consistent teaching methods, positive behavior support strategies, structured

communications, etc. All of this will ultimately make a significant difference for their child and place them on a trajectory for employment and/or community living.

I declare under penalty of perjury under the laws of the United States of America and pursuant to and subject to the penalties of 28 U.S.C. § 1746, relating to unsworn falsification to authorities, that the foregoing is true and correct to the best of my knowledge, information, and belief.



Anna Perng

Dated: 8/2/18

EXHIBIT 4

**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

DECLARATION OF WILLIAM DEL TORO VARGAS

I, William Del Toro Vargas, hereby declare as follows:

1. I have worked as an advocate on behalf of school-age children and youth with disabilities for over five years.
2. Since July 2019, I have been employed at HUNE, Inc. an organization which works with parents and families of children with disabilities and young adults to help them understand their rights and advocate for them. HUNE provides trainings, support, and provides individual assistance to parents. It is one of the only centers for parents of children with disabilities based in North Philadelphia. We serve hundreds of families a year.
3. In addition, I previously worked as a volunteer at HUNE for two years and worked with transition age youth – youth transitioning from high school. In that capacity, I also attended many IEP meetings in the District and advocated on behalf of youth directly.
4. My predecessor and former HUNE employee, Youanna Bustmante provided a deposition in this matter on February 22, 2018. I have assumed some of Ms. Bustamante's job

responsibilities, including with respect to working with LEP parents on a daily basis regarding the special education needs of their children.

5. Prior to joining HUNE, from July 2016 to January 2019, I worked at The Arc of Philadelphia as a Youth Leadership Ability Coordinator. In this capacity, I helped for youth with disabilities transitioning from high school to employment or post-secondary opportunities and attended many Individualized Education Program ("IEP") meetings in the School District of Philadelphia ("District") and assisted with developing transition plans, including identifying volunteer employment opportunities.

6. Over the past five years, I have attended over 100 IEP meetings in the District on behalf of Limited English Proficient ("LEP") parents of students with disabilities. I currently attend 2-3 IEP meetings per week in both District and charter schools but the majority of my cases involve children with disabilities in the District. Additionally, I regularly consult with parents via telephone and speak with them regarding the issues they are experiencing relating to their child's special education programming and IEP meetings.

7. In my current capacity as "Family Advisor" at HUNE, I work directly with LEP parents on a daily basis regarding the special education needs of their children. My work includes, but is not limited to, assisting parents in understanding the special education process and timelines, explaining to parents the rights they have as members of the IEP team, and assisting parents in preparing for IEP meetings. I also personally attend IEP meetings with families. We also provide bilingual special education trainings to parents with students with disabilities.

8. The majority of families I work with speak different dialects of Spanish and all of my clients are limited English proficient. As a result, I have had extensive experience in many

different schools across the District observing interpretations at IEP meetings and advocating for families who repeatedly request translations.

9. In my experience, the District has a common policy of refusing or failing to provide translated documents despite repeated requests from families and advocates.

10. In addition, the District fails to provide quality interpretation services at IEP meetings.

11. As a result of these District-wide deficiencies, LEP Parents are prevented from meaningfully participating in the special education process to the detriment of their children with disabilities.

12. LEP parents often feel very intimidated by the special education process and some are extremely disadvantaged by their lack of experience or knowledge of the education system. Many LEP parents of students with disabilities are extremely deferential to IEP teams and will accept whatever the IEP team says without feeling empowered to actively participate in the meeting or ask questions they may have.

13. The District fails to provide adequate language services for LEP Parents from the very beginning of the evaluation process. In my experience, approximately 80% of the Permission to Evaluate ("PTE") forms which families are asked to sign are in English only. LEP Parents are asked to sign at the "x" or where the document is highlighted in yellow but the document is in English only and the document is never fully translated nor are parents apprised that translation of the document is available.

14. Many children who are LEP are not evaluated by bi-lingual evaluators although Spanish is a common language and bi-lingual evaluations should be readily available.

15. Evaluation reports are always provided in English and are never presented in a parent's native language. In addition, the vast majority of such evaluations are not provided 10 days before the IEP meeting to discuss the evaluation.

16. Over the course of the last five years, I have never seen one evaluation, re-evaluation, or IEP that has been fully translated. While some documents are partially translated, this only means that the headings and "form" parts of the IEP are translated. The "partially translated" IEP contains no students specific information regarding a LEP Parent's own child – there is no evaluation or assessment data, no narrative, and no listing of goals, benchmarks, school placement, or the services to be provided in a language the parent can understand.

17. In approximately 15% of the cases I have handled, the Meeting Invitation NOREP informing the LEP Parent of the date, time, and location of the IEP meeting has been in English only. In these cases, the Procedural Safeguards notice is also sometimes provided in English only.

18. In approximately 15% of the cases, the IEP provided to the family is entirely in English, with none of the headings translated.

19. I have been told by many Special Education Liaisons ("SELs") at different schools that the documents take too long to translate so they will not bother to submit the documents for translation by completing the request form. They have also stated that interpreters are provided at the IEP meeting so there is "no need" to translate any of the special education documents – including NOREPs, PTEs as well as evaluations, re-evaluations, IEPs, etc. I have also been told that it takes three weeks to translate a NOREP and in fact, that has been my experience.

20. None of the LEP Parents I have worked with has ever been offered the opportunity to meet with a Bilingual Counselor Assistant (“BCA”) at any time prior to an IEP meeting to go over the IEP in advance of the IEP meeting. I have never heard of this as an option for families and no one has informed any of the families I work with that this is an option.

21. In almost every case I have ever been involved with the LEP parent has specifically and expressly requested an interpreter to assist them at IEP meetings. In many cases I have assisted families to check the box on the English-only NOREP to request an interpreter because they cannot read the form.

22. When I attend meetings, I specifically ask for an in-person interpreter so that the school will not use “language line” or telephonic interpreters. However, despite this request, there are still many occasions when the school will use language line only.

23. In my experience, the District uses “Language Line” instead of live interpreters a little less than 40% of the time. This is highly problematic and undermines the ability of the LEP to engage in the IEP meeting and participate at all. These telephonic interpreters do not have the IEP in front of them and are unable to follow what is being discussed or convey any of the information contained in the IEP. They do not interpret any of the relevant portions of the IEP for the LEP Parent. They also do not provide “word for word” interpretation at meetings or inform the parent of who is saying what so it is difficult for a LEP Parent to know whether the special education teacher provided a certain comment or the Occupational Therapist. As a result, it is difficult for a parent to assess the comments provided. Instead, the telephonic interpreters merely summarize the “thinking” of the entire group. Moreover, IEP participants often have to repeat themselves because the Language Line staff doesn’t understand what is being said.

24. In addition, telephonic interpreters have no training in special education or its terminology and therefore a great deal of time is spent explaining concepts to them because they don't understand what is being said. For example, they do not know the common words such as NOREP or "Functional Behavioral Assessment." I have had occasions when the telephonic interpretation has been completely incorrect. I had one meeting where we used 13 different interpreters over the course of the meeting because the cell reception was not good. On another occasion, it took over an hour just to get an interpreter on the phone.

25. LEP parents do not communicate and engage in IEP meetings when language line is used, in part because the interpretation is confusing as IEP members often talk over each other and the interpreter repeatedly asks participants to repeat themselves and struggles to understand what they are saying. They are concerned that the interpretation is not accurate and the meetings already take triple the usual time. LEP parents have told me that they will not participate if the school uses language line because they do not trust that the person on the phone who they cannot see and who they believe is likely to misrepresent the parent's statements and what the parent wants.

26. Importantly, in recent weeks, principals have told me that they have been instructed to use language line before requesting a live interpreter because the District doesn't have enough BCAs to attend IEP meetings.

27. In my experience, school staff provide interpretation at IEP meetings the majority of the time. Over the past two school years, I would estimate that 60% of my 100 IEP meetings at the District involved school staff providing interpretation services. Importantly, any school staff can be asked to interpret at a meeting so this can be anyone – it could be a janitor, an administrative assistant, a guidance counselor or coach. On one occasion, the person selected by

the school to provide interpretation services at an IEP meeting was the student who was the subject of the IEP. He did not interpret any negative statements which were made at the IEP meeting.

28. School staff who provide interpretations have no training at all regarding how to interpret and most have no understanding of special education. Sometimes different school staff providing interpretation services rotate in and out of the meeting. None of them is qualified to interpret and I believe it is insulting to the families to rely on unqualified school staff to provide this important service for families. School staff summarize everyone's comments collectively and explain an entire long conversation in a few statements. As a result, they also don't identify who said what about a particular issue and it is unclear to the family which member of the IEP Team has provided input. A great deal of important information is completely omitted in their summaries. Many times the LEP Parent does not know the person at all and very confidential information is shared. The vast majority of school staff have no background in special education nor do they know how to interpret, which is a highly specialized skill.

29. School staff also have no training regarding the dialect of LEP parents. This is very important when interpreting Spanish. For example, the dialects in Puerto Rico and Mexico are entirely different but school staff does not recognize these differences and use the wrong word which is sometimes offensive and makes a LEP Parent feel unwelcome.

30. In my experience, in most cases, the LEP parent is unable to share information at IEP meetings because of the fact that school staff interpreters lack the skills, training, or knowledge necessary to accurately convey information which the LEP parent is trying to share. LEP parents are often reluctant to share information with school staff interpreters. In a few

instances, I have been in meetings with LEP parents wanted to share a complaint about the very school staff member who was providing interpretation.

31. Although I speak Spanish, I am not an interpreter and do not serve in this role because I am unable to provide word for word interpretation. This is exactly what LEP families need in order to truly understand their child's disability and what specialized instruction, interventions, and services are being offered in a proposed IEP. I know I don't have the level of skills needed to provide accurate interpretation services but the District is relying on similarly untrained, unqualified school staff to provide these important services.

32. As a result of poor quality interpretation services and the absence of any special education documents translated into a language a LEP Parent can read, these parents are unable to understand their children's disability, IEP, why a school selected a certain placement, and what services and interventions are available to help their child make progress. A document written in a language which the parent can read at home is an important tool for parents when they are confused about what happened at an IEP meeting or insufficient interpretation.

33. Over the last 4 years, I have only had a trained BCA provide interpretation at IEP meetings on three occasions. Unlike school staff and language line interpreters, BCAs are trained to recognize and adjust to dialects and they interpret all statements word-for-word directly to the parents. They sit next to the parent and interpret the information more accurately and they do not summarize. While they also have the IEP in front of them, which is very important, they do not interpret the entire IEP but rather interpret what is said at the meeting.

34. All families I work with routinely request that their IEPs and all special education documents be fully translated. LEP parents ask for this verbally at all meetings. Many of the families I work with do not have internet and do not know how to navigate the website to request

a translated document on line. In my experience, school staff do not assist families to complete a document request. In fact, the opposite occurs.

35. In my experience, school staff promise families that at the next meeting the special education documents will be translated but that only means that a parent will receive a “partially translated” version where only the headings and form template narratives are translated. The documents are never fully translated. Instead, they provide the partially translated versions at the next meeting which maybe a year later. Sometimes, a Special Education Liaison will print out the blank Spanish IEP template form for the family as this is readily available on the PATTAN website. None of these template forms contain individualized information regarding their child.

36. LEP parents are also told that they can’t get a translated document for 30-60 days and they suggest that it “may not worth everyone’s time to get a translated document.” Importantly, the “10 day” window for challenging an IEP always runs and the IEP goes into effect before a LEP parent would ever receive a translated document.

37. I have only seen one IEP which has been completely translated into another language for a client who was not mine. The translation was not done correctly. While it provided a word-for-word translation from English to Spanish, it did not make the grammatical revisions necessary to make the document comprehensible.

38. Many parents do not understand what they are signing at all because the NOREP is only partially translated. On some occasions, parents are told you just need to sign and to trust us because we know more about this than you do. Some LEP parents are actively discouraged from participating in the special education process by special education liaisons or principals.

They often use college-level words that a LEP parent doesn't understand and are told that the documents are too complicated for them.

39. In all the meetings I have attended, no parent was offered translation services or informed of their right to such services or the availability of these services. I have not seen any notice provided to or read to families in meetings I have attended apprising them of their rights. No parent was verbally apprised of their right to request translated documents. Special Ed liaisons tell parents to go to the PATTAN website to obtain the template when the parent does not know English.

40. In all the meetings I have attended, no parent received a translated evaluation or IEP in a language they understood ten days prior to the IEP meeting. In contrast, parents who speak English do receive evaluations ten days prior to an IEP meeting in accordance with state law.

41. Over the course of the last four years, all of the NOREPs I have seen provided to LEP parents were not fully translated, but only have the headings and template form information translated, with no child-specific information provided to the LEP Parent.

42. Over the course of the last four years, I have reviewed hundreds of IEP documents provided to LEP parents. In each case, only the headings of the IEPs were translated and none of the individual information was translated.

43. Over the course of the last four years, I have seen many Evaluation and Re-evaluation Reports provided to LEP parents. While these documents are to be provided prior to ten days prior to the IEP meeting under state law, they are not and only the headings and form template are translated.

44. Over the course of the last three years, I have seen never seen any of the following special education process documents translated at all: Progress Monitoring Reports, Functional Behavioral Assessments, Positive Behavior Support Plans, Transition Service documents and assessments, or Extended School Year documents.

45. Transition plans are important to be understood and discussed. Youth with disabilities need this document to guide their future after high school and this plan communicates important information about what a youth wants to do and the services they need to get there. If parents cannot provide input or don't understand the plan, they are unable to support their child to plan for the future. The youth also need to be involved in this process and must provide input about what they want. For example, I had a case where a student wanted to go to college but the LEP Parent could not afford it and needed to provide that input. Because she could not read the IEP, she did not know her own child had applied to college through the school. In addition, I have had occasions when the District's transition plan included a reference to a "sheltered workshop" and the parents had no idea what that meant and would not have agreed to it if they had understood.

46. There is clearly harm to children resulting from a LEP parent's lack of participation in the special education process. There are many examples I can share. For example, in one case, the student's evaluation was incorrect because the child failed to receive a bi-lingual evaluation in Spanish. The 12-year-old child was autistic and high functioning but was placed in a life skills classroom based on the inaccurate evaluation. The child languished there for one year. During this time, the parent was unable to provide input and participate in the evaluation and IEP process. When she tried to raise concerns about her child's placement, she was told there was no one on staff to provide interpretation services. Outside of school, the child

was taking library books out on pre-calc and geometry. The child was ultimately identified as gifted and transferred from life skills but only after three months of advocacy.

47. On another occasion I worked with a family whose 16-year-old had behavioral issues. The child was repeatedly suspended every week because the child lacked a positive behavior support plan. The parent could not read the child's FBA, evaluation, or IEP. The child's teacher had an informal meeting rather than an IEP meeting to discuss transferring the child to Pathways—an alternative school for students with disciplinary problems. The LEP Parent was given a NOREP that was never translated and told to sign the document. She did so because she thought the document was a permission slip for a field trip. Although his behaviors were clearly related to his disability, the child remained in a completely inappropriate placement for six months.

48. I know parental input from LEP Parents would help the children of these parents academically and behaviorally and would improve the time to get a child evaluated, get the right IEP in place and provide better interventions and supports as well as more effective transition plans

49. The District consistently claims that it is committed to family engagement but fails to engage multilingual families in the special education process and provide language services that are essential for them to meaningfully participate in their child's educational process.

50. Thus far, three times this school year LEP parents I work with have been told they are signing "field trip" form, "daily report" or "report card" when it turned out to be a NOREP.

51. With one rare exception, no report cards are translated at all. However, I have seen one or two report cards from one teacher, (who is Latinx) at one high school (Frankford)

where the report card grades were translated into Spanish but the teachers' progress notes were not. Outside of this, I have not seen any other report cards translated into a parent's native language.

52. LEP Parents need clear District-wide policies requiring the District to translate critical special education documents and requiring all schools to provide quality interpretation services. Without such a systemic response, LEP parents of students with disabilities are deprived of meaningfully participate in the special education process. High quality interpretation is essential to ensuring that LEP parents of students with disabilities meaningfully participate in the special education process. High quality interpretation is utilizing in-person, trained, interpreters at all IEP meetings and to stop utilizing telephonic interpretation as this service is extremely limited and inadequate. They are not trained on special education terminology, do not have access to documents being discussed, and are unable to physically see the parent and read nonverbal cues that may signify that they need clarification or do not understand what is being conveyed. Providing in-person interpretation on a consistent basis would be one step toward ensuring LEP parents of students with disabilities are able to meaningfully participate.

53. In my experience, the District has routinely failed to arrange for a trained interpreter to be present at IEP meetings and, upon realizing their failure to plan accordingly, will pull people such as bi-lingual secretaries into meetings to interpret for parents. School staff interpreters do not facilitate or encourage parents to ask follow-up questions nor do they generally inquire into whether parents need clarification on anything that has been discussed.

54. The failure to provide parents with documents in a language they can understand results in their not fully understanding the nature or severity of their child's disability and/or

what services or program their child is being offered. Accordingly, they are unable to make informed decisions regarding their child's special education program.

55. In addition, providing LEP parents with translated documents would empower LEP parents to be able to monitor their child's progress. By having a fully translated IEP, a LEP parent would have a document they could reference which enables them to evaluate and track their child's progress towards measurable goals and benchmarks. Having translated documents would also allow LEP parents to ensure that IEP documents accurately reflect the nature and duration of the services the District agreed to provide and identify whether further testing or evaluations are needed based on their ability to review assessments and progress notes.

56. Most importantly, fully translating documents such as evaluation reports, NOREPs, and IEPs would ensure parents are making informed decisions regarding their child's special education program and this would result in better outcomes for their children.

I declare under penalty of perjury under the laws of the United States of America and pursuant to and subject to the penalties of 28 U.S.C. § 1746, relating to unsworn falsification to authorities, that the foregoing is true and correct to the best of my knowledge, information, and belief.


William Del Toro Vargas

Dated: November 4, 2019

EXHIBIT 5

**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

DECLARATION OF MANQING LIN

I, Manqing Lin, hereby declare 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 Declaration based on my own personal knowledge.
2. This Declaration was prepared and reviewed by me with the assistance of an interpreter and I fully understand its contents.
3. I am a limited English proficient parent of R.H., an eight-year-old child with a disability who attends McCall Elementary School in the School District of Philadelphia.
4. Specifically, I speak Mandarin Chinese and read and write in Simplified Chinese. R.H.'s father is also limited English proficient. He does not understand, read, or write in English.
5. I provided a deposition in this case on January 30, 2018.
6. Since providing my deposition, I have continued to fail to receive fully translated special education process documents prior to attending and participating in IEP meetings and within a reasonable period of time to enable me to help my son.

7. There are a few special education documents that I have received fully translated, including IEP meeting invitations. For example, I received an invitation for an IEP meeting on October 2, 2019, that included headings translated into Chinese and handwritten translations from the Bilingual Counselor Assistant (BCA) where parts of the invitation were not translated.

8. In addition, there are instances in which I have not received translated versions of general education documents, such as report cards.

9. Since my deposition, I have received fully translated Notice of Recommended Educational Placements (NOREPs) and one fully translated Individualized Education Program (IEP), but all have been provided after a significant delay and changes to my son's services have gone into effect. For example, I received the fully translated IEP four months after the completion of the May 2018 IEP meeting. This delay prevented me from understanding the services that R.H. received and prevented me from advocating for him during the IEP meeting.

10. I have been asked to sign documents, such as NOREPs, that I cannot understand because they are in English. For example, when R.H. first transitioned to the District for Kindergarten, I did sign a PTE in English without understanding that it gave consent to conduct a limited evaluation of R.H. More recently, I was asked to sign a NOREP in English on May 17, 2019. I did not agree to sign something that I did not understand.

11. I only receive draft IEPs in English. It is very difficult for me to participate in IEP meetings without draft IEPs in a language that I can understand. Although the District does offer me oral interpretation, which is something that is not offered to other non-native speakers, this is not a substitute for having a written draft in my language for several reasons.

12. First, translating one draft IEP takes several sessions because of the unavailability of the interpreter. For example, I met with the BCA for 2-3 sessions each lasting one hour long to discuss IEPs in prior years.

13. Next, the interpretation is not comprehensive. The BCA does not interpret each page of the IEP. He said that sections of the draft IEP were repetitive and some sections had been previously translated in prior years due to the fact that an IEE was translated when conducted in 2016-17 in accordance with a Mediation Agreement. The BCA did not interpret many other sections of the draft IEP. He stated that he interpreted only sections of the IEP which included a reference to the current year (for example, "May 2018"). There were sections he did not interpret at all.

14. In addition, I could not ask questions of the BCA because he does not have an understanding of special education as he has explained to me in the past. For example, Mr. Tang, a District BCA that has been tasked with providing me interpretation services, does not understand occupational therapy or what the categories of testing mean. This requires an explanation from the providers, who are not always present.

15. Finally, the oral interpretation of the draft IEP is not helpful when I am in the meeting and cannot refer to the draft IEP. I struggle to write handwritten notes for every word that is orally interpreted so I can refer to it in the meeting. I have to go home and double check the accuracy of what is being interpreted and sometimes I have to ask my daughter for help. It takes me 7-8 hours to do this additional translation on my own. Many sections of the draft IEP are never interpreted at all.

2017-2018 School Year

16. During the 2017-2018 school year, I often received documents solely in English with insufficient amount of time to attempt to obtain translation prior to the IEP meeting when the documents would be discussed. In addition, there is no offer to translate certain documents which are essential components of my son's IEP.

17. For example, in the 2017-2018 school year, as in past years, I did not receive a fully translated Functional Behavioral Assessment (FBA). I received the FBA dated December 4, 2017 solely in English, the day before the meeting during which we discussed it. I never received a fully translated FBA.

18. For the December 5, 2017 IEP meeting, I did not receive any draft IEP in any language prior to the scheduled meeting.

19. On May 3, 2018, I emailed the Special Education Liaison (SEL), Ms. Mannino, confirming my attendance for an IEP team meeting on May 25, 2018. In my email, I also requested a draft IEP ten days prior to the IEP meeting and requested an interpreter to review the draft IEP with me prior to the meeting.

20. I received the draft IEP on May 22, 2018, just three days prior to the meeting, which only contained translations of the IEP headings in Chinese and did not contain individual information concerning my son. I met with BCA Mr. Tang for an oral interpretation of the draft IEP on May 23, 2018.

21. On May 25, 2018, the IEP team did not discuss the IEP but the meeting focused on ESY goals and services. ESY or "Extended School Year" takes place in the summer.

22. The IEP team met again to discuss the IEP on June 8, 2018. I received the fully translated NOREP for the June 8, 2018 IEP meeting on September 12, 2018. I did not receive

the fully translated IEP until September 25, 2018. However, both documents are dated May 25, 2018.

23. I cannot sign a NOREP that asks me to approve or disapprove special education and related services that are detailed in an IEP in English that I do not understand and is not fully interpreted for me.

24. During this four-month period between the IEP meeting and when I received the fully translated IEP, I did not know whether or what portions of the IEP were being implemented. I have been told that the school cannot implement an IEP at all until I sign the NOREP.

25. Throughout the 2017-2018 school year, I received progress monitoring regarding R.H.'s IEP goals solely in English. At the end of most quarters, as a result of my request, someone from the school would call with a telephone interpreter to orally interpret the progress monitoring. This oral interpretation was difficult to understand and incomplete. I often would resort to just circling the numbers of percentage of mastery because I did not understand the written reports.

26. I received the final quarter's progress monitoring in English, of course, on the last day of school on June 12, 2018 and there was no one from the school available to orally translate the report.

27. Throughout the 2017-2018 school year, I also received progress notes that were entirely in English. As required consultation in R.H.'s IEP, the Speech Therapist would meet with me for fifteen minutes each month during which time she would give me the progress notes in English, orally communicating the progress notes with an interpreter on the phone, and answer

questions. Fifteen minutes per month was not enough time to provide this oral translation and required IEP consultation.

28. I also received Physical Therapy Progress Notes that were entirely in English. I now know that one of the notes stated that the Physical Therapist planned to cut by half R.H.'s service minutes from monthly to bi-monthly for the 2018-2019 school year. I was unaware that this was being proposed because the progress notes were only in English and I am unaware of the justification provided by the Physical Therapist for reducing the services. Due to the lack of adequate interpretation or translation of Progress Reports, I could not effectively understand or challenge these changes.

2018-2019 School Year

29. R.H. has significant behaviors that impact his ability to make progress and his Positive Behavior Support Plan (PBSP) is a necessary document that details the plan to address his behaviors.

30. The District failed to provide a translated PBSP, which I received only in English. In an email dated August 27, 2018, the Board-Certified Behavior Analyst (BCBA) Ms. Cronin confirmed that she submitted the PBSP for translation. I emailed the Director of Special Education Capitolo and the principal on September 7, 2018, requesting a translated PBSP and IEP because the information contained in the documents was impossible for me to understand in English. I never received a translated PBSP for that school year.

31. I attended three short meetings with some of R.H.'s related service providers on March 29, 2019, April 16, 2019, and May 7, 2019. The March 29th and April 16th meetings were conducted with a telephone interpreter. A BCA provided interpretation for the May 7, 2019 meeting. I understood that these meetings were to prepare for R.H.'s IEP meeting.

32. The service providers orally described R.H.'s progress and the services they were recommending. It was difficult for me to follow along because it was all oral. It was also difficult for me to take detailed notes so that I would have something in writing to refer to that I could understand and use during the IEP meeting and throughout the school year to monitor his progress.

33. Prior to attending an IEP meeting on May 17, 2019, I received an English version of the draft IEP with headings only translated into Chinese on May 14, 2019. As in the past, the District did not offer to translate the document. The District SEL, Ms. Mannino, stated that they had no obligation to provide a translated document until the draft IEP was final under the terms of the Mediation Agreement. No one offered to provide oral interpretation of the draft IEP prior to the May 17, 2019 IEP meeting.

34. I participated in an IEP meeting on May 17, 2019. I attended the meeting with my attorney and an advocate. At the end of the meeting, I was asked to sign an English NOREP so that the services could be implemented. I requested a NOREP in Chinese so that I could understand what I was signing. I also believed that it was necessary for me to receive the fully translated IEP before I signed the NOREP.

35. The District provided a partially translated NOREP followed by a fully translated NOREP on June 4, 2019. On August 21, 2019, I received an email from Ms. Mannino requesting that I sign the NOREP before the completed IEP could be sent to the translation department for translation into Chinese. I responded in an email in Chinese and English through a translation app that I could not sign the NOREP until I saw a translated final IEP, and had questions from the IEP meeting on May 17, 2019 that remained unanswered.

36. The District shared a final IEP only in English on September 5, 2019. I have not received a fully translated IEP for the 2019-2020 school year and am still waiting for the fully translated IEP in order to sign the NOREP.

37. Because I have not received a fully translated IEP, I was unable to identify or discuss significant changes to the current IEP at the May 17, 2019 meeting. For example, I did not realize the team eliminated parental consultation with the BCBA, and decreased teacher consultation time with the BCBA and decreased his occupational therapist by half. These changes were also completed without my knowledge or involvement. I learned about these changes because my son failed to receive these services. After I asked about these changes, the District amended the IEP on October 1, 2019 to restore the same consultation services included in prior IEPs.

38. On June 5, 2019, I received a fully translated NOREP declining to evaluate R.H. for physical therapy. This NOREP was issued as a response to my question at the May 17, 2019 IEP meeting when the physical therapist recommended terminating services. At the meeting, I asked whether there was any evaluation conducted. This NOREP stated that physical therapy was ending because R.H. demonstrated adequate strength and lacked interest in physical education activities, was distracted by environment and by numbers, and was able to demonstrate the skills in one-on-one, pull-out activities.

39. I also received a draft PBSP for the 2019-2020 school year solely in English on May 17, 2019. I attempted to translate it myself at home prior to my meeting on May 22, 2019 with the BCBA.

40. At the May 22, 2019 meeting with the BCBA telephonic interpretation was used to describe the contents of the PBSP. The BCBA reiterated the statements that she made during

our March 2019 discussion: that the special education teacher for the 2019-2020 school year would have experience with Applied Behavior Analysis (ABA), an evidence-based method of behavior intervention necessary for R.H., in order to train R.H.'s One-to-One to implement the PBSP. I noted this support service in my draft of the PBSP and believed this would be included in the final PBSP.

41. Because I did not understand the document, I did not feel like I could participate in the creation of the PBSP at all.

42. The final PBSP was also only in English. I have not received a translated PBSP. I know now that the final PBSP did not include the BCBA's prior confirmation that a special education teacher with experience in ABA would be provided for R.H. because a friend who could read English told me.

43. As in the previous school year, I received all of the progress notes from the Speech Therapist in English for the 2018-2019 school year. I met the Speech Therapist once a month for fifteen minutes, who used a telephonic interpreter to interpret the report. This short time was not sufficient time for me to understand the content of the progress notes and ask questions.

44. As in past years, the daily notes from the one-to-one aide for the 2018-2019 school year were also all in English. Because they were not translated, I could not understand R.H.'s daily progress, except for the number of prompts he received throughout the day. I saw the high number of marks and used a translation app on my phone to translate what these marks represented, which is how I learned that he was receiving a high number of prompts every day.

45. No one reported that R.H. needed more prompts or suggested a meeting or change in his program to improve his progress. As prompts increased, I saw more notes in other sections that I could not understand.

46. The 2018-2019 Progress Monitoring Reports were also provided only in English. At each quarter, I would receive telephonic interpretation of progress, except for the last quarter. Like the previous school year, I received the last report on the final day of school, June 4, 2019, and no translation or interpretation was offered.

47. The ESY progress monitoring for 2018-2019 was also completely in English with no offer of oral interpretation. I had concerns about the ESY program because R.H. seemed to regress but was unable to understand what his progress was because all of the reporting and documentation was in English. For example, all of R.H.'s daily notes during ESY were in English and I could not understand why he was being prompted. I observed the program due to my concerns, and did not get the impression that the teachers and staff were working on R.H.'s ESY goals or following his IEP. For example, I observed the instructor turn on a television and allow children to run in circles, bang objects on a desk, and other behavioral issues. When I asked the teacher what the students were working on during this time, the teacher responded that this was to improve social skills.

48. Because of the increase in R.H.'s negative behaviors during the second grade, he was unable to complete all of his classwork during the 2018-2019 school year. I did not realize this until the school sent home all his incomplete classwork almost two weeks before the last week of school. I questioned how R.H.'s grades were calculated when he had not completed his classwork and was just told that R.H. is very bright.

2019-2020 School Year

49. During the 2019-2010 school year, I have observed an increase in R.H.'s negative behaviors in school. I have also observed bruising on R.H.'s arms and have been notified about him eloping from his aide. I personally observed R.H. being restrained by his one-to-one aide for twenty minutes. I was also notified that R.H. was in the school hallway, naked, when he was upset.

50. Due to my significant concerns about R.H.'s behavior, I requested consultation with his BCBA which I believed continued to be a service in R.H.'s IEP.

51. On September 5, 2019, the District provided a final IEP in English with only headings translated, nearly four months after the May 17, 2019 IEP meeting. I still have not received a fully translated IEP for the 2019-2020 school year.

52. On October 1, 2019, I received an email from the SEL that she submitted the IEP for translation. Because I have not received a fully translated IEP and could not sign the NOREP, it is unclear which IEP is being implemented. It is my understanding from the SEL that the District could not implement an IEP until a NOREP was signed.

53. When I received this IEP in English, I compared its structure to the fully translated IEP that I received for the previous school year. At that time, because of the use of numerical minutes, I realized that my monthly consultation with the BCBA had been removed from the IEP. In addition to this omission, I also realized that minutes had been reduced for other consultation between the teachers, the one-to-one aide, BCBA and Occupational Therapist.

54. I understood that these consultations were previously in R.H.'s IEP to support his behavior. I believe that their removal, which had not been orally translated by the BCA or communicated to me when we met in May, has contributed to R.H.'s increased behaviors.

55. I requested that the original consultation minutes be restored. I am concerned that R.H.'s increased behaviors have already led to him missing instructional time. For example, R.H. was in literacy class and was upset by the volume of the software on his computer. He eloped from the classroom for an unknown amount of time. His one-to-one aide redirected him back to the classroom. Then, when it was time for technology class, he did not join his class. His aide said she asked him if he wished to attend technology class and he said no. He remained in the classroom and missed his technology class. Then, when his classmates returned R.H. was upset by the color displayed on the computer. He began to cry. His aide improperly removed R.H. from class and tried to get him to use an iPad in the hallway. This caused R.H. to become more upset, causing him to urinate in his pants. The principal told me that R.H. then removed his pants. I was notified that R.H. was observed by faculty, students, and staff to run through the halls, naked.

56. Though R.H.'s IEP includes specially designed instruction (SDI) to address his behavioral and sensory needs, this example shows that this information was improperly communicated and the SDI and PBSP were not implemented. I am concerned that the failure of his instructors and aides to implement the IEP will have an impact on his academic and social development.

57. Importantly, my son is not able to communicate with me regarding what occurs in school due to the nature of his disability. When R.H. came home with a bruise on his arm, he could not tell me how he got it. When R.H. came home with new pants, he could not tell me that he had urinated in his pants and the school changed his pants. This is why it is important for the school to communicate with me in a language that I can understand.

58. I continue to receive daily notes from R.H.'s one-to-one aide solely in English. R.H.'s behaviors are increasingly worse in the third grade and there is no clear solution for how the school plans to support R.H. These behaviors are causing R.H. to miss instructional time because he elopes or is improperly removed from the classroom when he exhibits the behaviors.

I declare under penalty of perjury under the laws of the United States of America and pursuant to and subject to the penalties of 28 U.S.C. § 1746, relating to unsworn falsification to authorities, that the foregoing is true and correct to the best of my knowledge, information, and belief.


MANQING LIN

DATED: 11/4/2019

EXHIBIT 6

**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

DECLARATION OF MADELINE PEREZ

I, Madeline Perez, hereby declare 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 Declaration based on my own personal knowledge.
2. This Declaration was prepared and reviewed by me with the assistance of an interpreter and I fully understand its contents.
3. I am a limited English proficient parent of two children with disabilities, L.R. and D.R., who are students in the School District of Philadelphia and named plaintiffs in this lawsuit. I have one child who is not in special education.
4. Specifically, I speak, read and write in Spanish. I do not speak, read, or write in English.
5. I provided a deposition in this case on February 12, 2018.
6. Since providing my deposition, I have continued to fail to receive translated special education process documents for my children, L.R. and D.R., and have received

inadequate interpretation services. Also, I have not received any document that summarizes my rights regarding translation of IEP documents or interpretation.

7. In addition, there are times in which I have not received translated versions of general education documents, such as report cards.

L.R.

8. When L.R. was evaluated by the School District of Philadelphia in 2012, the evaluation report was provided to me in English only. This evaluation was never translated. As a result, I didn't understand the evaluation and it was not until 2016 that I learned for the first time that L.R.'s 2012 diagnosis of autism from the Center for Autism was not included in his IEP.

9. None of the evaluations for any of my three children with disabilities educated in the District, including L.R. and D.R., were fully translated into Spanish.

10. Due to L.R.'s need for emotional support services and autistic support services, he was placed by the District at Devereaux - Brandywine and has attended this school since the 2017-2018 school year. Devereaux is an Approved Private School and the School District of Philadelphia remains responsible for his special education program and for arranging all IEP meetings and obtaining consent for all services and specially designed instruction provided to my son.

11. Since L.R. has attended Devereaux, I have never received any special education documents translated into Spanish at all. All of the documents that I have received for L.R. have been in English and even the headings were not translated into a language I could understand. This includes the IEP meeting invitations, Notice of Recommended Educational Placements

(NOREPs), IEP drafts, final IEPs, progress monitoring reports, and progress notes. Just one time, I received an IEP meeting invitation translated into Spanish.

12. I do not receive partial translations of L.R.'s special education documents.

13. L.R.'s reports cards are also solely in English.

14. I have participated in multiple IEP meetings while L.R. has been at Devereaux, both in person and by phone.

15. No one has ever offered to review the draft IEP with me prior to L.R.'s IEP meetings. No one has informed me that I can request oral translations of the draft IEPs prior to the meetings.

16. Because I do not receive any special education documents in Spanish, I do not know the services that L.R. receives at school or whether he is making progress.

17. When I leave the IEP meetings, it is difficult for me to remember the services that will be provided and I do not have a translated IEP to review to understand L.R.'s services or to assist me in determining whether L.R. is making progress or whether Devereaux is following his IEP.

18. I receive progress monitoring reports solely in English that I cannot understand. I save them to provide them to L.R.'s therapist at his appointments so that he can help me understand.

19. During the 2018-2019 school year, L.R. was having a very difficult time with behavior at both school and home. As a result, his psychiatrist referred him to Crisis mental health services and he was appointed a bilingual family-based worker. The family-based worker was not affiliated with the District or with Devereaux nor is this person provided through L.R.'s IEP.

20. During the 2018-2019 school year, Devereaux staff would provide L.R.'s family-based worker with weekly reports of L.R.'s behavior and progress solely in English. The family-based worker assisted me by orally describing the contents of the reports to me in Spanish. This is how I learned any information about L.R.'s progress on goals and his behaviors. This was the only way that I knew how L.R. was doing in school.

21. On or around March 2019, the family-based worker completed his services with L.R. As a result, I stopped receiving the weekly reports of L.R.'s behavior or progress.

22. I do not receive the weekly progress reports now and I believe this is a problem.

23. I do not know if the weekly progress reports are even included in L.R.'s IEP as a service because I cannot understand L.R.'s IEP, which is only provided in English.

24. I also do not know what goals the school is working on with L.R. I understand that L.R. has deficits in socializing and needs to learn to make friends. This is a skill that he is working on with his therapist outside of school. I do not know if this is something that the school is working on with L.R. or how they are working on it because I cannot understand his IEP. This is an important skill that he needs to learn.

25. I have also experienced problems with interpretation for L.R.'s IEP meetings.

26. No one at Devereaux speaks Spanish and so I am unable to communicate with the staff.

27. When I have participated in an IEP meeting at Devereux, there was an interpreter on the phone. I found it difficult to understand with an interpreter on the phone. In addition, while other participants in the meeting have a copy of L.R.'s IEP they are able to read and reference, I cannot read the IEP provided to me because it is in English. Also, it is my

understanding that the “Language Line” interpreter does not receive a copy of the written IEP and therefore he only interprets what is said at the meeting.

28. During the past school year, as in prior years, I received an invitation to an IEP meeting for L.R. that was only in English.

29. When a bilingual case worker was at my house, we both called the school to ask about the IEP meeting so that he could interpret for me. The school asked the case worker if he could serve as the interpreter for the IEP meeting. When he agreed to do this, the person at the school responded that this would be better and would the permit the school to hold the IEP meeting earlier. The bilingual case worker and I both participated in the IEP meeting on the phone in the Spring 2019. No one from the District or school served as an interpreter.

D.R.

30. Since providing my deposition, I have also not received fully translated special education documents for D.R. and I have continued to experience problems with interpretations at IEP meetings for D.R.

31. D.R. attends Kensington High School for Creative & Performing Arts in the School District of Philadelphia. She is in the twelfth grade.

32. Since my deposition, I have not received any fully translated special education documents for D.R. except for the IEP meeting invitations. For example, I have never received a fully translated draft IEP, finalized IEP, NOREP, progress monitoring reports, and progress notes.

33. Some documents are provided with only headings and form sections translated into Spanish, such as the IEP, NOREP, and progress monitoring reports. Other documents are not translated at all.

34. In May 2019, I received an invitation to an IEP meeting. I was not provided with a draft IEP in any language prior to the meeting. I was not offered to review D.R.'s draft IEP with an interpreter prior to the IEP meeting, nor has the District ever offered me this option.

35. During the May 2019 IEP meeting, an advocate from HUNE accompanied me, who also served as an interpreter for the meeting. I brought the advocate because I cannot rely on the school to provide an interpreter for the IEP meetings. There was a school staff member, it may have been a secretary from the school, who spoke Spanish and answered questions when I asked them.

36. I was provided with an IEP in the May 2019 meeting that had the headings and some form language in Spanish, but the information was primarily in English and the most important parts—all individualized information regarding my child—was in English only. At the end of the meeting, the SEL told me that she would mail a fully translated IEP to me.

37. I still have not received a fully translated IEP from the May 2019 meeting.

38. I also did not receive a NOREP translated into Spanish for the IEP that was created in May.

39. Because I cannot read D.R.'s IEP, I do not know the services that she is supposed to be receiving and have no way of knowing if the services in her IEP are being provided.

40. I will also need to make a decision regarding whether D.R. will graduate this year or remain in school to work on transition goals and this is a difficult decision to make in the absence of information regarding her progress.

41. Because this is D.R.'s last year in school, I am concerned about whether the services that she is receiving from the school will prepare her for getting a job after she leaves high school. D.R. has talked about being a police officer or joining the National Guard, but I do

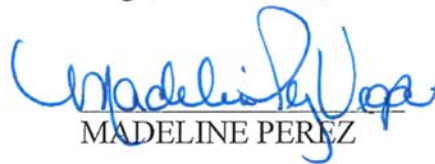
not know if this is reflected in her IEP. I do not know what services the school has agreed to provide because I cannot review the IEP.

42. Particularly, I am concerned about whether the school is going to connect D.R. with the Office of Vocational Rehabilitation (OVR) to get help for getting a job after high school. I do not know if the school has agreed to connect D.R. to OVR and coordinate services with OVR. This is an important opportunity for D.R. to connect to important employment and training services after graduation.

43. If I received D.R.'s IEP fully translated into Spanish, I would know whether she was receiving these necessary services to prepare her for leaving high school and what the District has agreed to do and provide regarding transitioning from high school. I would know whether the school was helping D.R. realize her goal of becoming a police officer or joining the National Guard.

44. If I had the translated documents, I would know what the District agreed to provide and could advocate for her to receive the services that I believe she needs.

I declare under penalty of perjury under the laws of the United States of America and pursuant to and subject to the penalties of 28 U.S.C. § 1746, relating to unsworn falsification to authorities, that the foregoing is true and correct to the best of my knowledge, information, and belief.


MADELINE PEREZ

DATED: NOV-04-2019

EXHIBIT 7

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

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I N D E X

- - -

EXAMINATION

NATALIE HESS

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BY MS. McINERNEY

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BY MS. OBOD

314, 320

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NATALIE HESS

Page 5

1 NATALIE HESS, after having
2 been first duly sworn, was examined and
3 testified as follows:

4 - - -

5 EXAMINATION

6 - - -

7 BY MS. MCINERNEY:

8 Q. Good morning, Ms. Hess.

9 A. Good morning.

10 Q. How are you today?

11 A. Great.

12 Q. My name is Maura McInerney. We know
13 each other. I, along with my colleagues, Paul
14 Saint-Antoine and Yvelisse Pelotte, represent
15 the parents in this matter, in the matter of
16 T.R. versus The School District of
17 Philadelphia.

18 Are you familiar with this
19 matter?

20 A. Yes.

21 Q. And could you please state your full
22 name for the record?

23 A. Natalie Celeste Hess.

24 Q. And what is your address?

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1 Q. Did you keep track of how often
2 bilingual counseling assistants were provided?

3 A. No.

4 Q. Did you ever use bilingual counseling
5 assistants?

6 A. Yes.

7 Q. And when would you do that?

8 A. When I was at a school meeting with a
9 parent, and the parent spoke a language other
10 than English.

11 Q. And do you know how many bilingual
12 counseling assistants or BCA's there were that
13 were available in 2014 when you were special
14 education director?

15 A. Around 50, 55.

16 Q. And what about the following year, in
17 2015?

18 A. So I don't have the numbers for each
19 year. I know that we have recently increased
20 to 78, with three being at the office, and the
21 others being out in schools. We also have a
22 number of buildings that have bilingual
23 teachers, bilingual principals, bilingual
24 staff that are also utilized to help the

NATALIE HESS

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1 communication between a parent and a school
2 team.

3 Q. And are those bilingual teachers,
4 principals and staff trained in any way?

5 A. Trained educators? Yes.

6 Q. Are they trained to be interpreters, to
7 provide language assistance?

8 A. Not to my knowledge.

9 Q. And do you know how often they were
10 used, the bilingual teachers, principals and
11 staff, how often were they used, in IEP
12 meetings, for example?

13 A. They are used as needed. Some
14 buildings have large numbers of bilingual
15 staff secretaries, principals, as ongoing
16 support to parents for meetings of any kind at
17 the school, including IEP meetings.

18 Q. And would they receive any kind of
19 training from your office from the director of
20 special education with regard to their
21 participation in IEP meetings?

22 A. No. Ludy Soderman oversees the
23 Interpretation & Translation Office, and she
24 does do training for District employees, but

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1 we do not for interpretation.

2 Q. Or for any other reason; correct?

3 A. We do training on special education all
4 the time.

5 Q. Right. And when you say staff, could
6 that be an administrative staff? Could that
7 be someone who is bilingual who works in the
8 office who would provide interpretation
9 services?

10 A. Yes.

11 Q. So any staff who is bilingual?

12 A. Yes.

13 Q. You mentioned that some parents
14 preferred LanguageLine to BCA's. And why
15 would that be?

16 A. It depends on the parent, but if they
17 have experience having used LanguageLine in
18 the past, and they are comfortable with it,
19 then they will ask to use LanguageLine. If
20 -- it is a matter of experience, and if they
21 liked it or didn't like it. In person is
22 usually a preferred method.

23 Q. How do you know that that's the
24 preferred method?

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1 District for identifying limited English
2 proficient parents, including parents of
3 children with disabilities, and for providing
4 access to information to relevant District
5 personnel, what are the policies, procedures
6 and practices for identifying limited English
7 proficient parents?

8 A. We don't do that. To my knowledge,
9 this is, again, the only way the District
10 knows if a parent does not speak English is
11 through the home language survey, when they
12 register for school.

13 Q. And are all parents asked to complete
14 the home language survey?

15 A. Yes.

16 Q. Do you know if they receive any
17 assistance with completing a home language
18 survey?

19 A. I know the schools have staff available
20 to support parents through the registration
21 process, and if they don't speak English,
22 there is an interpreter used to support that
23 process.

24 Q. And if a child enters the School

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1 District and has not yet been identified as
2 needing special education services, how would
3 the school building staff know that the parent
4 is limited English proficient?

5 A. By reviewing the school language survey
6 the parent filled out at registration.

7 Q. Do you know where the home language
8 survey is maintained?

9 A. No.

10 Q. Do you know if there is a database that
11 is accessible to all staff?

12 A. No.

13 Q. No, there isn't a database?

14 A. We don't keep track of the parents that
15 are what you are describing as limited English
16 proficient.

17 Q. And do you know the -- withdrawn.

18 How would your office learn
19 about whether a parent is limited English
20 proficient or not, your Office of Specialized
21 Services, how would you know that?

22 A. Potentially, from the school team, a
23 member of the school team. It could be that
24 the parent reaches out to us, and they are

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1 our office to a parent has that at the bottom
2 of the letter.

3 Q. Can you give me some examples of what
4 those letters would be?

5 A. Yes. Transitioning students to the
6 next grade level, if it is an unnatural
7 transfer, we notify parents that programming
8 for their student may require a change in
9 school. Those letters are sent out to our
10 students who are identified in the low inc
11 category and --

12 Q. I'm sorry, you said low --

13 A. The low inc, there is high inc, and
14 there is low inc.

15 Q. Can you explain what that is?

16 A. Sure. The states indicates that
17 special education students in the high inc
18 category, high identification category, are
19 the ones that you would see the most of, so
20 learning support and emotional support, but
21 those that have fewer identified students
22 would be your students of autism, life skill
23 students, multiple disability students.

24 Q. So letters concerning transitioning

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1 students to another -- to another potential
2 school?

3 A. Correct.

4 Q. As they switch grade levels?

5 A. Yes.

6 Q. And the information is provided in the
7 eight most common languages; is that correct?

8 A. Yes.

9 Q. And what are those?

10 A. I do not have all eight. I do not
11 know.

12 Q. And if a parent didn't speak one of the
13 eight most common languages, how would they
14 know about this opportunity to have something
15 translated?

16 A. So parents that don't speak English that
17 receive a document in English, like any other
18 mail that they receive, often have other
19 means, to ask a friend, a relative that does
20 speak English or read English, to either
21 interpret the document for them that they
22 received, or sometimes, they can just identify
23 that it is the School District, and they will
24 contact the School District.

NATALIE HESS

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1 Q. But they will receive the initial
2 communication in English?

3 A. Yes.

4 Q. And that would go out from your office,
5 from the Office of Specialized Services?

6 A. If it is a special education
7 correspondence, it goes out from our office,
8 and it has at the bottom the languages and how
9 they could get the document translated, a copy
10 of the translated document.

11 Q. In the eight most common languages?

12 A. Yes.

13 Q. What other letters are sent out from the
14 Office of Specialized Services in this way?
15 Is your office, for example, responsible for
16 invitations to IEP meetings? Is that
17 generated by your office?

18 A. No.

19 Q. Is that generated by the school
20 building?

21 A. Yes.

22 Q. And who would be responsible for those?

23 A. Special education teacher. The IEP
24 system also produces those invitations in the

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1 A. I can tell you that a teacher that
2 teaches autism at the -- and if they had all
3 students at the supplemental level, they could
4 have eight students on their caseload. A
5 life skills support teacher, if all students
6 on their caseload, they could have up to 20
7 students on their caseload. Learning support
8 can have up to 20 supplemental students on
9 their caseload. And I could run down all of
10 them, but hopefully, that helps.

11 Q. Do you know approximately how many
12 letters the Office of Specialized Services
13 would be sending to all parents each year?

14 A. We use a variety of communication tools
15 for parents. I'm trying to think of any
16 specific letter that every single special ed
17 parent gets, and I'm not coming up with one,
18 but we do send out communications about
19 meetings in multiple ways, e-mail, text
20 message and a robo call.

21 Q. And e-mails, text messages and robo
22 calls, would those all be in English?

23 A. Yes.

24 Q. And what would those e-mails, text

NATALIE HESS

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1 that time.

2 Q. And what, if anything, does this
3 addition mean for the IEP itself, for the IEP
4 document, the individualized education program
5 document?

6 A. It means that the documents that are
7 produced, the standard information is
8 translated into that language, because IEP's
9 are individualized and student-specific, the
10 student-specific information is not
11 translated.

12 Q. So would it be fair to say that the
13 headings are translated into the eight most
14 common languages?

15 A. Yes. Can we take a bathroom break?

16 Q. Sure.

17

18 (Whereupon a short break was
19 taken at 12:14 to 12:21 p.m.)

20

21 BY MS. McINERNEY:

22 Q. So looking at the Rule 30(b)(6) topics,
23 we are at Topic Number 3, the number of
24 limited English proficient parents of students

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1 to the parent where they are looking at on the
2 document and the LanguageLine interpreter
3 would interpret the IEP meeting that way.

4 Q. So the parent, if they don't happen to
5 speak one of the eight main languages, is
6 sitting with a document that's entirely in
7 English; is that correct?

8 A. Potentially, yes.

9 Q. And then the interpreter, who is on
10 LanguageLine, does not have a copy of the
11 document, of the IEP or the evaluation?

12 A. No.

13 Q. But they are interpreting whatever is
14 said at the meeting?

15 A. Yes, both ways, from the parent to the
16 school team and the school team to the parent.

17 Q. And if the BCA is interpreting, what is
18 your understanding of what their role is at
19 the meeting?

20 A. Their role is to do the exact same thing
21 that LanguageLine does; however, again, having
22 a human being in that relationship is
23 obviously valuable, and as people have
24 conversations, and with documents in front of

NATALIE HESS

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1 them, I think it is natural to reference and
2 look at certain sections, so they would have a
3 copy in front of them right there.

4 Q. The BCA would have a copy in front of
5 them?

6 A. Potentially, all the people at the table
7 would have a copy in front of them to look at.

8 Q. So the BCA doesn't necessarily have a
9 copy?

10 A. They don't have to, but they are sitting
11 next to the parent, and we are walking through
12 the document, so they are there.

13 Q. So the BCA doesn't read the entire
14 document at the IEP meeting?

15 A. No. Well, it depends. If the IEP
16 facilitator is reading the document, then,
17 obviously, the interpreter is interpreting
18 what's being said.

19 Q. Do you know, approximately, with regard
20 to evaluations, let's say, how often is
21 LanguageLine used, and how often are BCA's
22 used?

23 A. I do not know, and we don't collect that
24 data.

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1 Q. With regard to IEP meetings, more
2 generally, or to go over an IEP document, do
3 you know how often LanguageLine is used and
4 how often BCA's are used?

5 A. I do not know LanguageLine. I do know
6 that BCA's sign in for the IEP meeting.

7 Q. Does your office or does any office
8 maintain data about what percentage of IEP
9 meetings include a BCA?

10 A. No.

11 Q. So you mentioned the IEP and that the
12 headings are translated, but the
13 student-specific information is not provided
14 in the written document?

15 A. Correct.

16 Q. With respect, going back for a moment to
17 the evaluation report, are there any timelines
18 associated with meeting about an evaluation
19 report, and if so, do you know what that
20 requirement is?

21 A. The evaluation is to be completed within
22 60 days. The report needs to be provided to
23 the parent ten days in advance, and they then
24 meet to review the evaluation.

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1 Q. And why is the report provided ten days
2 in advance of the meeting?

3 A. So that the parent can review it and
4 determine whether or not they -- to review it.
5 I mean, obviously, they are reviewing it to
6 see if they have questions or agree with it or
7 don't agree with it in preparation for the
8 meeting.

9 Q. And generally, how long are those
10 documents? I know it varies a lot.

11 A. It varies a lot. It depends on the
12 number of assessments and the complex needs of
13 the student. They can be anywhere from 4
14 pages to 15 or 20, I suppose.

15 Q. So what is the procedure in place with
16 regard to a limited English proficient parent,
17 who would, I assume, receive this document ten
18 days before the meeting to discuss the
19 evaluation report?

20 A. Right. So when they receive
21 communication from the school, they oftentimes
22 will reach out to the school. Whether they
23 come up to the school and talk to the
24 bilingual counseling assistant, who is in the

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1 increased in a significant way?

2 A. I just know that it has increased.

3 Q. Okay. That's it on this document. And
4 now, I'm going to show you what's going to be
5 marked as Exhibit 4.

6 - - -

7 (Whereupon the court reporter
8 marked document as Hess 4 for identification.)

9 - - -

10 BY MS. McINERNEY:

11 Q. I'm showing you what's been marked as
12 Exhibit Number 4. Do you recognize this
13 document?

14 A. Yes.

15 Q. And what is it?

16 A. The guide that I was talking about.

17 Q. And do you know when this document was
18 developed?

19 A. Yes, in 2015.

20 Q. And who is it that developed this
21 document?

22 A. I did.

23 Q. And did you develop this in consultation
24 with anyone else?

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1 A. Yes. I talked about this earlier, PDE
2 and Office of General Counsel.

3 Q. And in -- on the first page, can you
4 read the fifth bullet point down?

5 A. "If a parent speaks a language other
6 than English, ensure that a bilingual
7 counseling assistant is requested at least 72
8 business hours before the scheduled meeting.
9 He or she is to receive a copy of necessary
10 documents to indicate attendance at IEP
11 meetings on the cover sheet."

12 Q. Do you know if BCA's actually receive a
13 copy of necessary documents?

14 A. I don't know.

15 Q. And who would be responsible for
16 ensuring that that happens?

17 A. The person making the request, either
18 the special education teacher, the special
19 education liaison.

20 Q. And would that occur at the building
21 level?

22 A. Yes.

23 Q. And it notes here that a BCA is
24 requested at least 72 hours before the

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1 not available on the PaTTAN website, we would
2 send it out to be translated.

3 Q. But those requests would come to your
4 office?

5 A. Yes.

6 Q. And do you keep track of how many
7 NOREP's are translated or how many procedural
8 safeguards are translated?

9 A. No.

10 Q. And this references NOREP's and
11 procedural safeguards. What about requests
12 to evaluate?

13 A. I don't see it on here.

14 Q. Turning to the next page, where it talks
15 about invitations to the parent for a meeting
16 to take place within ten days of receiving the
17 request, what does that relate to?

18 A. So this is under the action is
19 evaluation request by a parent. So if a
20 parent makes a request, whether it is in
21 verbal or written format, they are -- the
22 school team is to prepare an invitation to the
23 parent for a meeting to take place within ten
24 days of receiving the request, the invite

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1 come in for a meeting, they might use the
2 LanguageLine or a bilingual counseling
3 assistant to communicate with the parent. It
4 is an invitation, so it not required to be
5 translated.

6 Q. So with regard to the permission to
7 evaluate form, is that something that needs to
8 be translated?

9 A. Yes. If a permission to evaluate is
10 being provided to the parent, it should be in
11 the parent's native language.

12 Q. Okay, but that's not referenced in this
13 particular document; correct?

14 A. It is not indicated on this document.

15 Q. So, now, turning to the next page, which
16 is 3103, it references a Permission to
17 Reevaluate Consent Form; correct?

18 A. Yes.

19 Q. And it also references a Notice of
20 Recommended Educational Placement?

21 A. Yes.

22 Q. And the Notice of Recommended
23 Educational Placement would be a translated
24 document; is that correct?

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1 A. Yes.

2 Q. And then, turning to Page 105, this is
3 the evaluation report or reevaluation report
4 which we discussed previously, that must be
5 provided prior to the IEP meeting. And
6 again, is this something that would be
7 translated?

8 A. It is not required to be translated.

9 Q. And the same with regard to the Number
10 7, the written invitation to a reevaluation or
11 evaluation meeting, does that invitation need
12 to be translated?

13 A. The invitation does not require to be
14 translated.

15 Q. Turning to Page 3109, Number 9, what
16 does -- can you just read that, Number 9?

17 A. "Within ten days of the registration, an
18 IEP team meeting will be conducted to
19 determine if the IEP from the previous agency
20 should be revised or adopted as is, then issue
21 a Notice of Recommended -- NOREP or a PWN to
22 the parent. When appropriate, issue a PTE
23 consent and have the parent consent -- wait --
24 and have the parent consent and sign the

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1 form."

2 Q. And this is under the heading New
3 Student With An Out-of-State IEP?

4 A. Yes.

5 Q. So if a limited English proficient
6 parent came to the District, then within ten
7 days of their registration, they would receive
8 -- the IEP team would -- meeting would be
9 conducted to determine if they should keep the
10 same IEP or if there needs to be revisions or
11 a new IEP?

12 A. Yes.

13 Q. And would those documents -- would a
14 proposed IEP be translated for a parent with
15 limited English proficiency?

16 A. No, that's not required.

17 Q. And then, one last question, on Page --
18 the last page or second to last page, denoted
19 as PSD 003115, this refers to a manifestation
20 determination under Numeral 1. Is the
21 manifestation determination form -- is there a
22 form that's translated?

23 A. I am under discipline and restraint for
24 3115?

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1 participation.

2 Q. And this is the procedure that was put
3 into place this school year?

4 A. Yes.

5 Q. And so is there any form that they fill
6 out or any assessment that they make as to the
7 parents' participation in IEP meetings?

8 A. They are asking questions, they are
9 getting the feedback, they are having the
10 conversation with the director, and the
11 director is having follow-up conversations
12 both with the team and possibly the parent.

13 Q. So, again, I just want to make sure that
14 I am clear. If a limited English proficient
15 parent has not utilized interpretation
16 services, like a BCA, then what would be your
17 response to a request for translation?

18 A. It depends on the student and the
19 parent. Not the student, the parent, and the
20 IEP process so far. I want to know more
21 about what they have done and where they are
22 at in the IEP process.

23 Q. Have there been occasions when you have
24 requested that the special ed director further

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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

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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

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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

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1 yield accurate information on what the student
2 knows and can do academically, developmentally
3 and functionally, unless it is clearly not
4 feasible to so provide or administer."

5 Q. And what is your understanding of when a
6 student is required to have a bilingual
7 evaluation?

8 A. When it is not their native language.

9 Q. And in all circumstances when it is not
10 their native language?

11 A. When it is not their native language,
12 and evaluating them in their native language
13 would yield the best results. But it can be
14 done either through someone that is -- speaks
15 that child's native language or it can be done
16 using an interpretation service as well.

17 Q. Is it your understanding that students
18 need to be evaluated by a bilingual certified
19 school psychologist?

20 A. They have to be evaluated by a certified
21 school psychologist.

22 Q. Does that person need to be bilingual if
23 the child does not understand English?

24 A. No, you can use other forms of

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1 communication to yield as long as you can
2 yield accurate information. In other words,
3 if there is a language that we don't have a
4 certified school psychologist that speaks that
5 native language, we will use an interpreter to
6 -- in conjunction with the psychologist to
7 administer the assessment.

8 Q. And how many bilingual certified school
9 psychologists does the District have
10 currently?

11 A. I don't know.

12 Q. Do you know how many they had in prior
13 years?

14 A. Between 10 and 15, I believe. There
15 has been retirees as of late, the last couple
16 of years, but we are always advertising for
17 more. I don't have that number off the top
18 of my head.

19 Q. Do you know approximately how many were
20 in the school year 2015, 2016 versus 2017,
21 2018? Do you know if there has been an
22 increase in or a decrease in the number of
23 bilingual certified school psychologists?

24 A. There has been a decrease, just by

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1 not have examples of anyone not doing it.

2 Q. So, then, in the fourth paragraph, it
3 references parents or guardians requesting
4 translation or interpretation services at any
5 time throughout the IEP process. How are
6 families notified about that?

7 A. Again, the special education liaison,
8 the special education teacher in the building
9 are most familiar with the parents that do not
10 speak English as their native language and are
11 in communication with those parents, so they
12 are the ones that would engage in that process
13 with them.

14 Q. It says throughout the IEP process.
15 What does that mean?

16 A. Sure, so if you have the evaluation
17 meeting, and you move into an IEP, it could be
18 at either time, whatever time a parent is
19 requesting it, then they would intervene.

20 Q. So it refers to receiving a ten-day
21 notice of an IEP meeting. What is a ten-day
22 notice?

23 A. I want them to give their IEP's in
24 advance of the IEP meeting, so that the

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1 parents can review them and prepare, much like
2 we do for the evaluations.

3 Q. So is that a new procedure in the
4 District?

5 A. It is not required. It is new. It is
6 in better preparation for the IEP meeting,
7 both for the parents that require a review
8 with a bilingual counseling assistant and just
9 for our parents in general.

10 Q. And when was that new process put into
11 effect?

12 A. I would say this school year is where I
13 have brought it to the director's attention.

14 Q. So it references that upon receiving a
15 ten-day notice of an IEP meeting, that
16 includes a draft IEP that the parent can
17 request interpretation services. So do you
18 know how many parents are requesting
19 interpretation services this school year?

20 A. How many are requesting interpretation
21 services?

22 Q. Yes.

23 A. No.

24 Q. Is there a way that that's being

NATALIE HESS

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1 paragraph?

2 A. Can I go back and make a correction to
3 something I said earlier?

4 Q. Sure.

5 A. So the invitation to the IEP meeting
6 needs to be ten days in advance. The draft
7 IEP being provided in advance, it is my
8 expectation that it goes above and beyond what
9 the regulations are. I just wanted to
10 clarify that. Your question is what now?

11 Q. I was trying to understand the process
12 that you put into place here, that the parent
13 would arrange to meet with a BCA before the
14 IEP meeting. Why did you put that particular
15 process into place?

16 A. So they have an opportunity to review
17 the document and receive it to think about it
18 before the IEP meeting itself.

19 Q. Prior to this process, do you know if
20 limited English proficient parents received
21 interpretation of their IEP document before an
22 IEP meeting?

23 A. No, but neither did English language --
24 English-speaking parents. It is not a

NATALIE HESS

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1 required practice to have the draft in advance
2 to the meeting. It is a best practice, and it
3 is a practice that I expect to be in place to
4 better help all parents be prepared. So in
5 conjunction with doing that, it allows
6 students -- parents that do not speak English
7 to have the opportunity to have interpretation
8 services to prepare them for that meeting.

9 Q. And prior to this going into effect this
10 school year, do you know what the common
11 practice was with regard to parents receiving
12 a copy of their IEP?

13 A. Again, this is different than Iowa,
14 because it was our standard practice and
15 expectation, so I came to the District
16 expecting that to be in place. I think it is
17 a practice that they knew was best practice,
18 but didn't always get done, and there has been
19 a concerted effort to improve that.

20 Q. So that, currently, limited English
21 proficient parents would receive notice that
22 they can obtain interpretation services ten
23 days before an IEP meeting takes place. And
24 does that include any kind of IEP meeting?

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1 A. Yes.

2 Q. And then you talk about if a BCA or
3 other bilingual staff member. What is -- who
4 would be another bilingual staff member?

5 A. So we have talked about this quite a bit
6 today. So the principal, a special education
7 teacher, a general education teacher, it could
8 be classroom assistant, it could be any
9 bilingual employee of the District in the
10 building might be an agreed-upon use for doing
11 that service, providing that service.

12 Q. Do you think it matters whether it is a
13 BCA or another staff member?

14 A. I think it matters if the parent is able
15 to engage in the conversation. So it is
16 really up to the parent as to whether or not
17 that is working effectively, or if we need to
18 have a BCA or someone else step in to do the
19 interpretation, but that would be in any
20 situation.

21 Q. Okay. So you also referenced the
22 District's phone-based interpretation service,
23 Pacific Interpreters here?

24 A. Yes, that was the previous company, like

NATALIE HESS

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1 I said. That has changed hands. It is now
2 LanguageLine.

3 Q. So any one of those options are
4 available to parents, so BCA, school staff or
5 LanguageLine?

6 A. Yes.

7 Q. So if a parent is working and not able
8 to come to the school for -- to utilize
9 interpretation services, then what happens?

10 A. Well, the central office is also open
11 extended hours with bilingual counseling
12 assistant support available to parents beyond
13 the school day.

14 Q. And how late are they there?

15 A. Well, Ludy leaves about the time I do,
16 around 6:00 or 7:00 at night, so the office is
17 open all the time that she is there and has
18 staff there. It is not always the place that
19 the parents come to. There is barriers by
20 coming to the central office area. Not
21 everybody is comfortable coming through the
22 checkpoint of the security guards at the
23 front, that is uncomfortable, parking is
24 horrendous to try to find and pay for. So

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1 reviewed those documents in a long time.

2 Q. Do you recall that there were forms that
3 had not been translated into a language that
4 they understood, such as a 504 homebound
5 instruction form? Do you recall anything like
6 that?

7 A. The homebound instruction form, I'm not
8 aware that that was translated.

9 Q. Do you recall that they -- that A.G.
10 and T.R. received evaluations that were in
11 English, except for subheadings, the headings
12 translated?

13 A. I don't recall. I'm sorry, I don't
14 recall.

15 Q. Let me double-back on that in the
16 interest of time. I'm going to show you
17 what's being marked as Exhibit 11.

18 - - -

19 (Whereupon the court reporter
20 marked document as Hess 11 for
21 identification.)

22 - - -

23 BY MS. McINERNEY:

24 Q. Could you state for the record what that

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1 A. "Short meeting translated in Chinese,
2 documents translated after the fact. If Mom
3 requests a draft of the IEP before the
4 meeting, we have to provide her with a draft."

5 Q. And to your knowledge, are draft IEP's
6 fully translated for parents?

7 A. No.

8 Q. And why not?

9 A. In this case, the parent agreed not to
10 have draft IEP's translated and a NOREP to
11 indicate that. The IEP process is one in
12 which, initially, you are reviewing that IEP,
13 and you are making changes throughout that
14 process. Inevitably, you are going to make
15 many changes, and we do that by utilizing the
16 interpretation services through that process,
17 and then, if the parent still requires and
18 would like to have that translated document,
19 then we send it out for them to have the final
20 document translated.

21 Q. So the final document would be
22 translated, but not the draft document?

23 A. Yes.

24 Q. So with regard to IEP documents, is it

NATALIE HESS

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1 A. No.

2 Q. So for the years 2012, 2013 and 2013,
3 2014, there were no documents maintained, as
4 far as you know?

5 A. Correct.

6 Q. Do you know if there is any documents
7 maintained with respect to bilingual
8 evaluations or -- yes, bilingual evaluations
9 conducted at the School District? Are there
10 records maintained on that?

11 A. Not that I am aware of.

12 Q. Are you aware of whether parents ever
13 changed their mind about whether or not they
14 need translation or request for translation
15 during the course of their tenure with their
16 child at the Philadelphia School District from
17 year to year?

18 A. Yes, there are times where parents have
19 had it translated previously and do not
20 request to have it translated again.

21 Q. Does the School District affirmatively
22 offer the use of BCA's?

23 A. Yes.

24 Q. Does the School District promote the use

EXHIBIT 8

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 WEDNESDAY, DECEMBER 6, 2017

10 Oral Deposition of LUDY
11 SODERMAN, taken pursuant to notice, at Drinker
12 Biddle, One Logan Square, 20th Floor,
13 Philadelphia, Pennsylvania, beginning at
14 approximately 9:30 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

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I N D E X

- - -

EXAMINATION

LUDY SODERMAN

Page

BY MS. MCINERNEY

5, 199

BY MS. OBOD

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E X H I B I T S

- - -

| NUMBER | DESCRIPTION | PAGE MARKED |
|--------|----------------------------------|-------------|
| 1 | Multilingual Family. | .24 |
| 2 | FACE. | 31 |
| 3 | Interpretation Services. | .38 |
| 4 | 11/21/17 Letter. | .91 |
| 5 | BCA Assignments. | 112 |
| 6 | Guide to School Budgets. | 114 |
| 7 | E-Mail. | .115 |
| 8 | E-Mail. | .116 |
| 9 | E-Mail. | .119 |
| 10 | E-Mail. | .123 |
| 11 | E-Mail. | .125 |
| 12 | Interpretation Request. | .129 |
| 13 | E-Mail. | .143 |
| 14 | E-Mail. | .146 |
| 15 | Request. | 149 |
| 16 | E-Mail. | .150 |
| 17 | E-Mail. | .152 |
| 18 | E-Mail. | .161 |

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| | | | |
|----|--------|------------------------------|-------------|
| 1 | NUMBER | DESCRIPTION | PAGE MARKED |
| 2 | 19 | Protocol. | 166 |
| 3 | 20 | E-Mail. | 170 |
| 4 | 21 | E-Mail. | 175 |
| 5 | 22 | IEP. | 176 |
| 6 | 23 | Evaluation Report. | 177 |
| 7 | 24 | Behavior Assessment. | 177 |
| 8 | 25 | Invoice. | 180 |
| 9 | 26 | Job Summary. | 184 |
| 10 | 27 | Transcript. | 191 |

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LUDY SODERMAN

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1 Q. And why is it important for there to be
2 live interpretation?

3 A. When you have a live interpreter, live
4 interpreters not only interpret language, they
5 interpret the context of the culture as well.

6 Q. Can you explain that?

7 A. Yes, absolutely. When we interpret, we
8 don't do word to word. It is almost like
9 doing Google, and that is horrible. So when
10 we interpret, we interpret meaning. Good
11 interpreters don't interpret word to word.
12 That is robotic. But not only do we interpret
13 meaning, we also have to be aware of
14 dialectical differences. I come from the
15 Spanish-speaking world. In the
16 Spanish-speaking world, we have a common
17 language, in quote, but we don't speak the
18 same language. They use -- the vocabulary,
19 the semantics of the people from Argentina is
20 not from Chile, even though they are next to
21 each other, there is only the Andes dividing
22 them, which is not Venezuela, and it is not
23 Venezuela closer to Columbia, and it is not
24 Venezuela closer to the Caribbean, which is

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1 not Puerto Rico. So we have distinct use of
2 vocabulary. And it is imperative that we know
3 who we serve, so that we either use that
4 language or we know that we need to ask for
5 clarification. A good interpreter needs to
6 ask for clarification. It is part of our
7 role. So even though we are conduits, we
8 also are -- part of our responsibility is to
9 be a clarifier. And we are cultural brokers.
10 And then the last piece of our triangle of
11 role of the interpreter is to be an advocate,
12 which, for an educational interpreter is, we
13 are doing all these things. Like Cindy Roat
14 would say, R-O-A-T -- Cindy Roat has developed
15 the model for interpreters, but the most
16 important thing is to serve as a conduit.
17 When we are interpreting, we have to -- like I
18 saw you, and I am paying attention to your
19 gestures, but with my peripheral, I was
20 feeling her, because she is attentive, trying
21 to get every word, and some things I'm saying
22 might not be familiar to the person that is
23 the stenographer. Like I said conduit, and
24 you sort of like shrunk your eyes a little

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1 bit, right? So we have to pay attention to
2 visual cues and body language and tone of the
3 speaker, and we have to do sessions, a
4 pre-session. When I enter an interpretation
5 session, those encounters have to be -- you
6 have to begin with a pre-session. And one of
7 the trainings that BCAs get over and over
8 again is that we have to ask -- we have to say
9 our name, our language, and our function.
10 Example, my name is Ludy Soderman. I'm going
11 to serve as your Spanish interpreter today.
12 My function here is to say exactly what I
13 hear. If there is anything you don't want me
14 to repeat, don't say it, because I have to say
15 everything I hear. I don't advise, I don't
16 enhance, and I don't edit. I may take notes,
17 I will destroy them before I depart today, and
18 please look at each other when you are
19 speaking. Pretend I'm not here. That's what
20 interpreters should do. We also speak in the
21 first person.

22 So it is a long, long, long
23 answer to a short question that you asked, but
24 I think it is important that when we have --

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1 when we interpret for someone, it is more than
2 the words. It is a very complex -- it is a
3 very complex task, very complex task, yeah.

4 And we are -- drawing from our short-term
5 memory is exhausting, and it is wonderful,
6 because we help people talk to each other.

7 Q. And what is the primary function of the
8 BCA?

9 A. The primary function is to be linguistic
10 bridges and cultural brokers. So
11 interpretation is one of the things they do.
12 It is probably the big bulk of the things they
13 do.

14 Q. So interpretation, that's --

15 A. A big bulk.

16 Q. A big part of it?

17 A. Yeah, um-hum.

18 Q. What is the FACE office?

19 A. FACE is the Office of Family And
20 Community Engagement.

21 Q. And is it part of the Multilingual --

22 A. We are part of FACE.

23 Q. The Multilingual Center is part of FACE?

24 A. Yes. Well, we are not a multilingual

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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

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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

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1 person or an LE, they can call that number.

2 Q. Is this tracked in any way who -- what
3 people are using telephonic interpretation
4 for?

5 A. I don't know if that -- if they have the
6 capability to track it.

7 Q. And what about --

8 A. In fact, you know what, I know they
9 don't. I know we can -- we can get reports on
10 the schools that make the requests that use
11 the service, but they don't have the
12 capability of making a discrete report on why,
13 because when I have used it, they don't ask me
14 the purpose of my call.

15 Q. And what about with regard to the
16 in-person interpretation?

17 A. I have a form, I have developed a form,
18 because I think it is important to know the
19 type of encounter, the type of meeting, so
20 that I can send the person who will be the
21 most appropriate to provide interpretation.
22 Ideally, that's what happens to provide --
23 match the person's skills with the
24 interpretation session.

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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

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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

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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

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1 Q. Has the number of refugees increased in
2 the School District of Philadelphia over the
3 last five years?

4 A. Yes.

5 Q. Do you know by how much?

6 A. No. We don't track that.

7 Q. You don't track the number of refugees?

8 A. No.

9 Q. Do you track the number of immigrant
10 families?

11 A. We know we track the document language.
12 We cannot ask people their immigration status.
13 It is illegal. We know, if they tell us, but
14 we cannot solicit that information. It is in
15 relationships that we learn these things, and
16 then we can help them, guide them, encourage
17 them to get resources.

18 Q. Do you currently have a sufficient
19 number of BCAs to attend all the meetings that
20 are requested of your office for
21 Limited-English Proficient parents of any
22 kind?

23 A. I don't know. We help -- we support
24 our requests as best as we can. If we don't

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1 have BCAs, the translators will go, I will go,
2 Cong will go, yeah.

3 Q. Have particular schools ever requested
4 additional BCA support?

5 A. For asking for more days?

6 Q. Yes, asking for more days?

7 A. Yes.

8 Q. And how often has that happened?

9 A. It doesn't happen very often. It
10 doesn't happen very often.

11 Q. So did -- in terms of the exact
12 increase, how was that number determined of
13 how many BCAs would be added?

14 A. It was -- I guess it -- I wasn't part of
15 that decision-making.

16 Q. Did they ask for input from you about
17 that?

18 A. Yes.

19 Q. What did you say?

20 A. They didn't ask me how many. They said
21 we have been -- I honestly don't know if it
22 was the source, where it came from, but I know
23 that -- my supervisor said that we were going
24 to get more BCA positions.

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1 there wouldn't be a BCA available?

2 A. For a meeting?

3 Q. Right.

4 A. No. We are there, if they request us.
5 The translators, Cong and I will interpret if
6 we get any interpretation requests.

7 Q. And you would cover Spanish?

8 A. Cong would cover Chinese Mandarin,
9 Daniela and Nicole, they do Spanish, and then
10 Thavro, T-H-A-V-R-O, would do Khmer.

11 Q. Are there languages for which you have
12 no BCAs at all?

13 A. Yes.

14 Q. And what happens in those situations
15 with regard to the need for interpretation
16 services?

17 A. They use telephonic interpretation.

18 Q. Do interpreters on the Language Line --
19 what type of background do they have?

20 A. I don't know. I don't know what
21 background they all have, but I know that a
22 good amount of them have a background as
23 medical interpreters.

24 Q. Would any of them have a background in

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1 special education?

2 A. I don't know.

3 Q. And what oversight do you provide of
4 BCAs? I know you said you don't monitor them,
5 but do you get complaints about BCAs? Would
6 they come to you or --

7 A. The BCAs can complain. They come to me
8 and complain, they ask for help. If they
9 don't know how to -- for the new ones, I will
10 match them with a mentor. If they have
11 questions about how to get a resource for a
12 family, connect them with community
13 organizations, doctors and psychologists
14 outside of the District, maybe they have
15 different needs.

16 Q. What I was asking was, do people come to
17 you complaining about BCAs?

18 A. Oh, pardon me. Yes, I have had someone
19 complain about BCAs, yes.

20 Q. And what school -- do you recall what
21 school that that related to or what schools?

22 A. When?

23 Q. It has been a long time that you have
24 been in this position.

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1 as to who will go to what meeting when BCAs
2 come to you and say, I was told by this
3 principal to go to this meeting, I was told by
4 that principal to go over here?

5 A. That doesn't happen all the time, so,
6 like, if the principal from this school wants
7 me to go, and the principal said, you can go,
8 blah, blah, blah, some of them say no, because
9 the principals, they have had that agreement,
10 I think, as a matter of courtesy, I want to
11 know. So I'm not going to say, don't go, I
12 can't do that, but I want to know when it
13 happens.

14 Q. But you can't say don't go?

15 A. No, I don't think so. Ultimately, the
16 principal is their boss of that day, so I
17 cannot -- yeah.

18 Q. So that is their boss?

19 A. Right.

20 Q. Not you, okay.

21 A. But if it is something unethical, I will
22 definitely say something, I will make it stop,
23 yes. It hasn't happened yet.

24 Q. Are there times when you deny request

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1 A. Yes, but I have them only for 20 hours a
2 week.

3 Q. You only have them for 20 hours a week?

4 A. Yes.

5 Q. So do you have any policies, written
6 policies or standards, regarding making
7 decisions as to who will be assigned to a
8 particular interpretation request?

9 A. No.

10 Q. Are there any criterion that you have
11 identified, other than the skill set of the
12 individual who you are sending?

13 A. No. Oh, yeah. Why am I saying no? I
14 also consider, I mean, I have BCAs who do not
15 have cars, so if it is something that anyone
16 can do, I will consider that.

17 Q. Now, do you ever receive any requests
18 for translation that come to you to translate
19 documents?

20 A. Well, if they send something, I refer it
21 to Cong Wang, who is in charge of translation.

22 Q. Does Mr. Wang make decisions with regard
23 to whether to approve or deny a request for
24 translation? Does he make those decisions?

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1 people with Ph.D.'s in English don't know
2 every single terminology, every single word,
3 every single nuance of language.

4 Q. Are there any documents that you know of
5 that are always translated for Limited-English
6 Proficient parents?

7 A. The Code of Student Conduct is
8 translated. There are some notices. There
9 are many documents that are translated for
10 non-English-speaking parents, many documents.

11 Q. In the special education context, do you
12 know what documents are always translated for
13 Limited-English Proficient parents?

14 A. Translated by whom? By us?

15 Q. By someone in the District.

16 A. I don't know which ones are always
17 translated.

18 Q. In your view, what information do
19 parents need, if you are Limited-English
20 Proficient, in order to participate in the
21 special education process? What information
22 do you think that parents need?

23 A. They need to know what special education
24 is. They need to know what their rights are.

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1 They need to know how they can best help their
2 children at home, so that whatever deficit or
3 room for improvement, they can support at
4 home. So it is not just leaving what happens
5 to the teachers. It is what we can do at home
6 with our own kids if they have learning
7 differences.

8 Q. Do you think they need to understand an
9 evaluation of their child that was conducted
10 to determine whether they were -- they had a
11 disability or not? Did they need to
12 understand that?

13 A. Absolutely.

14 Q. What about the services being offered by
15 the District, the special education services
16 being offered? Do you think they need to
17 understand that?

18 A. Yes.

19 Q. What about whether or not the child is
20 making progress? Do you think that's
21 information they need?

22 A. Yes.

23 Q. What about the school placement of the
24 child, the proposed classroom placement of the

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1 child? Is that information you think they
2 need?

3 A. Yes.

4 Q. What about the behavior of the child, if
5 that's a problem, if the School District
6 identifies their behavior as interfering with
7 learning? Is that something you think that
8 Limited-English Proficient parents need to
9 know about?

10 A. Yes.

11 Q. And with regard to progress, what would
12 that include, the progress of the child?

13 A. Well, I assume what the progress means
14 is, how are they -- how the programs or the
15 services offered to the child are meeting the
16 child's needs and how these needs are not
17 impeding the child's academic performance and
18 achievement.

19 Q. Do you think they need to understand
20 progress monitoring reports?

21 A. Yes.

22 Q. What about their report cards?

23 A. Yes.

24 Q. And what about a behavior plan for the

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1 child?

2 A. Absolutely.

3 Q. And in the school discipline context, if
4 they are proposing to expel the child, do you
5 think they need to understand that
6 information?

7 A. Absolutely.

8 Q. What about a manifestation determination
9 review? Do you know what that is?

10 A. No. I have heard the word, but I don't
11 know what -- what is it?

12 MS. OBOD: Ludy, just answer
13 the questions. Yes or no is perfect.

14 BY MS. McINERNEY:

15 Q. So I'm going to show you another
16 document, and I don't know if you have seen
17 this before.

18

19 (Whereupon the court reporter
20 marked document as Exhibit 4 for
21 identification.)

22

23 BY MS. McINERNEY:

24 Q. Have you ever seen this before? I will

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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

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1 to do a site translation?

2 A. Anyone in the meeting.

3 Q. And would they have those documents ten
4 days before the meeting or would they receive
5 the documents at the IEP meeting?

6 A. It varies. Some people send it in
7 advance. I like to have BCAs look at it in
8 advance. That's not always possible, so I
9 send the BCAs at least a half an hour in
10 advance, so they can eyeball the document,
11 whatever document they are going to see.

12 Q. Can you explain how long it would take
13 them to site-translate an IEP document?

14 A. To site-translate an IEP document?
15 Well, how much do they want to -- it depends
16 what they want you to site-translate. If
17 someone wants to site-translate and interpret
18 are very different things.

19 Q. Maybe you can explain.

20 A. So if you give me a document, and you
21 want me to just read the goals, I mean, that's
22 simple. If you want me to site-translate the
23 whole document, that is completely
24 inefficient, I think, because it would take

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1 forever. You look at the document -- you are
2 really doing translation on the spot, so that
3 translation -- goodness, it is -- I wouldn't
4 recommend anyone to do a whole IEP with site
5 translation. It would take a long time, a
6 long time.

7 Q. In general, how long are IEP's? Do you
8 know how many pages, based on your experience?

9 A. It varies.

10 Q. So when a BCA or you provides site
11 translation, what are you looking at?

12 A. You are supposed to read it, you are
13 supposed to mark it. The syntax from English
14 into Spanish, we have very different syntaxes,
15 so you want your utterance to flow as
16 naturally as possible, you want to have enough
17 time to look for the meaning of the words or
18 ask for clarification of terminology that you
19 don't know. Those are the things you want to
20 do before you do your utterances. It is not
21 going to be perfect. It is never perfect. We
22 don't have the benefit -- regardless of how
23 much training you have as an interpreter, we
24 don't have the luxury of time. Translators

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1 Q. The information and data that you
2 maintain with regard to requests for
3 interpretation would be solely the requests
4 that come to your office?

5 A. Yes.

6 Q. Would it reflect requests that might be
7 made of a BCA when he is in the building and
8 in his day-to-day sort of practice?

9 A. Not in my interpretation request, no.
10 In the past, I asked BCAs to let me know how
11 many different meetings they held. But it is
12 unmanageable to do it by myself.

13 Q. So you are tracking a request that
14 specifically comes to your office?

15 A. Yes.

16 Q. And only those requests?

17 A. Yes.

18 Q. Are there any specific policies or
19 standards or protocols in place with regard to
20 how BCAs provide interpretation services in
21 the special education context?

22 A. No.

23 Q. Is there any way that you are tracking
24 whether or not a BCA showed up at an IEP

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1 meeting that they were supposed to attend?

2 A. I expect them to just attend, and if
3 they don't attend, I will hear from someone
4 that the BCA didn't attend, and I will figure
5 out why, I will call the BCA, did they have
6 car trouble, did they get sick?

7 Q. And when that happens, what would occur
8 in the IEP meeting?

9 A. They use telephonic, but they would call
10 us, too, if the BCA hasn't shown up, they will
11 call us, and we will figure it out or one of
12 us will just jump in the car or Uber and go
13 and help.

14 Q. Do family members ever serve as
15 interpreters at IEP meetings?

16 A. I hope not. I don't know.

17 Q. Do the BCAs play any role in evaluating
18 children who are suspected to have
19 disabilities?

20 A. No.

21 Q. Do they play any role in the evaluation
22 process?

23 A. No.

24 Q. So BCAs do not provide interpretation

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1 services when an evaluation is conducted of a
2 child that does not speak English?

3 A. The role is exclusively to interpret.
4 We are not evaluating.

5 Q. But they are present and participating
6 as interpreters?

7 A. As interpreters.

8 Q. And what do they do?

9 A. They exclusively say what is being said,
10 and they provide psychologists, if they are
11 doing a psychological evaluation, with the
12 cultural context. There are some things that
13 will help the person who is doing the
14 assessment get a better profile of the
15 student. If you have a student who has been
16 in a refugee camp, there are some questions
17 that might not be -- might be perceived as
18 wrong when it actually is reflective of the
19 experience of the kid. If you have a kid in
20 a refugee camp, where there is no electricity,
21 where you put the milk, and the tester expects
22 refrigerator, and the kid says put it on top
23 of the table, BCAs know something about
24 experiences of our families that some people

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1 need to get in order to do the best assessment
2 for the child. But the role of the BCA is
3 exclusively to interpret. We don't test
4 anybody.

5 Q. Do you know how many bilingual
6 evaluations are conducted of Limited-English
7 Proficient students in the District?

8 A. No.

9 Q. Do you have any involvement in that
10 process?

11 A. Unless they ask me for a BCA for a
12 language for which they don't have someone.
13 Otherwise, no, I don't know how many. I don't
14 know numbers.

15 Q. Do you know how many BCAs participated
16 as interpreters in special education
17 evaluations last year?

18 A. Not from the top of my head. I would
19 need to go look at the books.

20 Q. Do you maintain that data?

21 A. That's part of the interpretation
22 request form.

23 Q. So it will specifically identify whether
24 they were conducting an evaluation -- whether

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1 with this, so I wasn't able to figure it out,
2 either, but it refers to documents that need
3 to be translated prior to -- into the parents'
4 native language prior to them signing. So
5 these are documents that they are signing.

6 In response to this, would you
7 have those documents translated or would you
8 do a site translation?

9 A. I would refer her to Cong Wang for the
10 translation. I can do the interpretation
11 piece, but I don't deal with the translations.

12 Q. Do BCAs ever translate documents?

13 A. One-pagers.

14 Q. And under what circumstances? Do you
15 know?

16 A. Fliers, so nothing -- I don't want them
17 to translate things that it would take longer
18 time. They don't have the time in schools,
19 and they don't have -- you need a quiet space
20 to do that.

21 Q. So would they be translating a Notice of
22 Recommended Educational Placement if it were
23 one page or --

24 A. I would hope not. I don't know. I

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1 BY MS. McINERNEY:

2 Q. And then what does it go on to say?

3 Just summarize the rest.

4 A. Okay.

5 Q. So did you alert her to the fact that
6 she could use specific interpreters as an
7 option?

8 A. Yes. I also alerted her to -- and I
9 would remind the BCA to train new staff on how
10 to use specific interpreters, to do quick
11 review with teachers, but I also tell her to
12 let me know in advance, if she needed an
13 interpreter, I would send interpreters to her.

14 Q. And you also mentioned a secretary and
15 school psychologist?

16 A. That there were Spanish speakers there.

17 Q. What did you mean by referencing them?

18 A. I said, "I know that your secretary and
19 school psychologists are Spanish speakers, but
20 we will do our best to help you by sending
21 trained staff and not someone who is not
22 trained or might not be aware of the code of
23 ethics for educational interpreters." So I
24 wanted her to know that it is better we have

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1 one of us do it, but these people, they know
2 their craft. No one knows about psychology
3 better than a school psychologist, and she
4 speaks Spanish.

5 Q. Are there schools that do that, that
6 would use a secretary or school psychologist
7 to speak a language that they need in the
8 school to participate in an IEP meeting?

9 A. Possibly. I don't know for certain.

10 Q. And then, if you go to PSD 003923, in
11 that same set of documents?

12 A. Uh-huh.

13 Q. So this is, again, an e-mail. Is this
14 directed to you?

15 A. Yes.

16 Q. And what is it about?

17 A. It is my Portuguese BCA, saying that her
18 -- the principal at Rhawnhurst, Mrs. Toomer,
19 T-O-O-M-E-R, is asking her to have the family
20 at her school, the student needs to be
21 evaluated and doesn't speak English at all.

22 So she wants me to arrange for that. And she
23 gives me the date, which is Tuesday. She says
24 next Tuesday, and the e-mail was on Thursday,

LUDY SODERMAN

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1 is a few more pages? I can't tell.

2 A. That's it. For this, yes.

3 Q. I'm going to show you another document,
4 which is 13.

5 - - -

6 (Whereupon the court reporter
7 marked document as Exhibit 13 for
8 identification.)

9 - - -

10 BY MS. McINERNEY:

11 Q. Can you just look at the first page
12 there?

13 A. Um-hum.

14 Q. Do you remember this document?

15 A. Yes, I do.

16 Q. And what is the date on the document?

17 A. It is February 4, 2016, but it started
18 on January 28th, maybe. Yes, January 28th.

19 Q. And what does the request relate to?

20 A. For someone who speaks Dutch.

21 Q. And for what purpose was interpretation
22 sought?

23 A. Okay, so an evaluation.

24 Q. An evaluation for a child?

LUDY SODERMAN

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1 A. Yes.

2 Q. For what purpose?

3 A. I don't know the purpose. Okay, I see
4 the psychologist, who has been asked to
5 evaluate a student, whose primary language is
6 Dutch.

7 Q. And do you recall what happened in this
8 case?

9 A. They asked me for Dutch. We don't have
10 Dutch. So what I offered was to ask my
11 neighbor, who doesn't work for the School
12 District, but who is Dutch, and he is a
13 professional. He is Dutch, and he is a big
14 financial guy in New York. So, no, I was
15 trying to do the best to help.

16 Q. And then on Page PSD 10244?

17 A. Uh-huh. Still the same document?

18 Q. Yes. And on the bottom of that page,
19 can you look at that particular e-mail, dated
20 January 28, 2016?

21 A. Okay.

22 Q. And it says, "In such cases, we
23 generally have a BCA who is fluent in the
24 language accompany the psychologist and serve

LUDY SODERMAN

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1 as a translator"?

2 A. Yes. She meant to say interpreter.

3 Q. Is that what -- were they looking for an
4 interpreter to participate in an evaluation of
5 a child who may need special education
6 services?

7 A. Yes.

8 Q. And then, if you could turn to PSD
9 010245?

10 A. Uh-huh.

11 Q. There is a sentence in that e-mail
12 string at the top, the last sentence?

13 A. Yeah.

14 Q. And what does that say?

15 A. "As far as assigned PTE's are concerned,
16 there is actually four students that are ahead
17 of Steven on the PTE list. Thanks, Jen."

18 Q. Are you familiar with the District
19 having lists of children who need to be
20 evaluated?

21 A. No.

22 Q. You are not?

23 A. Un-huh.

24 Q. All right, that's it on that document.

LUDY SODERMAN

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1 A. No, but the BCA assignments change every
2 day -- I mean, every year, and this was
3 February 8, 2017.

4 Q. And in terms of the BCA assignments, are
5 they provided to the school building level
6 people?

7 A. By request.

8 Q. Just by request?

9 A. Um-hum.

10 Q. So are they routinely provided to the
11 directors? She seemed to be asking for it as
12 if she had not gotten it?

13 A. No, it was not routinely provided to
14 them.

15 Q. That's it on that document. And this
16 is going to be marked as Plaintiff's
17 Exhibit 17.

18 - - -

19 (Whereupon the court reporter
20 marked document as Exhibit 17 for
21 identification.)

22 - - -

23 BY MS. McINERNEY:

24 Q. And can you tell us what this e-mail

LUDY SODERMAN

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1 Q. So when you are at IEP meetings, you
2 haven't noticed the use of the templates for
3 IEP documents?

4 A. From PaTTAN? I don't know if they are
5 coming from PaTTAN, no.

6 Q. At any of the IEP meetings that you have
7 attended and been involved with, have
8 Limited-English Proficient parents had a copy
9 of an IEP where the headings are translated
10 into their native language?

11 A. Yes.

12 Q. And is that the only portion of the
13 document that's translated into the native
14 language?

15 A. Yes.

16 Q. So there is no individual information
17 that's in the IEP?

18 A. No.

19 Q. And do you think that's sufficient for a
20 parent to understand and participate through a
21 document where only the headings are in their
22 native language?

23 A. I don't think it is sufficient.

24 Q. And why not?

LUDY SODERMAN

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1 A. Because it is a template.

2 Q. So does it give them information about
3 their child's disability?

4 A. No.

5 Q. Does it give them any information about
6 the services being offered by the District?

7 A. No.

8 Q. Then this document refers, it says, if a
9 verbal interpretation site translation of a
10 written document in any language is
11 appropriate, it says, complete the form below,
12 and it mentions you expressly?

13 A. Um-hum.

14 Q. Who determines whether a site
15 translation is appropriate?

16 A. I didn't write this.

17 Q. Okay.

18 A. But this is not -- this is written to
19 District staff, not --

20 Q. Okay, let me just move on.

21 - - -

22 (Whereupon the court reporter
23 marked document as Exhibit 20 for
24 identification.)

LUDY SODERMAN

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1 is a school where there is -- it is located in
2 the Kensington area. I think it is
3 Kensington, if I recall, yeah.

4 Q. It says, "We do not have a staff member
5 who is assigned to translate." What does
6 that mean?

7 A. I don't know what she means by that,
8 because she had a BCA there two days a week.

9 Q. Was she asking for something to be
10 translated, rather than a site translation?

11 MS. OBOD: Asked and
12 answered. Just listen to the question.
13 Don't try to guess. Just answer the question.

14 THE WITNESS: She is asking to
15 translate. I don't assign translators.

16 BY MS. McINERNEY:

17 Q. Right, so if you look at the e-mail
18 below that, who is the e-mail from?

19 A. From Nancy Velez.

20 Q. And she is the Bilingual Special
21 Projects Assistant?

22 A. That's right, yes.

23 Q. And she is in the Office of Specialized
24 Services?

LUDY SODERMAN

Page 173

1 A. Yes.

2 Q. And what does her e-mail say?

3 A. "Before we outsource the translation, we
4 need to be sure we have used our local
5 resources first. Is there a BCA in your
6 building? If not, you can submit a request to
7 have one assist. Are there Spanish-speaking
8 staff in your building who can assist?" And
9 then she addresses me, and she says, "Is there
10 a BCA assigned to Stearne? Thanks."

11 Q. Have you seen this particular e-mail
12 before?

13 A. Yes.

14 Q. And is this generally the procedure that
15 is followed in the Office of Specialized
16 Services with regard to determining whether a
17 translation will be provided?

18 A. I don't know the procedure for
19 translation.

20 Q. Okay. So it appears that when she
21 refers to local resources, does that mean
22 school building resources?

23 A. Yes.

24 Q. So if there isn't a BCA in a building --

LUDY SODERMAN

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1 and how many buildings are they in, by the
2 way, BCAs? How many buildings do they cover?

3 A. How many schools?

4 Q. Yes.

5 A. I actually know from the top of my head.
6 Definitely, over 78 buildings. The average
7 number of schools per BCA is about three
8 schools. So, I mean, it is definitely well
9 over a hundred schools.

10 Q. So they are covering over a hundred
11 schools. And how many schools are in the
12 School District of Philadelphia?

13 A. 200 and -- I think it is 216.

14 Q. So if there isn't a BCA in the building
15 when you need that, then you would look for
16 staff in the school who would speak -- who
17 would be able to interpret?

18 A. They would send me the request for
19 interpretation, and I will send someone.

20 Q. So do you agree with what Nancy Velez
21 has recommended here?

22 A. To find out if there is a BCA first,
23 absolutely.

24 Q. And what about the second part?

LUDY SODERMAN

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1 MS. OBOD: Don't answer it
2 until I get back.

3 THE WITNESS: Okay. On 22, it
4 would take me about two and a half hours to
5 read the document, to site-translate it.

6 BY MS. MCINERNEY:

7 Q. And that would be --

8 A. Without breaks.

9 Q. With covering every page?

10 A. Not including the ones in the back that
11 have been -- the headings are in Spanish, but
12 everything else is in English, because it is
13 repetitive of what I would have done already.

14 Q. Okay, thank you.

15 - - -

16 (Whereupon the court reporter
17 marked document as Exhibit 25 for
18 identification.)

19 - - -

20 BY MS. MCINERNEY:

21 Q. Do you know what this document is?

22 A. It is an invoice.

23 Q. And what is it an invoice from?

24 A. From Pacific Interpreters.

LUDY SODERMAN

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1 Q. And what is that?

2 A. The language telephonic interpretation
3 service.

4 Q. So is that the service that schools
5 would use in order to obtain interpretation
6 services over the phone?

7 A. Yes.

8 Q. Do these bills come to you?

9 A. No.

10 Q. Where do they go?

11 A. They should go to the director of
12 translation. They should go to Cong Wang.

13 Q. This says Karen Dunkley?

14 A. Karen Dunkley was the former deputy
15 chief of our office.

16 Q. Of your office, okay.

17 A. Of the Family and Community Engagement.

18 Q. So have you ever looked at such a
19 document?

20 A. No.

21 Q. Do you know what information this would
22 capture?

23 A. No, I have never looked at this
24 document, never seen it before.

LUDY SODERMAN

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1 Q. So if you go to Page PSD 009236?

2 A. Uh-huh.

3 Q. It appears that it identifies the call
4 date, the time, the language, and then it has
5 something, connect time, and it has it in
6 seconds and minutes, and it provides an
7 interpreter's number?

8 A. Yes.

9 Q. And it also identifies department or
10 offices.

11 MS. OBOD: There is no
12 question pending. You have to wait until she
13 asks you a question.

14 THE WITNESS: Thank you.

15 BY MS. MCINERNEY:

16 Q. Do you see that?

17 A. I do.

18 Q. Have you ever received any information
19 about how Language Line, how the Pacific
20 Interpreters -- how it is used? Do you look
21 at any of this information in assessing
22 whether Limited-English Proficient parents are
23 utilizing Language Line in any way?

24 A. No.

LUDY SODERMAN

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1 site translation for the Documents 22, 23, 24,
2 it would take me an hour 45 minutes, two and a
3 half hours for the others, so I would have to
4 be dedicated to your school, depending on how
5 many IEP's you would have, and that's the only
6 thing I would do. I would not probably be
7 able to do anything else, depending on how
8 many IEP's you would have in that day.

9 Q. Have you ever done a survey regarding
10 whether parents want translated versions of
11 special education documents? Do you know if
12 there has ever been any kind of study
13 conducted by the District on that issue?

14 A. I don't know, but I have never done
15 that.

16 Q. Has there ever been any kind of
17 evaluation of whether Limited-English
18 Proficient parents of students with
19 disabilities are receiving the interpretation
20 and translation services that they need to
21 participate in the special education process?

22 A. Not in the past, not that I know of.

23 Q. Last document, Exhibit 27.

24

- - -

EXHIBIT 9

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

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

5)
6 - vs -)

7 THE SCHOOL DISTRICT OF)
 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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24

DEPOSITION SUPPORT INDEX

DIRECTIONS NOT TO ANSWER:

PAGES: None

REQUEST FOR DOCUMENTS OR INFORMATION:

PAGES: None

STIPULATIONS AND/OR STATEMENTS:

PAGES: 6

MARKED QUESTIONS:

PAGES: None

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MARIE CAPITOLO

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1 - - -
2 PROCEEDINGS
3 - - -

4 (By agreement of counsel,
5 all objections, except as to the form
6 of the question, have been reserved
7 until the time of trial.)
8 - - -

9 MARIE CAPITOLO, having been
10 first duly sworn, was examined and
11 testified as follows:
12 - - -

13 EXAMINATION
14 - - -

15 BY MR. SAINT-ANTOINE:

16 Q. Good morning, Ms. Capitolo.

17 A. Good morning.

18 Q. As I mentioned off the record, my
19 name is Paul Saint-Antoine from the Law Firm of
20 Drinker, Biddle & Reath and I represent the
21 plaintiffs in this litigation.

22 A. Okay.

23 Q. If we could begin, Ms. Capitolo, by
24 having you state your full name and your home

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,

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.

1 can read it or not though. As a matter of
2 fact, we make the assumption the opposite way.
3 We assume they can't read it and understand it.

4 Q. Nevertheless, you give the document
5 in writing to the English-speaking parents?

6 A. We do.

7 Q. But you're saying that the district's
8 policy for non-English speaking, before giving
9 them a document that they can read, there needs
10 to be this dialogue about whether or not the
11 district feels that it's helpful to their
12 meaningful participation?

13 MS. OBOD: Objection to
14 form.

15 You can answer.

16 A. Yes, we do. We do require that
17 there's a dialogue and that's because our
18 documents in English don't need to be
19 translated, but the ones in the other languages
20 do. There is a cost factor to it and it is a
21 resource that we use and pay for it.

22 So there's got to be some degree of
23 managing the resource. I'm sure there is some
24 degree to that. I couldn't even calculate the

1 number if we just automatically translated
2 every single document in this city for its
3 12,000 special ed students that are here and
4 the number of them that are non-English
5 primary. So we make every effort to make sure
6 that the parents that need it for meaningful
7 participation get it.

8 BY MR. SAINT-ANTOINE:

9 Q. Do you know what the cost would be to
10 the school district if every IEP for a special
11 ed student whose parent was limited English
12 proficient was translated?

13 A. No. I couldn't -- I don't think I
14 could calculate that number.

15 I think that number would be very
16 high. I know that it is one of the -- a
17 priority mission of our office to improve upon
18 that and many improvements have been made to
19 that process because, unfortunately,
20 translation costs money. There is nothing that
21 we can do about it, but we have made
22 significant improvements to our system, to our
23 website, to our EasyIEP system that translates
24 a bulk of the document into other languages

1 already automatically, so that parents have at
2 least the template that they are going to see
3 every single year.

4 So it's the standard language that
5 they are going to be presented with every year
6 they go to an IEP meeting. That template is
7 already in their native language. So, then, we
8 interpret what's just written in by the team
9 and it's cut down a lot on parents -- it's
10 provided for parents to meaningfully
11 participate because they get that knowledge
12 upfront and we hold -- we hold initial IEP
13 meetings very differently than we hold the
14 subsequent ones because we have to forefront
15 all of the teaching of what is an IEP, why does
16 your child have one, what is the law, what are
17 your rights.

18 We do a whole bunch of that for
19 English and non-English-speaking parents at the
20 beginning so they become familiar with the
21 document. The more familiar they are with the
22 document, the better they participate.

23 Q. But if I understand correctly, you
24 don't have a dollar number in mind in terms of

1 what the expenditure would be by the school
2 district if it translated every IEP for a
3 student whose parent is limited-English
4 proficient?

5 A. No, but I have seen some e-mails
6 that -- and invoices that showed the cost of
7 what an IEP and an ER cost to be translated and
8 they are in the number bracket of 4 to \$5,000
9 per document. I know how many special ed
10 students are in the district and how many
11 documents they get a year and multiply that by
12 the number of years.

13 If I had a calculator, I could figure
14 it out, what that number is, but I would
15 suspect that number is extremely high.

16 Q. More than a million dollars a year?

17 A. I would think so, yes.

18 Q. Can you give a rough approximation
19 beyond that?

20 A. I mean, I would think in one year for
21 one special ed child, depending on the type of
22 child, if it's a child with autism that has a
23 lengthy evaluation report with a lot of
24 assessments and a lengthy IEP, they could be

1 between 25 and 30,000 in translation of just
2 that one year's documents. Multiple that by
3 every year the kid is in special education,
4 which could be 18 years.

5 Q. Right now, I'm asking you -- and you
6 can tell me if you -- if you don't have a rough
7 number --

8 A. I don't know the number.

9 Q. -- I'm just asking about IEPs and
10 systemwide, do you have an approximate number
11 of expenditures --

12 A. I don't.

13 Q. -- by the school district to
14 translate every IEP for a special ed student
15 whose parent is limited English proficient?

16 A. I don't.

17 And that number -- I don't have that
18 number for you. That number is not even a
19 worthwhile number because it's -- why just an
20 IEP? Why just calculate what an IEP costs?

21 It's not just IEP. It's the
22 invitation. It's the NOREP. It's the
23 permission to evaluate. It's the evaluation
24 report, it's the FBA, it's the positive

1 behavior support plan. Four times a year, we
2 send home progress reports. It is every
3 progress report.

4 So once it is deemed that a parent
5 cannot, under any circumstance, participate in
6 a meeting without a translated document. Then,
7 that goes into effect forever, right?

8 I mean we make that decision, the
9 parent is going to get translated documents
10 forever. So we don't make that decision
11 lightly. We don't let the school teams just
12 arbitrarily send documents to be translated
13 without some oversight of it.

14 Q. Is it your understanding that once
15 it's been determined that a parent does need
16 translation to meaningfully participate, then,
17 going forward, those documents are translated
18 into their native language?

19 A. No. Most of the time, you know, I
20 have parents that become very comfortable with
21 the IEP process, with the terminology, with the
22 team. They have a trust in the school team.
23 They are never going to read the document when
24 they get home. They realized that the first

1 their native language, but an evaluation report
2 or an IEP are the two documents that we would
3 ask these questions to a parent, if they -- we
4 would go through these series of questions to
5 determine if they needed to be translated out,
6 as opposed to just interpretation.

7 Q. I guess my question is: Is it a
8 practice of the district to ask these
9 questions, even if the parent hasn't made a
10 request for translation services?

11 A. No. We are not asking them across
12 the board.

13 Q. Is it the practice of the district to
14 tell parents with respect to IEPs or
15 evaluations that translation of those documents
16 is available?

17 MS. OBOD: Objection.

18 Asked and answered.

19 A. We wait for the parent to request the
20 documents in translated form. We ask them if
21 they need interpretation services to
22 participate. We ask that of every parent that
23 is documented limited English proficiency or
24 even maybe looks or sounds like they are

EXHIBIT 10



SCHOOL DISTRICT OF PHILADELPHIA
Office of Talent Information Management
Bilingual Counseling Assistants 2011-12

Case 2:11-cv-04782-MSG Document 113-12 Filed 11/04/19 Page 2 of 7

Source: Oracle/Crystal Report 10-31-11, vv

| LAST NAME | FIRST NAME | EIDN | TITLE CODE | TITLE | HOME ORG CODE | ORGANIZATION | LANGUAGE |
|---------------------|------------|-------------|------------|---------------------------|---------------|--------------------------------|------------------------------|
| PAPAJ | LEONIDHA | 0000061619 | 0858 | COUNSELING ASST,BILINGUAL | 8010 | ABRAHAM LINCOLN HIGH | ALBANIAN BILINGUAL |
| PAPAJ | NIKOLETA | 0000037529 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | ALBANIAN BILINGUAL |
| ALLAM | ROKIA | 0000057994 | 0858 | COUNSELING ASST,BILINGUAL | 8120 | WOODROW WILSON MIDDLE SCHOOL | ARABIC BILINGUAL |
| DORSEY | JUSTIN | 0000063577 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN ACADEMICS PLUS SCH | ARABIC BILINGUAL |
| HTOO | DAI | 0000072028 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | BURMESE BILINGUAL |
| CHO | VITTORIO | 0000068717 | 0858 | COUNSELING ASST,BILINGUAL | 8380 | LOUIS H. FARRELL SCHOOL | CANTONESE BILINGUAL |
| HE | LI RU | 0000065373 | 0858 | COUNSELING ASST,BILINGUAL | 6010 | CENTRAL HIGH SCHOOL | CANTONESE BILINGUAL |
| PANG | FAN IO | 0000037366 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | CANTONESE BILINGUAL |
| TANG | QI | 0000061175 | 0858 | COUNSELING ASST,BILINGUAL | 2340 | MC CALL SCHOOL | CANTONESE BILINGUAL |
| WANG | XIAO | 0000065264 | 0858 | COUNSELING ASST,BILINGUAL | 2090 | EDWARD BOK HIGH SCHOOL | CANTONESE BILINGUAL |
| WU | LANPING | 0000025099 | 0858 | COUNSELING ASST,BILINGUAL | 8350 | GILBERT SPRUANCE SCHOOL | CANTONESE BILINGUAL |
| DIAWARA | PENDA | 0000058247 | 0858 | COUNSELING ASST,BILINGUAL | 1380 | THOMAS G MORTON SCHOOL | FRENCH BILINGUAL |
| DORMEUS | DURANTON | 0000046968 | 0858 | COUNSELING ASST,BILINGUAL | 8030 | GEORGE WASHINGTON HIGH | FRENCH CREOLE BILINGUAL |
| LAVENTURE-HYPPOLITE | MARIE | 0000046964 | 0858 | COUNSELING ASST,BILINGUAL | 7370 | GROVER WASHINGTON JR. MIDDLE | FRENCH CREOLE BILINGUAL |
| PARJKH | UPASANA | 0000023776 | 0858 | COUNSELING ASST,BILINGUAL | 8400 | ANNE FRANK SCHOOL | HINDI BILINGUAL |
| SUMANA-EISCHEN | MEGAWATI | 0000060677 | 0858 | COUNSELING ASST,BILINGUAL | 2320 | STEPHEN GIRARD SCHOOL | INDONESIAN GENERIC BILINGUAL |
| CHOING | SAY HONG | 0000027682 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H S | KHMER BILINGUAL |
| KY | NARADIVIE | 0000008832 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | KHMER BILINGUAL |
| MA | POLYKA | 0000008840 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | KHMER BILINGUAL |
| ONG | KHOSOM | 0000006425 | 0858 | COUNSELING ASST,BILINGUAL | 2190 | D. NEWLIN FELL SCHOOL | KHMER BILINGUAL |
| SOUR | SOTHA | 0000002799 | 0858 | COUNSELING ASST,BILINGUAL | 6050 | PHILA HIGH SCHOOL FOR GIRLS | KHMER BILINGUAL |
| CHANDAVONG | ROLAND | 0000025420 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H S | LOATIAN BILINGUAL |
| ABRAHAM | ELIZABETH | 0000001364 | 0858 | COUNSELING ASST,BILINGUAL | 8430 | JOSEPH GREENBERG SCHOOL | MALAYALAM BILINGUAL |
| KA | SIU MING | 0000004939 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | MANDARIN BILINGUAL |
| ZHANG | YANSHUANG | 00000069187 | 0858 | COUNSELING ASST,BILINGUAL | 8030 | GEORGE WASHINGTON HIGH | MANDARIN BILINGUAL |
| KUIKEL | INDRA | 0000071693 | 0858 | COUNSELING ASST,BILINGUAL | 2690 | JOHN H TAGGART SCHOOL | NEPALI BILINGUAL |
| BATISTA | MARILIA | 00000060790 | 0858 | COUNSELING ASST,BILINGUAL | 8030 | GEORGE WASHINGTON HIGH | PORTUGUESE BILINGUAL |
| PALMER | TAMARA | 0000037870 | 0858 | COUNSELING ASST,BILINGUAL | 8160 | BALDI MIDDLE SCHOOL | RUSSIAN BILINGUAL |
| POZNER | TANIA | 0000006086 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | RUSSIAN BILINGUAL |
| SHILOVSKAYA | ANASTASIA | 0000065586 | 0858 | COUNSELING ASST,BILINGUAL | 8360 | RHAWNURST SCHOOL | RUSSIAN BILINGUAL |
| ORTIZ | SONIA | 00000000843 | 0858 | COUNSELING ASST,BILINGUAL | 5590 | JOHN H. WEBSTER SCHOOL | SPANISH BILINGUAL |
| ACEVEDO | MELISSA | 0000047908 | 0858 | COUNSELING ASST,BILINGUAL | 5590 | JOHN H. WEBSTER SCHOOL | SPANISH BILINGUAL |
| ARIAS | NEREIDA | 0000020314 | 0858 | COUNSELING ASST,BILINGUAL | 7400 | OLNEY ELEMENTARY SCHOOL | SPANISH BILINGUAL |
| BERNIER | LEONARDO | 0000048066 | 0858 | COUNSELING ASST,BILINGUAL | 2590 | GEORGE W. NEBINGER SCHOOL | SPANISH BILINGUAL |
| CARRASQUILLO | ALIDA | 00000000983 | 0858 | COUNSELING ASST,BILINGUAL | 5530 | PHILIP H. SHERIDAN SCHOOL | SPANISH BILINGUAL |
| CARRASQUILLO | SHIRLEY | 0000059780 | 0858 | COUNSELING ASST,BILINGUAL | 7220 | CARNELL SCHOOL | SPANISH BILINGUAL |
| DUGAN | ESTELA | 0000048559 | 0858 | COUNSELING ASST,BILINGUAL | 5470 | CRAMP SCHOOL | SPANISH BILINGUAL |
| FARRIS | BETTY | 0000020636 | 0858 | COUNSELING ASST,BILINGUAL | 8420 | STEPHEN DECATUR SCHOOL | SPANISH BILINGUAL |
| FILIPUZZI | ALEJANDRA | 0000046936 | 0858 | COUNSELING ASST,BILINGUAL | 7270 | FINLETTER ACADEMICS PLUS SCH | SPANISH BILINGUAL |
| GARCIA | GLADYS | 0000009781 | 0858 | COUNSELING ASST,BILINGUAL | 5450 | CHARLES CARROLL HIGH SCHOOL | SPANISH BILINGUAL |
| GONZALEZ | EDILIA | 0000001335 | 0858 | COUNSELING ASST,BILINGUAL | 7200 | BARTON SCHOOL | SPANISH BILINGUAL |
| GONZALEZ | MERLYAN | 0000050828 | 0858 | COUNSELING ASST,BILINGUAL | 2160 | FURNESS HIGH SCHOOL | SPANISH BILINGUAL |
| LOPEZ | IVETTE | 0000015120 | 0858 | COUNSELING ASST,BILINGUAL | 7380 | ALEXANDER MCCLURE SCHOOL | SPANISH BILINGUAL |
| MILLER | ROBERT | 0000016465 | 0858 | COUNSELING ASST,BILINGUAL | 7330 | HENRY W. LAWTON SCHOOL | SPANISH BILINGUAL |
| NIEVES | MAYRA | 0000027420 | 0858 | COUNSELING ASST,BILINGUAL | 8140 | AUSTIN MEEHAN MIDDLE SCHOOL | SPANISH BILINGUAL |
| OQUENDO | SARAH | 0000062290 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | SPANISH BILINGUAL |
| PADILLA | ELSI | 0000045218 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H S | SPANISH BILINGUAL |
| RAMOS | ANA | 0000012247 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN ACADEMICS PLUS SCH | SPANISH BILINGUAL |
| ROMAN | JOSE | 0000014954 | 0858 | COUNSELING ASST,BILINGUAL | 2720 | ABIGAIL VARE SCHOOL | SPANISH BILINGUAL |
| ROSARIO | AURORA | 0000044969 | 0858 | COUNSELING ASST,BILINGUAL | 7240 | THOMAS CREIGHTON SCHOOL | SPANISH BILINGUAL |
| TORRES | YOLANDA | 0000020312 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | SPANISH BILINGUAL |
| VELEZ | LYDIA | 0000027662 | 0858 | COUNSELING ASST,BILINGUAL | 7110 | HARDING MIDDLE SCHOOL | SPANISH BILINGUAL |
| VERDEJO | ROBERTO | 0000008381 | 0858 | COUNSELING ASST,BILINGUAL | 5150 | WILLIAM W. BODINE H.S. | SPANISH BILINGUAL |
| YOUNG | JANET | 0000027131 | 0858 | COUNSELING ASST,BILINGUAL | 2510 | ANDREW JACKSON SCHOOL | SPANISH BILINGUAL |
| DANG | VINH | 0000004946 | 0858 | COUNSELING ASST,BILINGUAL | 7200 | BARTON SCHOOL | VIETNAMESE BILINGUAL |
| DO | HIEN | 0000023481 | 0858 | COUNSELING ASST,BILINGUAL | 2160 | FURNESS HIGH SCHOOL | VIETNAMESE BILINGUAL |
| NGO | PHUONG | 0000006075 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | VIETNAMESE BILINGUAL |
| THIEU | THAI | 0000002810 | 0858 | COUNSELING ASST,BILINGUAL | 7350 | JAMES R. LOWELL SCHOOL | VIETNAMESE BILINGUAL |
| TIEU | AMANDA | 0000012203 | 0858 | COUNSELING ASST,BILINGUAL | 7120 | SAMUEL S. FELS HIGH SCHOOL | VIETNAMESE BILINGUAL |



SCHOOL DISTRICT OF PHILADELPHIA
Office of Talent Information Management
Bilingual Counseling Assistants 2012-13

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| LAST NAME | FIRST NAME | EJDN | TITLE CODE | TITLE | HOME ORG CODE | ORGANIZATION | LANGUAGE |
|---------------------|------------|------------|------------|---------------------------|---------------|--------------------------------|------------------------------|
| PAPAJ | LEONIDHA | 0000061619 | 0858 | COUNSELING ASST,BILINGUAL | 8010 | ABRAHAM LINCOLN HIGH | ALBANIAN BILINGUAL |
| PAPAJ | NIKOLETA | 0000037529 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | ALBANIAN BILINGUAL |
| ALLAM | ROKIA | 0000057994 | 0858 | COUNSELING ASST,BILINGUAL | 7200 | BARTON SCHOOL | ARABIC BILINGUAL |
| DORSEY | JUSTIN | 0000063577 | 0858 | COUNSELING ASST,BILINGUAL | 8350 | GILBERT SPRUANCE SCHOOL | ARABIC BILINGUAL |
| RAHMAN | ABU | 0000073607 | 0858 | COUNSELING ASST,BILINGUAL | 1470 | ALAIN LOCKE SCHOOL | BENGLI BILINGUAL |
| HTOO | DAI | 0000072028 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | BURMESE BILINGUAL |
| CHO | VITTORIO | 0000068717 | 0858 | COUNSELING ASST,BILINGUAL | 8380 | LOUIS H. FARRELL SCHOOL | CANTONESE BILINGUAL |
| KA | SIU MING | 000004939 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | CANTONESE BILINGUAL |
| PANG | FAN IO | 0000037366 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | CANTONESE BILINGUAL |
| WANG | XIAO | 0000065264 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | CANTONESE BILINGUAL |
| ZHANG | YANSHUANG | 0000069187 | 0858 | COUNSELING ASST,BILINGUAL | 7350 | JAMES R. LOWELL SCHOOL | CANTONESE BILINGUAL |
| WU | LANPING | 0000025099 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN ACADEMICS PLUS SCH | CHINESE BILINGUAL |
| DIWARA | PENDA | 0000058247 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | FRENCH BILINGUAL |
| DORMEUS | DURANTON | 0000046968 | 0858 | COUNSELING ASST,BILINGUAL | 7370 | GROVER WASHINGTON JR. MIDDLE | HAITIAN CREOLE BILINGUAL |
| LAVENTURE-HYPPOLITE | MARIE | 0000046964 | 0858 | COUNSELING ASST,BILINGUAL | 7280 | FRANKLIN ACADEMICS PLUS SCHOOL | HAITIAN CREOLE BILINGUAL |
| PARIKH | UPASANA | 0000023776 | 0858 | COUNSELING ASST,BILINGUAL | 8400 | ANNE FRANK SCHOOL | HINDI BILINGUAL |
| SUMANA-EISCHEN | MEGAWATI | 0000060677 | 0858 | COUNSELING ASST,BILINGUAL | 2160 | FURNESS HIGH SCHOOL | INDONESIAN GENERIC BILINGUAL |
| CHOING | SAY HONG | 0000027682 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | KHMER BILINGUAL |
| KY | NARADIVIE | 0000008832 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | KHMER BILINGUAL |
| MA | POLYKA | 0000008840 | 0858 | COUNSELING ASST,BILINGUAL | 7270 | FINLETTER ACADEMICS PLUS SCH | KHMER BILINGUAL |
| ONG | KHOSOM | 0000006425 | 0858 | COUNSELING ASST,BILINGUAL | 7370 | GROVER WASHINGTON JR. MIDDLE | KHMER BILINGUAL |
| SOUR | SOTHA | 0000002799 | 0858 | COUNSELING ASST,BILINGUAL | 2190 | D. NEWLIN FELL SCHOOL | KHMER BILINGUAL |
| CHANDAVONG | ROLAND | 0000025420 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | LOATIAN BILINGUAL |
| ABRAHAM | ELIZABETH | 0000001364 | 0858 | COUNSELING ASST,BILINGUAL | 8430 | JOSEPH GREENBERG SCHOOL | MALAYALAM BILINGUAL |
| HE | LI RU | 0000063373 | 0858 | COUNSELING ASST,BILINGUAL | 8300 | MAYFAIR SCHOOL | MANDARIN BILINGUAL |
| TANG | QI | 0000061175 | 0858 | COUNSELING ASST,BILINGUAL | 2340 | MC CALL SCHOOL | MANDARIN BILINGUAL |
| KUIKEL | INDRA | 0000071693 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | NEPALI BILINGUAL |
| BATISTA | MARILIA | 0000060790 | 0858 | COUNSELING ASST,BILINGUAL | 8030 | GEORGE WASHINGTON HIGH | PORTUGUESE BILINGUAL |
| PALMER | TAMARA | 0000037870 | 0858 | COUNSELING ASST,BILINGUAL | 8160 | BALDI MIDDLE SCHOOL | RUSSIAN BILINGUAL |
| POZNER | TANIA | 0000006086 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | RUSSIAN BILINGUAL |
| SHILOVSKAYA | ANASTASIA | 0000065586 | 0858 | COUNSELING ASST,BILINGUAL | 8380 | LOUIS H. FARRELL SCHOOL | RUSSIAN BILINGUAL |
| ORTIZ | SONIA | 0000000843 | 0858 | COUNSELING ASST,BILINGUAL | 5590 | JOHN H. WEBSTER SCHOOL | SPANISH BILINGUAL |
| ACEVEDO-TORRES | MELISSA | 0000047908 | 0858 | COUNSELING ASST,BILINGUAL | 8140 | AUSTIN MEEHAN MIDDLE SCHOOL | SPANISH BILINGUAL |
| ARIAS | NEREIDA | 0000020314 | 0858 | COUNSELING ASST,BILINGUAL | 7400 | OLNEY ELEMENTARY SCHOOL | SPANISH BILINGUAL |
| BERNIER | LEONARDO | 0000048066 | 0858 | COUNSELING ASST,BILINGUAL | 2590 | GEORGE W. NEBINGER SCHOOL | SPANISH BILINGUAL |
| CARRASQUILLO | ALIDA | 0000000983 | 0858 | COUNSELING ASST,BILINGUAL | 5230 | RUSSELL H. CONWELL MIDDLE SCH | SPANISH BILINGUAL |
| CARRASQUILLO | SHIRLEY | 0000059780 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | SPANISH BILINGUAL |
| COULTER | GLORIA | 0000065497 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | SPANISH BILINGUAL |
| DUGAN | ESTELA | 0000048559 | 0858 | COUNSELING ASST,BILINGUAL | 7310 | FELTONVILLE INTERMEDIATE | SPANISH BILINGUAL |
| FARRIS | BETTY | 0000020636 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | SPANISH BILINGUAL |
| FILIPUZZI | ALEJANDRA | 0000046936 | 0858 | COUNSELING ASST,BILINGUAL | 5420 | JOHN WELSH SCHOOL | SPANISH BILINGUAL |
| GARCIA | GLADYS | 0000009781 | 0858 | COUNSELING ASST,BILINGUAL | 5060 | JULES MASTBAUM HIGH SCHOOL | SPANISH BILINGUAL |
| LOPEZ | IVETTE | 0000015120 | 0858 | COUNSELING ASST,BILINGUAL | 5500 | THURGOOD MARSHALL SCHOOL | SPANISH BILINGUAL |
| MILLER | ROBERT | 0000016465 | 0858 | COUNSELING ASST,BILINGUAL | 8350 | GILBERT SPRUANCE SCHOOL | SPANISH BILINGUAL |
| MORALES | ROSIO | 0000049011 | 0858 | COUNSELING ASST,BILINGUAL | 5440 | FRANCES E. WILLARD SCHOOL | SPANISH BILINGUAL |
| NIEVES | MAYRA | 0000027420 | 0858 | COUNSELING ASST,BILINGUAL | 5370 | JOHN MOFFET SCHOOL | SPANISH BILINGUAL |
| OQUENDO | SARAH | 0000062290 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | SPANISH BILINGUAL |
| PADILLA | ELSI | 0000045218 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | SPANISH BILINGUAL |
| ROMAN | JOSE | 0000014954 | 0858 | COUNSELING ASST,BILINGUAL | 5060 | JULES MASTBAUM HIGH SCHOOL | SPANISH BILINGUAL |
| ROSARIO | AURORA | 0000044969 | 0858 | COUNSELING ASST,BILINGUAL | 7380 | ALEXANDER MCCLURE SCHOOL | SPANISH BILINGUAL |
| TORRES | YOLANDA | 0000020312 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | SPANISH BILINGUAL |
| UDOWENKO | LIDIA | 0000065201 | 0858 | COUNSELING ASST,BILINGUAL | 7220 | CARNELL SCHOOL | SPANISH BILINGUAL |
| VELEZ | LYDIA | 0000027662 | 0858 | COUNSELING ASST,BILINGUAL | 7010 | FRANKFORD HIGH SCHOOL | SPANISH BILINGUAL |
| VERDEJO | ROBERTO | 0000008381 | 0858 | COUNSELING ASST,BILINGUAL | 7300 | FRANCIS HOPKINSON SCHOOL | SPANISH BILINGUAL |
| YOUNG | JANET | 0000027131 | 0858 | COUNSELING ASST,BILINGUAL | 2510 | ANDREW JACKSON SCHOOL | SPANISH BILINGUAL |
| DANG | VINH | 0000004946 | 0858 | COUNSELING ASST,BILINGUAL | 5210 | H.A. BROWN ACADEMICS PLUS SCH | VIETNAMESE BILINGUAL |
| DO | HIEN | 0000023481 | 0858 | COUNSELING ASST,BILINGUAL | 7150 | JUNIATA PARK ACADEMY | VIETNAMESE BILINGUAL |
| NGO | PHUONG | 0000006075 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | VIETNAMESE BILINGUAL |
| THIEU | THAI | 0000002810 | 0858 | COUNSELING ASST,BILINGUAL | 2190 | D. NEWLIN FELL SCHOOL | VIETNAMESE BILINGUAL |
| TIEU | AMANDA | 0000012203 | 0858 | COUNSELING ASST,BILINGUAL | 6050 | PHILA HIGH SCHOOL FOR GIRLS | VIETNAMESE BILINGUAL |



SCHOOL DISTRICT OF PHILADELPHIA
Office of Talent Information Management
Bilingual Counseling Assistants 2013-14

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Source: Oracle/Crystal Report 10-31-13, vw

| LAST NAME | FIRST NAME | EIDN | TITLE CODE | TITLE | HOME ORG CODE | ORGANIZATION | LANGUAGE |
|---------------------|------------|------------|------------|---------------------------|---------------|--------------------------------|------------------------------|
| PAPAJ | LEONIDHA | 0000061619 | 0858 | COUNSELING ASST,BILINGUAL | 8010 | ABRAHAM LINCOLN HIGH | ALBANIAN BILINGUAL |
| PAPAJ | NIKOLETA | 0000037529 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | ALBANIAN BILINGUAL |
| BENTIBA | NABILA | 0000074782 | 0858 | COUNSELING ASST,BILINGUAL | 8410 | ROBERT B. POLLOCK SCHOOL | ARABIC BILINGUAL |
| DORSEY | JUSTIN | 0000063577 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN, SOLOMON SCHOOL | ARABIC BILINGUAL |
| OSMAN | HASHIM | 0000074869 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | ARABIC BILINGUAL |
| RAHMAN | ABU | 0000073607 | 0858 | COUNSELING ASST,BILINGUAL | 1340 | HENRY C. LEA SCHOOL | BENGALI BILINGUAL |
| HTOO | DAI | 0000072028 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | BURMESE BILINGUAL |
| CHO | VITTORIO | 0000068717 | 0858 | COUNSELING ASST,BILINGUAL | 2190 | D. NEWLIN FELL SCHOOL | CANTONESE BILINGUAL |
| KA | SIU MING | 0000004939 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | CANTONESE BILINGUAL |
| PANG | FAN IO | 0000037366 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | CANTONESE BILINGUAL |
| WANG | XIAO | 0000065264 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | CANTONESE BILINGUAL |
| WU | LANPING | 0000025099 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN, SOLOMON SCHOOL | CANTONESE BILINGUAL |
| ZHANG | YANSHUANG | 0000069187 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | CANTONESE BILINGUAL |
| DIWARA | PENDA | 0000058247 | 0858 | COUNSELING ASST,BILINGUAL | 1340 | HENRY C. LEA SCHOOL | FRENCH BILINGUAL |
| SOW | OUMAHANY | 0000074906 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | FRENCH BILINGUAL |
| LAVENTURE-HYPPOLITE | MARIE | 0000046964 | 0858 | COUNSELING ASST,BILINGUAL | 7280 | FRANKLIN, BENJAMIN SCHOOL | HAITIAN CREOLE BILINGUAL |
| PARIKH | UPASANA | 0000023776 | 0858 | COUNSELING ASST,BILINGUAL | 8400 | ANNE FRANK SCHOOL | HINDI BILINGUAL |
| SUMANA-EISCHEN | MEGAWATI | 0000060677 | 0858 | COUNSELING ASST,BILINGUAL | 2160 | FURNESS, HORACE HIGH SCHOOL | INDONESIAN GENERIC BILINGUAL |
| CHOING | SAY HONG | 0000027682 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | KHMER BILINGUAL |
| MA | POLYKA | 0000008840 | 0858 | COUNSELING ASST,BILINGUAL | 7350 | JAMES R. LOWELL SCHOOL | KHMER BILINGUAL |
| ONG | KHOSOM | 0000006425 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | KHMER BILINGUAL |
| SOUR | SOHA | 0000002799 | 0858 | COUNSELING ASST,BILINGUAL | 2260 | GEORGE W CHILDS SCHOOL | KHMER BILINGUAL |
| PHOKHAXANG | SOMPRADITH | 0000027695 | 0858 | COUNSELING ASST,BILINGUAL | 2320 | STEPHEN GIRARD SCHOOL | LOATIAN BILINGUAL |
| ABRAHAM | ELIZABETH | 0000001364 | 0858 | COUNSELING ASST,BILINGUAL | 8430 | JOSEPH GREENBERG SCHOOL | MALAYALAM BILINGUAL |
| HE | LI RU | 0000065373 | 0858 | COUNSELING ASST,BILINGUAL | 8300 | MAYFAIR SCHOOL | MANDARIN BILINGUAL |
| TANG | QI | 0000061175 | 0858 | COUNSELING ASST,BILINGUAL | 2340 | MC CALL, GEN. GEORGE A. SCHOOL | MANDARIN BILINGUAL |
| KAFLEY | KRISHNA | 0000074781 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | NEPALI BILINGUAL |
| KUIKEL | INDRA | 0000071693 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | NEPALI BILINGUAL |
| BATISTA | MARILIA | 0000060790 | 0858 | COUNSELING ASST,BILINGUAL | 8030 | GEORGE WASHINGTON HIGH | PORTUGUESE BILINGUAL |
| PALMER | TAMARA | 0000037870 | 0858 | COUNSELING ASST,BILINGUAL | 8160 | BALDI MIDDLE SCHOOL | RUSSIAN BILINGUAL |
| POZNER | TANIA | 0000006086 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | RUSSIAN BILINGUAL |
| ABUAWADEH | MARGARITA | 0000052325 | 0858 | COUNSELING ASST,BILINGUAL | 8120 | WOODROW WILSON MIDDLE SCHOOL | SPANISH BILINGUAL |
| ACEVEDO-TORRES | MELISSA | 0000047908 | 0858 | COUNSELING ASST,BILINGUAL | 7500 | FELTONVILLE ARTS & SCIENCES | SPANISH BILINGUAL |
| ARIAS | NEREIDA | 0000020314 | 0858 | COUNSELING ASST,BILINGUAL | 7400 | OLNEY ELEMENTARY SCHOOL | SPANISH BILINGUAL |
| CARRASQUILLO | ALIDA | 0000000983 | 0858 | COUNSELING ASST,BILINGUAL | 7310 | FELTONVILLE INTERMEDIATE | SPANISH BILINGUAL |
| CARRASQUILLO | SHIRLEY | 0000059780 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | SPANISH BILINGUAL |
| COULTER | GLORIA | 0000065497 | 0858 | COUNSELING ASST,BILINGUAL | 2590 | GEORGE W. NEBINGER SCHOOL | SPANISH BILINGUAL |
| DUGAN | ESTELA | 0000048559 | 0858 | COUNSELING ASST,BILINGUAL | 7220 | CARNELL, LAURA H. SCHOOL | SPANISH BILINGUAL |
| FARRIS | BETTY | 0000020636 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | SPANISH BILINGUAL |
| FILIPUZZI | ALEJANDRA | 0000046936 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | SPANISH BILINGUAL |
| GARCIA | GLADYS | 0000009781 | 0858 | COUNSELING ASST,BILINGUAL | 5060 | JULES MASTBAUM HIGH SCHOOL | SPANISH BILINGUAL |
| LOPEZ | IVETTE | 0000015120 | 0858 | COUNSELING ASST,BILINGUAL | 5420 | JOHN WELSH SCHOOL | SPANISH BILINGUAL |
| MILLER | ROBERT | 0000016465 | 0858 | COUNSELING ASST,BILINGUAL | 5500 | THURGOOD MARSHALL SCHOOL | SPANISH BILINGUAL |
| MORALES | ROSIO | 0000049011 | 0858 | COUNSELING ASST,BILINGUAL | 5440 | FRANCES E. WILLARD SCHOOL | SPANISH BILINGUAL |
| NIEVES | MAYRA | 0000027420 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | SPANISH BILINGUAL |
| OQUENDO | SARAH | 0000062290 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | SPANISH BILINGUAL |
| ORTIZ | SONIA | 0000000843 | 0858 | COUNSELING ASST,BILINGUAL | 7300 | FRANCIS HOPKINSON SCHOOL | SPANISH BILINGUAL |
| PADILLA | ELSI | 0000045218 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | SPANISH BILINGUAL |
| ROSARIO | AURORA | 0000044969 | 0858 | COUNSELING ASST,BILINGUAL | 7380 | ALEXANDER MCCLURE SCHOOL | SPANISH BILINGUAL |
| TORRES | YOLANDA | 0000020312 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | SPANISH BILINGUAL |
| UDOWENKO | LIDIA | 0000065201 | 0858 | COUNSELING ASST,BILINGUAL | 7220 | CARNELL, LAURA H. SCHOOL | SPANISH BILINGUAL |
| VELEZ | LYDIA | 0000027662 | 0858 | COUNSELING ASST,BILINGUAL | 7010 | FRANKFORD HIGH SCHOOL | SPANISH BILINGUAL |
| YOUNG | JANET | 0000027131 | 0858 | COUNSELING ASST,BILINGUAL | 2510 | ANDREW JACKSON SCHOOL | SPANISH BILINGUAL |
| HUA | CHAU | 0000065181 | 0858 | COUNSELING ASST,BILINGUAL | 5210 | H. A. BROWN ACADEMICS PLUS SCH | VIETNAMESE BILINGUAL |
| THIEU | THAI | 0000000210 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | VIETNAMESE BILINGUAL |
| TIEU | AMANDA | 0000012203 | 0858 | COUNSELING ASST,BILINGUAL | 7350 | JAMES R. LOWELL SCHOOL | VIETNAMESE BILINGUAL |
| TRAN-SHELDON | STEPHANIE | 0000006076 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | VIETNAMESE BILINGUAL |



SCHOOL DISTRICT OF PHILADELPHIA
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| LAST NAME | FIRST NAME | EIDN | TITLE CODE | TITLE | HOME ORG CODE | ORGANIZATION | LANGUAGE |
|---------------------|------------|------------|------------|---------------------------|---------------|--------------------------------|------------------------------|
| PAPAJ | LEONIDHA | 0000061619 | 0858 | COUNSELING ASST,BILINGUAL | 8030 | GEORGE WASHINGTON HIGH | ALBANIAN BILINGUAL |
| PAPAJ | NIKOLETA | 0000037529 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | ALBANIAN BILINGUAL |
| BENTIBA | NABILA | 0000047482 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | ARABIC BILINGUAL |
| DORSEY | JUSTIN | 0000063577 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN, SOLOMON SCHOOL | ARABIC BILINGUAL |
| OSMAN | HASHIM | 0000074869 | 0858 | COUNSELING ASST,BILINGUAL | 8350 | GILBERT SPRUANCE SCHOOL | ARABIC BILINGUAL |
| RAHMAN | ABU | 0000073607 | 0858 | COUNSELING ASST,BILINGUAL | 1340 | HENRY C. LEA SCHOOL | BENGALI BILINGUAL |
| HTOO | DAI | 0000072028 | 0858 | COUNSELING ASST,BILINGUAL | 2160 | FURNESS, HORACE HIGH SCHOOL | BURMESE BILINGUAL |
| LIAN | NIANG | 0000072484 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | BURMESE BILINGUAL |
| CHO | VITTORIO | 0000068717 | 0858 | COUNSELING ASST,BILINGUAL | 2190 | D. NEWLIN FELL SCHOOL | CANTONESE BILINGUAL |
| KA | SU MING | 0000004939 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | CANTONESE BILINGUAL |
| PANG | FAN IO | 0000037366 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | CANTONESE BILINGUAL |
| WANG | XIAO | 0000065264 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | CANTONESE BILINGUAL |
| WU | LANPING | 0000025099 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN, SOLOMON SCHOOL | CANTONESE BILINGUAL |
| ZHANG | YANSHUANG | 0000069187 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | CANTONESE BILINGUAL |
| DIWARA | PENDA | 0000058247 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | FRENCH BILINGUAL |
| SOW | OUAHANY | 0000074906 | 0858 | COUNSELING ASST,BILINGUAL | 1010 | JOHN BARTRAM HIGH SCHOOL | FRENCH BILINGUAL |
| LAVENTURE-HYPPOLITE | MARIE | 0000046964 | 0858 | COUNSELING ASST,BILINGUAL | 6060 | MARTIN L. KING HIGH SCHOOL | HAITIAN CREOLE BILINGUAL |
| PARIKH | UPASANA | 0000023776 | 0858 | COUNSELING ASST,BILINGUAL | 8400 | ANNE FRANK SCHOOL | HINDI BILINGUAL |
| SUMANA-EISCHEN | MEGAWATI | 0000060677 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | INDONESIAN GENERIC BILINGUAL |
| CHOING | SAY HONG | 0000027682 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | KHMER BILINGUAL |
| MA | POLYKA | 0000008840 | 0858 | COUNSELING ASST,BILINGUAL | 7350 | JAMES R. LOWELL SCHOOL | KHMER BILINGUAL |
| ONG | KHOSOM | 0000006425 | 0858 | COUNSELING ASST,BILINGUAL | 7370 | GROVER WASHINGTON JR. MIDDLE | KHMER BILINGUAL |
| SOUR | SOTHA | 0000002799 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | KHMER BILINGUAL |
| ABRAHAM | ELIZABETH | 0000001364 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | MALAYALAM BILINGUAL |
| HE | LI RU | 0000065373 | 0858 | COUNSELING ASST,BILINGUAL | 8120 | WOODROW WILSON MIDDLE SCHOOL | MANDARIN BILINGUAL |
| TANG | QI | 0000061175 | 0858 | COUNSELING ASST,BILINGUAL | 2340 | MC CALL, GEN. GEORGE A. SCHOOL | MANDARIN BILINGUAL |
| KAFLEY | KRISHNA | 0000074781 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | NEPALI BILINGUAL |
| KUIKEL | INDRA | 0000071693 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | NEPALI BILINGUAL |
| BATISTA | MARILIA | 0000060790 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | PORTUGUESE BILINGUAL |
| PALMER | TAMARA | 0000037870 | 0858 | COUNSELING ASST,BILINGUAL | 8160 | BALDI MIDDLE SCHOOL | RUSSIAN BILINGUAL |
| POZNER | TANIA | 0000006086 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | RUSSIAN BILINGUAL |
| ABUAWADEH | MARGARITA | 0000052325 | 0858 | COUNSELING ASST,BILINGUAL | 7220 | CARNELL, LAURA H. SCHOOL | SPANISH BILINGUAL |
| ACEVEDO-TORRES | MELISSA | 0000047908 | 0858 | COUNSELING ASST,BILINGUAL | 5500 | THURGOOD MARSHALL SCHOOL | SPANISH BILINGUAL |
| ARIAS | NEREIDA | 0000020314 | 0858 | COUNSELING ASST,BILINGUAL | 7400 | OLNEY ELEMENTARY SCHOOL | SPANISH BILINGUAL |
| CARRASQUILLO | ALIDA | 0000000983 | 0858 | COUNSELING ASST,BILINGUAL | 7310 | FELTONVILLE INTERMEDIATE | SPANISH BILINGUAL |
| CARRASQUILLO | SHIRLEY | 0000059780 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | SPANISH BILINGUAL |
| COULTER | GLORIA | 0000065497 | 0858 | COUNSELING ASST,BILINGUAL | 2590 | GEORGE W. NEBINGER SCHOOL | SPANISH BILINGUAL |
| DUGAN | ESTELA | 0000048559 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | SPANISH BILINGUAL |
| FARRIS | BETTY | 0000020636 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | SPANISH BILINGUAL |
| FILIPUZZI | ALEJANDRA | 0000046936 | 0858 | COUNSELING ASST,BILINGUAL | 5440 | FRANCES E. WILLARD SCHOOL | SPANISH BILINGUAL |
| GARCIA | GLADYS | 0000009781 | 0858 | COUNSELING ASST,BILINGUAL | 5060 | JULES MASTBAUM HIGH SCHOOL | SPANISH BILINGUAL |
| LOPEZ | IVETTE | 0000015120 | 0858 | COUNSELING ASST,BILINGUAL | 7380 | ALEXANDER MCCLURE SCHOOL | SPANISH BILINGUAL |
| MILLER | ROBERT | 0000016465 | 0858 | COUNSELING ASST,BILINGUAL | 7300 | FRANCIS HOPKINSON SCHOOL | SPANISH BILINGUAL |
| MORALES | ROSIO | 0000049011 | 0858 | COUNSELING ASST,BILINGUAL | 5470 | CRAMP, WILLIAM SCHOOL | SPANISH BILINGUAL |
| NIEVES | MAYRA | 0000027420 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | SPANISH BILINGUAL |
| OQUEENDO | SARAH | 0000062290 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | SPANISH BILINGUAL |
| ORTIZ | SONIA | 0000000843 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | SPANISH BILINGUAL |
| PADILLA | ELSI | 0000045218 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | SPANISH BILINGUAL |
| POWELL | ANA | 0000048562 | 0858 | COUNSELING ASST,BILINGUAL | 5420 | JOHN WELSH SCHOOL | SPANISH BILINGUAL |
| ROSARIO | AURORA | 0000044969 | 0858 | COUNSELING ASST,BILINGUAL | 7500 | FELTONVILLE ARTS & SCIENCES | SPANISH BILINGUAL |
| UDOWENKO | LIDIA | 0000065201 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | SPANISH BILINGUAL |
| VELEZ | LYDIA | 0000027662 | 0858 | COUNSELING ASST,BILINGUAL | 7010 | FRANKFORD HIGH SCHOOL | SPANISH BILINGUAL |
| YOUNG | JANET | 0000027131 | 0858 | COUNSELING ASST,BILINGUAL | 2510 | ANDREW JACKSON SCHOOL | SPANISH BILINGUAL |
| HUA | CHAU | 0000065181 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | VIETNAMESE BILINGUAL |
| SHELDON | STEPHANIE | 0000006076 | 0858 | COUNSELING ASST,BILINGUAL | 2320 | STEPHEN GIRARD SCHOOL | VIETNAMESE BILINGUAL |
| THIEU | THAI | 0000002810 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | VIETNAMESE BILINGUAL |
| TIEU | AMANDA | 0000012203 | 0858 | COUNSELING ASST,BILINGUAL | 7350 | JAMES R. LOWELL SCHOOL | VIETNAMESE BILINGUAL |



SCHOOL DISTRICT OF PHILADELPHIA
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Source: Oracle/Crystal Report 10-31-15, vw

| LAST NAME | FIRST NAME | EIDN | TITLE CODE | TITLE | HOME ORG CODE | ORGANIZATION | LANGUAGE | 2ND LANGUAGE |
|---------------------|------------|-------------|---------------|---------------------------|---------------------|--------------------------------|------------------------------|--------------------------|
| PAPAJ | LEONIDHA | 0000061619 | 0858 | COUNSELING ASST,BILINGUAL | 8030 | GEORGE WASHINGTON HIGH | ALBANIAN BILINGUAL | |
| PAPAJ | NIKOLETA | 0000037529 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | ALBANIAN BILINGUAL | |
| BENTIBA | NABILA | 0000074782 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | ARABIC BILINGUAL | |
| DORSEY | JUSTIN | 0000063577 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN, SOLOMON SCHOOL | ARABIC BILINGUAL | |
| ELROBH | HEBA | 0000064687 | 0858 | COUNSELING ASST,BILINGUAL | 8380 | LOUIS H. FARRELL SCHOOL | ARABIC BILINGUAL | |
| HAMAILI | SERINE | 0000076682 | 0858 | COUNSELING ASST,BILINGUAL | 8350 | GILBERT SPRUANCE SCHOOL | ARABIC BILINGUAL | |
| ALWAN | BASHAR | 0000077470 | 0858 | COUNSELING ASST,BILINGUAL | 8300 | MAYFAIR SCHOOL | ARABIC BILINGUAL | |
| RAHMAN | ABU | 0000073607 | 0858 | COUNSELING ASST,BILINGUAL | 1340 | HENRY C. LEA SCHOOL | BENGALI BILINGUAL | |
| HTOO | DAI | 0000072028 | 0858 | COUNSELING ASST,BILINGUAL | 2160 | FURNESS, HORACE HIGH SCHOOL | BURMESE BILINGUAL | |
| LIAN | NIANG | 0000072484 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | BURMESE BILINGUAL | |
| PANG | FAN IO | 0000037366 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | CANTONESE BILINGUAL | |
| DIAWARA | PENDA | 0000058247 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | FRENCH BILINGUAL | FRENCH CREOLE BILINGUAL |
| SOW | OUMAHANY | 0000074906 | 0858 | COUNSELING ASST,BILINGUAL | 1010 | JOHN BARTRAM HIGH SCHOOL | FRENCH BILINGUAL | |
| LAVENTURE-HYPPOLITE | MARIE | 0000046964 | 0858 | COUNSELING ASST,BILINGUAL | 6060 | MARTIN L. KING HIGH SCHOOL | FRENCH CREOLE BILINGUAL | HAITIAN CREOLE BILINGUAL |
| SUMANA-EISECHEN | MEGAWATI | 0000060677 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | INDONESIAN GENERIC BILINGUAL | |
| CHOING | SAY HONG | 0000027682 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | KHMER BILINGUAL | |
| SOUR | SOTHA | 0000002799 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | KHMER BILINGUAL | |
| ABRAHAM | ELIZABETH | 0000001364 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | MALAYALAM BILINGUAL | |
| CHO | VITTORIO | 0000068717 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | MANDARIN BILINGUAL | CANTONESE BILINGUAL |
| HE | LI RU | 0000065373 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | MANDARIN BILINGUAL | CANTONESE BILINGUAL |
| KA | SIU MING | 0000004939 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | MANDARIN BILINGUAL | CANTONESE BILINGUAL |
| TANG | QI | 0000061175 | 0858 | COUNSELING ASST,BILINGUAL | 2340 | MC CALL, GEN. GEORGE A. SCHOOL | MANDARIN BILINGUAL | CANTONESE BILINGUAL |
| WANG | XIAO | 0000065264 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | MANDARIN BILINGUAL | CANTONESE BILINGUAL |
| WU | LANPING | 0000025099 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN, SOLOMON SCHOOL | MANDARIN BILINGUAL | CANTONESE BILINGUAL |
| ZHANG | YANSHUANG | 0000069187 | 0858 | COUNSELING ASST,BILINGUAL | 8120 | WOODROW WILSON MIDDLE SCHOOL | MANDARIN BILINGUAL | CANTONESE BILINGUAL |
| KAFLEY | KRISHNA | 0000074781 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | NEPALI BILINGUAL | |
| KUIKEL | INDRA | 0000071693 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | NEPALI BILINGUAL | |
| HAMED | FNU | 0000077705 | 0858 | COUNSELING ASST,BILINGUAL | 2160 | FURNESS, HORACE HIGH SCHOOL | PASHTO BILINGUAL | |
| BATISTA | MARILIA | 0000060790 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | PORTUGUESE BILINGUAL | |
| PALMER | TAMARA | 0000037870 | 0858 | COUNSELING ASST,BILINGUAL | 8160 | BALDI MIDDLE SCHOOL | RUSSIAN BILINGUAL | |
| POZNER | TANIA | 0000060686 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | RUSSIAN BILINGUAL | |
| ABUWADEH | MARGARITA | 0000052325 | 0858 | COUNSELING ASST,BILINGUAL | 7300 | FRANCIS HOPKINSON SCHOOL | SPANISH BILINGUAL | |
| ACEVEDO-TORRES | MELISSA | 0000047908 | 0858 | COUNSELING ASST,BILINGUAL | 5500 | THURGOOD MARSHALL SCHOOL | SPANISH BILINGUAL | |
| CARRASQUILLO | ALIDA | 0000000983 | 0858 | COUNSELING ASST,BILINGUAL | 7310 | FELTONVILLE INTERMEDIATE | SPANISH BILINGUAL | |
| CARRASQUILLO | SHIRLEY | 0000059780 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | SPANISH BILINGUAL | |
| COULTER | GLORIA | 0000065497 | 0858 | COUNSELING ASST,BILINGUAL | 2590 | GEORGE W. NEBINGER SCHOOL | SPANISH BILINGUAL | |
| FARRIS | BETTY | 0000020636 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | SPANISH BILINGUAL | |
| FILIPUZZI | ALEJANDRA | 0000046936 | 0858 | COUNSELING ASST,BILINGUAL | 5440 | FRANCES E. WILLARD SCHOOL | SPANISH BILINGUAL | |
| GARCIA | GLADYS | 0000009781 | 0858 | COUNSELING ASST,BILINGUAL | 5060 | JULES MASTBAUM HIGH SCHOOL | SPANISH BILINGUAL | |
| LOPEZ | IVETTE | 0000015120 | 0858 | COUNSELING ASST,BILINGUAL | 7380 | ALEXANDER MCCLURE SCHOOL | SPANISH BILINGUAL | |
| MA | POLYKA | 0000008840 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | SPANISH BILINGUAL | KHMER BILINGUAL |
| MILLER | ROBERT | 0000016465 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | SPANISH BILINGUAL | |
| MORALES | ROSIO | 0000049011 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | SPANISH BILINGUAL | |
| NEGRON | IRIS | 0000065811 | 0858 | COUNSELING ASST,BILINGUAL | 8240 | HAMILTON DISSTON SCHOOL | SPANISH BILINGUAL | |
| NIEVES | MAYRA | 0000027420 | 0858 | COUNSELING ASST,BILINGUAL | 7010 | FRANKFORD HIGH SCHOOL | SPANISH BILINGUAL | |
| OQUENDO | SARAH | 0000062290 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | SPANISH BILINGUAL | |
| ORTIZ | SONIA | 0000000843 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | SPANISH BILINGUAL | |
| PADILLA | ELSI | 0000045218 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | SPANISH BILINGUAL | |
| UDOWENKO | LDIA | 0000065201 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | SPANISH BILINGUAL | |
| YOUNG | JANET | 0000027131 | 0858 | COUNSELING ASST,BILINGUAL | 2510 | ANDREW JACKSON SCHOOL | SPANISH BILINGUAL | |
| DUGAN | ESTELA | 0000048559 | 0858 | COUNSELING ASST,BILINGUAL | 8350 | GILBERT SPRUANCE SCHOOL | SPANISH BILINGUAL | |
| POWELL | ANA | 0000048562 | 0858 | COUNSELING ASST,BILINGUAL | 7400 | OLNEY ELEMENTARY SCHOOL | SPANISH BILINGUAL | |
| HUA | CHAU | 0000065181 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | VIETNAMESE BILINGUAL | |
| SHELDON | STEPHANIE | 0000006076 | 0858 | COUNSELING ASST,BILINGUAL | 2320 | STEPHEN GIRARD SCHOOL | VIETNAMESE BILINGUAL | |
| THIEU | THAI | 00000002810 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | VIETNAMESE BILINGUAL | |
| TIEU | AMANDA | 0000012203 | 0858 | COUNSELING ASST,BILINGUAL | 8120 | WOODROW WILSON MIDDLE SCHOOL | VIETNAMESE BILINGUAL | |



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Source: Oracle/Crystal Report 10-31-16, yw

| LAST NAME | FIRST NAME | EDIN | TITLE | HOME ORG CODE | ORGANIZATION | LANGUAGE | 2ND LANGUAGE |
|----------------|------------|------------|-------|---------------------------|--------------|--------------------------------|------------------------------|
| PAPAJ | LEONIDHA | 0000061619 | 0858 | COUNSELING ASST,BILINGUAL | 8380 | LOUIS H. FARRELL SCHOOL | ALBANIAN BILINGUAL |
| PAPAJ | NIKOLETA | 0000037529 | 0858 | COUNSELING ASST,BILINGUAL | 5400 | RICHMOND SCHOOL | ALBANIAN BILINGUAL |
| BENTIBA | NABILA | 0000074782 | 0858 | COUNSELING ASST,BILINGUAL | 8350 | GILBERT SPRUANCE SCHOOL | ARABIC BILINGUAL |
| DORSEY | JUSTIN | 0000063577 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | ARABIC BILINGUAL |
| ELHASSAN | ELKHATTAB | 0000078258 | 0858 | COUNSELING ASST,BILINGUAL | 8120 | WOODROW WILSON MIDDLE SCHOOL | ARABIC BILINGUAL |
| ELROBI | HEBA | 0000064687 | 0858 | COUNSELING ASST,BILINGUAL | 8310 | J. HAMPTON MOORE SCHOOL | ARABIC BILINGUAL |
| HAMAILI | SERINE | 0000076682 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | ARABIC BILINGUAL |
| RAHMAN | ABU | 0000073607 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | BENGALI BILINGUAL |
| HTOO | DAI | 0000072028 | 0858 | COUNSELING ASST,BILINGUAL | 2160 | FURNESS, HORACE HIGH SCHOOL | BURMESE BILINGUAL |
| NIANGTAWLIAN | ESTHER | 0000072484 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | BURMESE BILINGUAL |
| PANG | FAN IO | 0000037366 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | CANTONESE BILINGUAL |
| DIWARA | PENDA | 0000058247 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | FRENCH BILINGUAL |
| SOW | OUAMAHANY | 0000074906 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | FRENCH BILINGUAL |
| SUMANA-EISCHEN | MEGAWATI | 0000060677 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | INDONESIAN GENERIC BILINGUAL |
| CHOING | SAY HONG | 0000027682 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | KHMER BILINGUAL |
| SOUR | SOTHA | 0000002799 | 0858 | COUNSELING ASST,BILINGUAL | 7370 | GROVER WASHINGTON JR. MIDDLE | KHMER BILINGUAL |
| ABRAHAM | ELIZABETH | 0000001364 | 0858 | COUNSELING ASST,BILINGUAL | 8440 | WILLIAM H. LOESCHE SCHOOL | MALAYALAM BILINGUAL |
| CHO | VITTORIO | 0000068717 | 0858 | COUNSELING ASST,BILINGUAL | 2190 | D. NEWLIN FELL SCHOOL | MANDARIN BILINGUAL |
| HE | LI RU | 0000065373 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | MANDARIN BILINGUAL |
| KA | SIU MING | 0000004939 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | MANDARIN BILINGUAL |
| TANG | QI | 0000061175 | 0858 | COUNSELING ASST,BILINGUAL | 2340 | MC CALL, GEN. GEORGE A. SCHOOL | MANDARIN BILINGUAL |
| WANG | XIAO | 0000065264 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | MANDARIN BILINGUAL |
| WU | LANPING | 0000025099 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN, SOLOMON SCHOOL | MANDARIN BILINGUAL |
| ZHANG | YANSHUANG | 0000069187 | 0858 | COUNSELING ASST,BILINGUAL | 8300 | MAYFAIR SCHOOL | MANDARIN BILINGUAL |
| KAFLEY | KRISHNA | 0000074781 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | NEPALI BILINGUAL |
| KUIKEL | INDRA | 0000071693 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | NEPALI BILINGUAL |
| HAMED | FNU | 0000077705 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | PASHTO BILINGUAL |
| BATISTA | MARILIA | 0000060790 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | PORTUGUESE BILINGUAL |
| PALMER | TAMARA | 0000037870 | 0858 | COUNSELING ASST,BILINGUAL | 8160 | BALDI MIDDLE SCHOOL | RUSSIAN BILINGUAL |
| POZNER | TANIA | 0000006086 | 0858 | COUNSELING ASST,BILINGUAL | 8400 | ANNE FRANK SCHOOL | RUSSIAN BILINGUAL |
| ABUAWADEH | MARGARITA | 0000052325 | 0858 | COUNSELING ASST,BILINGUAL | 8340 | SOLIS-COHEN, SOLOMON SCHOOL | SPANISH BILINGUAL |
| ACEVEDO-TORRES | MELISSA | 0000047908 | 0858 | COUNSELING ASST,BILINGUAL | 3500 | THURGOOD MARSHALL SCHOOL | SPANISH BILINGUAL |
| CARRASQUILLO | ALIDA | 0000000983 | 0858 | COUNSELING ASST,BILINGUAL | 8380 | LOUIS H. FARRELL SCHOOL | SPANISH BILINGUAL |
| CARRASQUILLO | SHIRLEY | 0000059780 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | SPANISH BILINGUAL |
| COULTER | GLORIA | 0000065497 | 0858 | COUNSELING ASST,BILINGUAL | 2590 | GEORGE W. NEBINGER SCHOOL | SPANISH BILINGUAL |
| FARRIS | BETTY | 0000020636 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | SPANISH BILINGUAL |
| FILIPUZZI | ALEJANDRA | 0000046936 | 0858 | COUNSELING ASST,BILINGUAL | 5530 | PHILIP H. SHERIDAN SCHOOL | SPANISH BILINGUAL |
| GARCIA | GLADYS | 0000009781 | 0858 | COUNSELING ASST,BILINGUAL | 7290 | ALLEN M. STEARNE SCHOOL | SPANISH BILINGUAL |
| LOPEZ | IVETTE | 0000015120 | 0858 | COUNSELING ASST,BILINGUAL | 7350 | JAMES R. LOWELL SCHOOL | SPANISH BILINGUAL |
| MA | POLYKA | 0000008840 | 0858 | COUNSELING ASST,BILINGUAL | 7350 | JAMES R. LOWELL SCHOOL | SPANISH BILINGUAL |
| MILLER | ROBERT | 0000014465 | 0858 | COUNSELING ASST,BILINGUAL | 8200 | ETHAN ALLEN SCHOOL | SPANISH BILINGUAL |
| MORALES | ROSIO | 0000049011 | 0858 | COUNSELING ASST,BILINGUAL | 2260 | GEORGE W. CHILDS SCHOOL | SPANISH BILINGUAL |
| NEGRON | IRIS | 0000065811 | 0858 | COUNSELING ASST,BILINGUAL | 7400 | OLNEY ELEMENTARY SCHOOL | SPANISH BILINGUAL |
| NIEVES | MAYRA | 0000027420 | 0858 | COUNSELING ASST,BILINGUAL | 7010 | FRANKFORD HIGH SCHOOL | SPANISH BILINGUAL |
| OQUENDO | SARAH | 0000062290 | 0858 | COUNSELING ASST,BILINGUAL | 2540 | FRANCIS SCOTT KEY SCHOOL | SPANISH BILINGUAL |
| ORTIZ | SONIA | 0000000843 | 0858 | COUNSELING ASST,BILINGUAL | 5590 | JOHN H. WEBSTER SCHOOL | SPANISH BILINGUAL |
| PADILLA | ELSI | 0000045218 | 0858 | COUNSELING ASST,BILINGUAL | 2640 | SOUTHWARK SCHOOL | SPANISH BILINGUAL |
| UDOWENKO | LIDIA | 0000065201 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | SPANISH BILINGUAL |
| YOUNG | JANET | 0000027131 | 0858 | COUNSELING ASST,BILINGUAL | 2510 | ANDREW JACKSON SCHOOL | SPANISH BILINGUAL |
| THILLET | JULIA | 0000047917 | 0858 | COUNSELING ASST,BILINGUAL | 8240 | HAMILTON DISSTON SCHOOL | SPANISH BILINGUAL |
| WADE | LISA | 0000066081 | 0858 | COUNSELING ASST,BILINGUAL | 8240 | HAMILTON DISSTON SCHOOL | SPANISH BILINGUAL |
| LABUNKA | ILLIA | 0000077804 | 0858 | COUNSELING ASST,BILINGUAL | 8160 | BALDI MIDDLE SCHOOL | UKRAINIAN BILINGUAL |
| HUA | CHAU | 0000065181 | 0858 | COUNSELING ASST,BILINGUAL | 2000 | SOUTH PHILADELPHIA H.S. | VIETNAMESE BILINGUAL |
| SHeldon | STEPHANIE | 0000006076 | 0858 | COUNSELING ASST,BILINGUAL | 2320 | STEPHEN GIRARD SCHOOL | VIETNAMESE BILINGUAL |
| THIEU | THAI | 0000002810 | 0858 | COUNSELING ASST,BILINGUAL | 2580 | ELIZA B. KIRKBRIDE SCHOOL | VIETNAMESE BILINGUAL |
| TIEU | AMANDA | 0000012203 | 0858 | COUNSELING ASST,BILINGUAL | 8020 | NORTHEAST HIGH SCHOOL | VIETNAMESE BILINGUAL |

EXHIBIT 11

School District of Philadelphia
Multilingual Family Support Office
Interpretation Referral Log AY 2015-2016

| | |
|----------------------------------|---|
| Date of request: | Feb. 19, 2016 |
| Language (s): | [REDACTED] |
| School/Office: | Sharswood |
| Contact name: | Esther Kang |
| Contact number/e-mail: | ekangc |
| Meeting purpose: | IEP _____ Psych. evaluation _____ Re-eval. & IEP _____ Parent meeting <input checked="" type="checkbox"/> SRC meeting _____ SAC meeting _____ RtII meeting _____ P/T Conf. _____ Community Meeting _____ Disciplinary Hearing _____ Expulsion Hearing _____ Back to School _____ Welcome Wagon _____ Medical Home Visit _____ Inter-Agency Meeting _____ H.S. Application _____ JJ Peters _____ |
| Equipment needed: | Yes _____ No _____ |
| Meeting location: | |
| Date and time of meeting: | Monday, April 11 - 9:00 A.M. |
| Interpreter(s) assigned: | Justin Darsey |
| Request fulfilled by: | Wendy [Signature] |
| Principal notified: | Yes _____ No _____ How: _____ |
| Notes: | |

Request number: 218

249

Zimbra

lsoderman@philasd.org

Fwd: Re: [REDACTED] Interpreter Request

From : Kang, Esther <ekang@philasd.org> Fri, Feb 19, 2016 09:09 AM
Subject : Fwd: Re: [REDACTED] Interpreter Request
To : Soderman, Lutzgarde
<lsoderman@philasd.org>

Ludy,
Here's another [REDACTED] translator request way in
advance from my SEL.

April 11 at 9:00 AM

Thanks,
Esther Kang
ESOL Teacher
George Sharswood School
215-952-6212
ekang@philasd.org

----- Forwarded Message -----

From: Kosterlitz, Sherri <skosterlitz@philasd.org>
To: Esther Kang <ekang@philasd.org>
Sent: Fri, 19 Feb 2016 08:53:01 -0500 (EST)
Subject: Re: [REDACTED] Interpreter Request

Please request an [REDACTED] translator in person for our
scheduled meeting April 11 at 9:00(Balmoun) Sherri

----- Original Message -----

From: "Esther Kang" <ekang@philasd.org>
To: "skosterlitz" <skosterlitz@philasd.org>
Sent: Thursday, February 18, 2016 2:33:50 PM
Subject: Fwd: Re: [REDACTED] Interpreter Request

Esther Kang
ESOL Teacher

George Sharswood School
215-952-6212
ekang@philasd.org

----- Forwarded Message -----

From: Soderman, Lutzgarde <lsoderman@philasd.org>
To: Esther Kang <ekang@philasd.org>
Sent: Thu, 18 Feb 2016 13:46:32 -0500 (EST)
Subject: Re: [REDACTED] Interpreter Request

Esther,

I am so sorry that I did not reply earlier, but we do not have a BCA available to go. We have sent Ms. Nabila Bentiba to the meetings at Sharswood but she is currently out of the country in a family emergency and the other three are not available.

Ludy

----- Original Message -----

From: "Esther Kang" <ekang@philasd.org>
To: "lsoderman" <lsoderman@philasd.org>
Sent: Thursday, February 18, 2016 12:16:10 PM
Subject: Re: [REDACTED] Interpreter Request

Hi Ludy,
Just following up with you...

Will there be an [REDACTED] interpreter this afternoon?
I didn't hear back yesterday, so just checking in.

Thanks for all of your efforts considering the limited number of [REDACTED] interpreters!

Esther Kang
ESOL Teacher
George Sharswood School
215-952-6212
ekang@philasd.org

----- Original Message -----

From: Soderman, Lutzgarde <lsoderman@philasd.org>
To: Esther Kang <ekang@philasd.org>
Sent: Tue, 16 Feb 2016 15:12:54 -0500 (EST)
Subject: Re: [REDACTED] Interpreter Request

Esther,

We are trying our best to send someone, but it is a bit of a challenge at the moment because we are down to three [REDACTED] BCAs (one resigned and the other had to go overseas for a family emergency!). I will have a response to you by the end of business tomorrow.

Ludy

----- Original Message -----

From: "Esther Kang" <ekang@philasd.org>
To: "lsoderman" <lsoderman@philasd.org>
Sent: Tuesday, February 16, 2016 2:29:29 PM
Subject: Re: [REDACTED] Interpreter Request

Hi Ludy,
Hope you had a great long weekend!

I was just following up with you to see if you knew which interpreter could come.
My SEL has been asking.

Hope to hear from you!

Esther Kang
ESOL Teacher
George Sharswood School
215-952-6212
ekang@philasd.org

----- Original Message -----

From: Soderman, Lutzgarde <lsoderman@philasd.org>
To: Esther Kang <ekang@philasd.org>
Sent: Fri, 12 Feb 2016 16:54:39 -0500 (EST)

Subject: Re: [REDACTED] Interpreter Request

Got it! Will do my best to get someone.

----- Original Message -----

From: "Esther Kang" <ekang@philasd.org>
To: "lsoderman" <lsoderman@philasd.org>
Sent: Friday, February 12, 2016 11:42:31 AM
Subject: Fwd: [REDACTED] Interpreter Request

Sorry Ludy,
I meant to say THURSDAY, February 18th at 2 PM, not Tuesday!
Esther Kang
ESOL Teacher
George Sharswood School
215-952-6212
ekang@philasd.org

----- Forwarded Message -----

From: Kang, Esther <ekang@philasd.org>
To: Lutzgarde Soderman <lsoderman@philasd.org>
Cc: Kosterlitz, Sherri <skosterlitz@philasd.org>, Gregory Maddox <gmaddox@philasd.org>
Sent: Fri, 12 Feb 2016 11:32:48 -0500 (EST)
Subject: [REDACTED] Interpreter Request

Hi Ludy,

How are you? I hope all is well!

I'm writing to request an in-person [REDACTED] Interpreter for Tuesday, February 18th at 2:00 PM. This is for a high priority case, and it is imperative that we have one in person. Your help with this matter would be greatly appreciated!

Thanks so much in advance!
Esther Kang
ESOL Teacher
George Sharswood School

EXHIBIT 12

School District of Philadelphia
Multilingual Family Support Office
Interpretation Referral Log AY 2015-2016

| | |
|----------------------------------|---|
| Date of request: | May 31, 2016 |
| Language (s): | [REDACTED] |
| School/Office: | CAN, GA |
| Contact name: | VALERIE BARE |
| Contact number/e-mail: | 215-456-3167 |
| Meeting purpose: | IEP <input checked="" type="checkbox"/> Psych. evaluation <input type="checkbox"/> Re-eval. & IEP <input type="checkbox"/> Parent meeting <input type="checkbox"/> SRC meeting <input type="checkbox"/> SAC meeting <input type="checkbox"/> RtII meeting <input type="checkbox"/> P/T Conf. <input type="checkbox"/> Community Meeting <input type="checkbox"/> Disciplinary Hearing <input type="checkbox"/> Expulsion Hearing <input type="checkbox"/> Back to School <input type="checkbox"/> Welcome Wagon <input type="checkbox"/> Medical Home Visit <input type="checkbox"/> Inter-Agency Meeting <input type="checkbox"/> H.S. Application <input type="checkbox"/> JJ Peters <input type="checkbox"/> |
| Equipment needed: | Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> |
| Meeting location: | Cayuga |
| Date and time of meeting: | Friday, June 3 - 12:00 P.M. |
| Interpreter(s) assigned: | [Signatures] |
| Request fulfilled by: | [Signature] |
| Principal notified: | Yes <input type="checkbox"/> No <input type="checkbox"/> How: _____ |
| Notes: | Post filed! |

Request number: 392

Zimbra**Isoderman@philasd.org**

Re: Live Interpretation Request

From : Soderman, Lutzgarde
<Isoderman@philasd.org>

Wed, Jun 01, 2016 12:04 PM

Subject : Re: Live Interpretation Request

To : vbare@philasd.org

Cc : translation
<translation@philasd.org>

Dear MS. BARe,

We will do our best to assign an interpreter. Please, be aware that at this moment the demand for interpreters exceeds the number of staff available. I will send a confirmation by mid-morning tomorrow.

Cheers,

Ludy Soderman

From: vbare@philasd.org
To: "translation" <translation@philasd.org>
Sent: Tuesday, May 31, 2016 12:50:45 PM
Subject: Live Interpretation Request

**Name of
School/Office** Cayuga
:

**Contact
Person :** Valerie Bare

**Contact
Phone** 2154563167
Number :

Contact**E-mail** vbare@philasd.org**Address :****Language(s)****Needed :** [REDACTED]**Other****Language(s)**

:

:
** For Sign Language Interpretation,
please call 215-400-5666**Type of****Event :**

IEP Meeting

Date of**Event :**

06/03/2016

Time of**Event :**

12 PM

Location of**Event :**

Cayuga Elementary School, Room 108.

**Attach any
document
that may
help the
interpreter
to be
better
prepared :****Additional
Information**

:

:
To complete request submission, please
click "save".
* IMPORTANT: If you do not hear back
from us within 24 hours, please follow up

with an e-mail to translation@philasd.org
or call (215) 400-4180, option 4, or Ludy
Söderman at 215 400 6361.

This email was generated by the following form:

[http://webgui.phila.k12.pa.us/offices/t/translation/request-for-service
/live-interpretation-request/live-interpretation-request](http://webgui.phila.k12.pa.us/offices/t/translation/request-for-service/live-interpretation-request/live-interpretation-request)

School District of Philadelphia
webmaster@phila.k12.pa.us
<http://webgui.phila.k12.pa.us>

EXHIBIT 13

School District of Philadelphia
Multilingual Family Support Office
Interpretation Referral Log AY 2015-2016

| | |
|----------------------------------|---|
| Date of request: | Feb. 12, 2016 |
| Language (s): | [REDACTED] |
| School/Office: | Shawswood |
| Contact name: | Esther Kay |
| Contact number/e-mail: | e.kay@sdph |
| Meeting purpose: | IEP ____ Psych. evaluation ____ Re-eval. & IEP ____ Parent meeting <input checked="" type="checkbox"/> SRC meeting ____ SAC meeting ____ RtII meeting ____ P/T Conf. ____ Community Meeting ____ Disciplinary Hearing ____ Expulsion Hearing ____ Back to School ____ Welcome Wagon ____ Medical Home Visit ____ Inter-Agency Meeting ____ H.S. Application ____ JJ Peters ____ |
| Equipment needed: | Yes <input type="radio"/> No <input checked="" type="radio"/> |
| Meeting location: | Shawswood |
| Date and time of meeting: | Thursday, Feb. 18 - 2:00 p.m. |
| Interpreter(s) assigned: | N/A |
| Request fulfilled by: | Andy M |
| Principal notified: | Yes ____ No ____ How: ____ |
| Notes: | Shortage of staff |

Request number: 223
254

Zimbra**Isoderman@philasd.org****██████████ Interpreter Request**

From : Kang, Esther <ekang@philasd.org> Fri, Feb 12, 2016 11:32 AM
Subject : ██████████ Interpreter Request
To : Lutzgarde Soderman
<Isoderman@philasd.org>
Cc : Kosterlitz, Sherri
<skosterlitz@philasd.org>, Gregory
Maddox <gmaddox@philasd.org>

Hi Ludy,

How are you? I hope all is well!

I'm writing to request an in-person ██████████ Interpreter for Tuesday, February 18th at 2:00 PM. This is for a high priority case, and it is imperative that we have one in person. Your help with this matter would be greatly appreciated!

Thanks so much in advance!
Esther Kang
ESOL Teacher
George Sharswood School
215-952-6212
ekang@philasd.org

Zimbra**lsoderman@philasd.org****Fwd: [REDACTED] Interpreter Request**

From : Kang, Esther <ekang@philasd.org> Fri, Feb 12, 2016 11:42 AM
Subject : Fwd: [REDACTED] Interpreter Request
To : Lutzgarde Soderman
<lsoderman@philasd.org>

Sorry Ludy,
I meant to say THURSDAY, February 18th at 2 PM, not
Tuesday!
Esther Kang
ESOL Teacher
George Sharswood School
215-952-6212
ekang@philasd.org

----- Forwarded Message -----

From: Kang, Esther <ekang@philasd.org>
To: Lutzgarde Soderman <lsoderman@philasd.org>
Cc: Kosterlitz, Sherri <skosterlitz@philasd.org>,
Gregory Maddox <gmaddox@philasd.org>
Sent: Fri, 12 Feb 2016 11:32:48 -0500 (EST)
Subject: [REDACTED] Interpreter Request

Hi Ludy,

How are you? I hope all is well!

I'm writing to request an in-person [REDACTED] Interpreter
for Tuesday, February 18th at 2:00 PM. This is for a
high priority case, and it is imperative that we have
one in person. Your help with this matter would be
greatly appreciated!

Thanks so much in advance!
Esther Kang

EXHIBIT 14

~~YOUANA BUSTAMANTE~~

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

3 T.R., et al,

4 Plaintiffs,

5 vs.

6 SCHOOL DISTRICT OF
7 PHILADELPHIA,

8 Defendants.

9 THURSDAY, FEBRUARY 22, 2018

10 - - -
11 Computer-aided transcript of
12 deposition testimony of YOUANA BUSTAMANTE, taken
13 on the above date, in the above-entitled matter,
14 before DONNA ROSNER, a Certified Court Reporter,
15 and Notary Public, held at the offices of
16 Dilworth Paxson, LLP, 1500 Market Street,
17 Suite 3500E, Philadelphia, Pennsylvania,
18 commencing at 9:50 a.m.
19
20
21
22
23
24

25 GOLKOW LITIGATION SERVICES

 877.370.3377 ph| 917.591.5672 fax

~~Iouana Bustamante~~

1 A P P E A R A N C E S:

2

3 EDUCATION LAW CENTER

4 BY: MAURA MCINERNEY, ESQ.

5 1315 Walnut Street, Suite 400

6 Philadelphia, Pennsylvania 19107

7 Tel: (215) 346-6906

8 E-Mail: Mmcinerney@elc-pa.org

9 Attorneys for the Plaintiffs.

10

11 DILWORTH PAXSON, LLP

12 BY: MARJORIE M. OBOD, ESQ.

13 BY: DANIELLE M. GOEBEL, ESQ.

14 1500 Market Street, Suite 3500E

15 Philadelphia, Pennsylvania 19102

16 Tel: (215) 575-7000

17 E-Mail: Mobod@dilworthlaw.com

18 Attorneys for the Defendants.

19

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~~Youana Bustamante~~

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I N D E X

| WITNESS | PAGE |
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| Bustamante-4 | Document Written in Spanish | 82 |

(EXHIBITS ANNEXED HERETO)

1 probably is in Spanish, but whatever it comes in
2 is in English, so the parents sign, but they
3 don't know what they say. Sometimes the parents
4 say, I'm still waiting for my evaluation. We
5 say, no, you're not going to wait for evaluation,
6 because here it says that you was in the meeting
7 and you said that you was okay that they're not
8 going to make evaluation for another year.
9 Because now they try to see the child for speech
10 or something like that, so kind of like tricky.
11 It's a lot of issues.

12 Q. In your experience, do parents
13 generally receive translated copies of their
14 evaluations?

15 A. The evaluation, no.

16 Q. Do parents receive translated copies
17 of their IEPs, in general?

18 A. No. I mean, I cannot give you a
19 number because I'm not sure. But they come to
20 HUNE and tell me, look, this is my IEP. In
21 Spanish, no.

22 Q. Do you think the parents know that
23 they can ask for a translated IEP or a translated
24 evaluation?

25 A. No. Only my parents who call.

1 Because I teach them every time they go to
2 school, it has to be translated.

3 Q. When you have interacted with
4 limited English proficient parents, when they
5 first come to you, do they know about their right
6 to request interpretation services at meetings?

7 A. No.

8 One particular time -- I'm going to
9 say probably like five years ago, one of the
10 parents -- I was in one school doing a training,
11 and one mom said, well, in my school nobody speak
12 Spanish. And I told them, nobody speak Spanish?
13 You can ask for somebody to do the interpretation
14 or probably you want to communicate, tell the
15 interpretation on the phone or something.
16 Somebody has to talk to you. And they said, no.
17 They said, they don't have it.

18 So she went back, I think, that
19 week. Because I was doing the training for six
20 weeks. When I went back to the school, mom said,
21 I did it. I said, what did you do? I told them
22 that they have to provide me interpretation
23 because they have to provide interpretation. And
24 what happened? Well, somebody in the line -- I
25 don't understand too much, they was speaking

1 Spanish, it was a guy, but at least I can say,
2 look, my son was sick. But it was like for so
3 many things, he was suspensions, probably with
4 his IEP, but there was no communication. So in
5 that time, he never know that HUNE exists. So I
6 don't know how she was helping herself.

7 Q. So prior to her contacting HUNE and
8 HUNE getting involved with advocates, do you
9 think that parent was able to meaningfully
10 participate in the special education process?

11 A. I'm going to say yes. Not a hundred
12 percent.

13 But the parents, sometimes when I go
14 and I talk about the service or what we do --
15 actually, not what we do, what you can do, if the
16 parent go to request an IEP, you can do that.
17 The parent say, I can do that? I was, like,
18 sure. I can be in the meeting? Of course you
19 can be in the meeting. It can be your husband,
20 your grandmom. I don't know if psychologist can
21 go to meeting, but therapist or somebody. And
22 they say, I never know that. So you went to IEP
23 meeting? And they said no, I went to a meeting
24 with my teacher, they give me this. So yeah.

25 Q. And you also mentioned with regard

~~Jouana Bustamante~~

1 Q. When parents go to IEP meetings in
2 general, do you know whether they have translated
3 documents that they receive prior to an IEP
4 meeting?

5 A. I'm not sure. Because when the
6 parents go, if they go alone, we always tell the
7 parent, please bring back a copy for the records.
8 Because if something happens and you need me to
9 go to school, I have to be able to take the IEP
10 again and review. So I'm not sure. Because
11 there's not feedback that they're having in
12 Spanish. It's not back in Spanish.

13 Q. The documents don't come back in
14 their native language --

15 A. No.

16 Q. -- that they would understand?

17 A. Yes.

18 Q. You mentioned the notice of
19 recommended educational placement.

20 Is that NOREP fully translated or just the
21 headings?

22 A. The headings only. Sometimes it is
23 headings; sometimes it's not. Sometimes it's all
24 in English, and they give it to the parents.

25 In one particular case, mom was so

1 Because we're doing the translation, and you can
2 say, give me a moment, let me explain to mom, and
3 they can do the translation.

4 Q. Are you familiar with the fact that
5 the district sometimes uses Language Line in IEP
6 meetings?

7 A. I heard, but I'm not -- I never been
8 in one, but I heard that, yes, they do.

9 Q. And to your knowledge, would that
10 interpreter have a copy of the IEP?

11 A. I'm not sure. I don't think so. I
12 never -- I'm not sure. I don't know if they send
13 the documents or something.

14 Q. Do you think it would help if
15 limited English-proficient parents received
16 translated special education documents like
17 evaluations prior to going to the meeting?

18 A. Yeah, of course.

19 Q. And how would that help them?

20 A. Myself, me, I never received -- my
21 English is not perfect, perfect. I can be able
22 to understand. When I go to IEP meetings, I know
23 I got my book. So I go back, because I want to
24 make sure we have everything. But I always
25 receive the ER in English. So sometimes --

1 You say, he's doing Spanish and English. You
2 have to empower the families to do it. But some
3 families don't do it, because they don't know how
4 to ask. And in that point, yeah, it help a lot.

5 Q. And does the language barrier make
6 it more difficult for them to participate?

7 A. Yeah. I think. Yeah.

8 Q. Do you know if BCAs have special
9 training in special education?

10 A. I went for the training myself. And
11 no, I was so scared. I was almost crying that
12 day. And I wanted to get out of here, but I
13 paid, I have to stay here. Because most of the
14 people sitting in there, I know a couple of
15 faces, they are sitting in the IEPs, or actually
16 a different agency when they come for
17 translation. Sometimes we have different
18 translation to the school district, and I see
19 those coming, and I'm like. (Gestures.) So the
20 training is nothing about special ed. The
21 training is about criminals, or divorce, if
22 people sell drugs on the street, different,
23 different. And it's so different. There's
24 nothing about community, nothing about special
25 ed.

1 And I take the training. And, I'm
2 like okay, this training is not for me. I'm not
3 sure they take the training about the criminals
4 or whether it's evaluation or like how IEP goes.
5 I don't think so.

6 Q. And do you think it should be the
7 district's responsibility to explain this special
8 education process to limited English-proficient
9 parents?

10 A. Yeah. They do. I think the school
11 district -- I always said the school district is
12 the second house for the child. So they have to
13 provide the servicing to be able to understand
14 about the families, yeah.

15 Q. Are most of the IEPs that you see in
16 English?

17 A. Yeah.

18 Q. And are most of the NOREPs that you
19 see either in English or just have the headings
20 translated?

21 A. Some are all English, and some they
22 only have the heading, English, Spanish.

23 Q. You mentioned at some meetings -- at
24 some IEP meetings that the district will provide
25 an interpreter that someone provided from the

1 school building.

2 A. Yeah. My area is for the school
3 building. They call somebody from the school to
4 cover.

5 Q. Do you know if those people have any
6 special training in special education?

7 A. No.

8 Like when I put the sign for the
9 special, he was a teacher, he was like this.
10 (Witness indicates.) And when we correct him, he
11 was kind of like okay, what's going on? He
12 didn't even know what was going on in the
13 meeting. It's like they just call him, you going
14 to sit here, and you're going to make the
15 interpretation. But the way that the meeting
16 was, he was lost. He was repeating, okay. Like,
17 he don't know what he was doing.

18 Q. Do you know if they used staff who
19 have no training in doing interpretation?

20 A. Pretty much, yeah.

21 Q. And do you think that's problematic?

22 A. Yeah.

23 Q. And why is that?

24 A. Because it's not proper. I mean, we
25 doing the interpretation, and you miss something,

1 the parent probably miss something and probably
2 said, yes, and probably it's not the service that
3 they said. So, yeah, it can misunderstand.

4 Q. And do you have any experience with
5 limited English-proficient students that may need
6 interpretation services?

7 A. Not exactly. Because I not went to
8 IEP with -- only with **J.R.**. So I'm not having --
9 I'm not sure she went to IEP with the child in
10 there that speak only Spanish. I'm not sure.

11 Q. To your knowledge, is **J.R.** an
12 English language learner?

13 A. No. I mean, he speaks with me a
14 little bit English, but I'm not sure that he
15 is -- I mean, he received ESL before. I'm not
16 sure.

17 Q. Have you yourself ever been
18 requested to provide interpretation services at
19 an IEP meeting?

20 A. The school district asked me, yes,
21 one time, and we said no. And they asked my
22 advocate, and my advocate said, no, we're not
23 doing interpretation.

24 Q. Why did you refuse to provide
25 interpretation services?

1 evaluation said, why the child was denied. And
2 mom said, no, it's not, this is not my child. So
3 that's why we went for independent evaluation.

4 Q. Do you know anything about the
5 quality of interpretation services provided by
6 BCAs at meetings?

7 A. I don't like to talk about them
8 because I know they're professionals, but I don't
9 think it's quality. I think for me, it should be
10 something like -- what they do to take the
11 training for the certificate, it should be
12 something about more special ed and more
13 community to be able to understand why it's IEP.
14 They need to be included in something different
15 so they can be able to understand. Sometimes
16 they go to the meeting, okay, what happened here?
17 And I don't think they are knowledge to the
18 special ed.

19 Q. And to your knowledge, do BCAs fully
20 review all of the services that are being offered
21 by the school district?

22 Do they walk through everything being
23 offered in the IEP and everything?

24 A. I'm not sure.

25 But me personal with my daughter,

1 with the little one -- I mean, not exactly the
2 district. But this person went to provide me the
3 interpretation and help me. And I said, I don't
4 need it. That's okay, you can stay. And I let
5 her do the -- and she was not doing it. She kind
6 of skipped what the speech therapy was telling
7 me. And I do understand what the speech therapy
8 telling me. But she was kind of telling me,
9 okay, she's not doing it right. I tell the lady,
10 it's okay, you can be there. But I think I can
11 explain myself, and I explained myself to the
12 speech therapy.

13 Q. When a limited English-proficient
14 parent requests translated documents, do you know
15 if they're provided in a timely manner, if
16 they're provided quickly by the district?

17 A. I don't think it's quickly. I don't
18 think when this happened. Because sometimes we
19 ask a parent to come back with the documents, but
20 they never come back with the documents.

21 (Short recess held at this time.)

22 BY MS. MCINERNEY:

23 Q. In your experience, do limited
24 English-proficient parents who attend IEP
25 meetings understand all of their options in the

Youana Bustamante

1 C E R T I F I C A T E

2 I, DONNA ROSNER, a Certified Court
3 Reporter, License XI001976, and Notary Public of
4 the Commonwealth of Pennsylvania, do hereby
5 certify that prior to the commencement of the
6 examination, Youana Bustamante was duly sworn by
7 me to testify the truth, the whole truth and
8 nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing
10 is a true and accurate transcript of the
11 testimony as taken stenographically by and before
12 me at the time, place and on the date
13 hereinbefore set forth.

14 I DO FURTHER CERTIFY that I am neither a
15 relative nor employee nor attorney nor counsel of
16 any of the parties to this action, and that I am
17 neither a relative nor employee of such attorney
18 or counsel, and that I am not financially
19 interested in the action.

20

21

22

23 Notary Public of the Commonwealth of Pennsylvania

24 My Commission expires October 6, 2020

25 Dated: March 14, 2018

EXHIBIT 15

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.

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

Manquing Lin

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15 ALSO PRESENT:

16 ELIZABETH DICH, THE INTERPRETER
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1 understand it, so that the record is clear that
2 you're answering the questions that I'm asking with
3 understanding.

4 A. Okay.

5 Q. I don't want to be asking you about
6 conversations you had with your lawyer. So if I
7 ask you a question about when you met with your
8 lawyer, you can answer those questions, but I don't
9 want you to give me any substance of any
10 discussions with your lawyers in response to any of
11 these questions.

12 A. Okay.

13 Q. If you need to take a break, just ask. I
14 will ask that you answer a question that I've
15 already asked before you take a break.

16 A. Okay.

17 Q. Are you taking any medication that would
18 prevent you from being able to accurately testify
19 today?

20 A. No.

21 Q. We are using an interpreter, but do you
22 understand English?

23 A. No, I do not understand.

24 Q. Did you bring any notes with you today?

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1 me complete the sentence and I just print it on
2 this form.

3 **Q. But this is your printing, not your**
4 **daughter's, correct?**

5 A. Correct. I wrote it on here.

6 **Q. You said you have been in the United**
7 **States for ten years; is that correct?**

8 A. No, I have been to United States
9 twenty-one years.

10 **Q. Is your English better today than it was**
11 **when you came here twenty-one years ago?**

12 A. When I first came to America, I
13 completely cannot understand any saying in English.
14 However, over the years been in this country, now I
15 can have some basic and limited daily conversation
16 like greetings and say happy birthday, those I
17 could understand. But to be able to comprehend the
18 document was provided to me through the IEP, that
19 is beyond my scope of understanding.

20 **Q. You do have meetings regarding R.H. at**
21 **the school; don't you?**

22 A. Yes, correct. We do have meetings at the
23 school.

24 **Q. Aren't there occasions where you've**

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1 **anybody else the fact that you signed a document**
2 **that you didn't understand what it said at that**
3 **time?**

4 A. I did not tell my attorney.

5 **Q. Pardon me?**

6 A. I didn't tell my attorney.

7 **Q. Are you aware that the school district**
8 **has a language line available for interpretation**
9 **services?**

10 A. At that meeting, I did not know that
11 information. And they didn't inform me that I can
12 have the language lines translation.

13 **Q. Do you also have meetings with physical**
14 **therapists ten minutes a week for R.H. education**
15 **at the district?**

16 A. No, I never get to meet the physical
17 therapist once a week at the school.

18 **Q. Have you met the physical therapist in**
19 **this school year 2017-2018?**

20 A. Prior to June of 2017, the physical
21 therapist has conversation with me on the phone
22 once a month, and each time she does provide this
23 translator.

24 **Q. And the translator that she provided, was**

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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. [REDACTED]**

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. [REDACTED] 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**

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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?**

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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?**

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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?

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1 (Whereupon, the court reporter read
2 the requested portion of the testimony.)

3 ---

4 THE WITNESS: What I meant earlier
5 in my answer was not what was translated.
6 What I meant was at the meeting there was
7 only three person; I, myself, the SEL and
8 the BCA at the meeting. And some of the
9 terminology, the vocabulary on the report
10 regarding to my son's report, I couldn't
11 understand. So the BCA representative
12 look up online herself and trying to
13 explain to me the meaning. And she told
14 me herself many of the terminology was
15 being expressed in the report, she
16 herself could not fully understand
17 neither.

18 The person is not she, it's a he.

19 BY MS. OBOD:

20 **Q. Was that Mr. Tang?**

21 A. Correct.

22 **Q. Was Christine Kenney also present at that**
23 **meeting?**

24 A. Correct.

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1 **Q. Was Mr. Tang able to translate Christine**
2 **Kenney's explantation of the terminology to you?**

3 A. I do remember that meeting when Christine
4 Kenney expressed in those many terminology on the
5 report, Mr. Tang couldn't understand those meaning
6 himself, so he asked Christine to speak it in a
7 daily day language, the meaning of those
8 terminology. And he, in turn, translate the
9 meaning to me.

10 **Q. Is what Mr. Tang told you is that the**
11 **terminology doesn't translate into Chinese and**
12 **therefore he had to ask Ms. Kenney to give**
13 **day-to-day language to interpret the meaning of the**
14 **words for you?**

15 A. My answer again is because Mr. Tang could
16 not fully comprehend the definitions of the
17 terminology, he asked Christine to say the meaning
18 of the terminology, and then he translate the
19 meaning of the terminology to me.

20 **Q. At that meeting you were explained what**
21 **the meaning of the terminology was through Mr.**
22 **Tang?**

23 A. Correct.

24 **Q. Mr. Tang said he couldn't translate the**

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1 words from English to Chinese, and that's why you
2 had to rely on the interpretation of the meaning of
3 the words; is that correct?

4 A. I don't understand this sentence you just
5 said. Can you say it again?

6 Q. Sure. Did Mr. Tang tell you that he was
7 unable to interpret or translate the terminology
8 from English to Chinese?

9 A. All I heard from Mr. Tang was that he
10 could not -- he, himself, doesn't fully understand
11 the meaning of this terminology.

12 Q. Therefore, he relied on words that
13 Ms. Kenney provided, Christine Kenney provided, to
14 explain the meaning of the terminology; is that
15 correct?

16 A. Correct. Also later on, there's a
17 special education teacher was also present at the
18 meeting.

19 Q. Did the special education person who was
20 later present at the meeting also help interpret
21 the meaning of some of the terminology in the
22 document relating to R.H. [REDACTED]

23 A. Correct. The special education teacher
24 also explained the meaning, and Mr. Tang was able

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1 to translate it into Chinese for me.

2 **Q. Were you able to leave the meeting**
3 **understanding the terminology after Mr. Tang**
4 **interpreted the meanings that were explained by the**
5 **special education teacher and Christine Kenney?**

6 A. Not completely understood the report,
7 because the report itself have many terminologies
8 and I could vaguely understood the summary of it.

9 **Q. Did you understand what the report meant**
10 **with respect to services that the school district**
11 **thought were necessary to be provided for R.H. [REDACTED]**

12 A. At the IEP meeting, there was not mention
13 a lot of service was provided. So at the time of
14 the meeting, they told me about draft of the IEP
15 report. In the draft, I did not see any prospect
16 of the service would be provided to my son in the
17 draft.

18 **Q. This was not the IEP meeting, this was a**
19 **meeting you had to go through the draft of the IEP;**
20 **is that correct?**

21 A. Correct. The meeting was about the
22 school, the special education evaluation and the
23 IEP draft.

24 **Q. What is your understanding of the purpose**

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1 **Q. What are the three documents you said**
2 **that you need to have translated that have not been**
3 **translated from the school?**

4 A. The first one is the FBA. The
5 appropriate behavior standard program -- PBSP.
6 Something about the P stand for behavior standard
7 program. Positive behavior standard program --
8 support not standard. PBSP.

9 **Q. There too you were able to correct the**
10 **interpreter from giving me the incorrect words to**
11 **the correct words, right?**

12 A. Correct, because I know the term based on
13 the teacher has always mentioned this term.

14 **Q. That was two; FBA, the PBSP. And you**
15 **said that there was a third document?**

16 A. It's the report of the progress monitor.

17 **Q. Do those all relate to the school year?**

18 A. Yes.

19 **Q. Do you know if any of those documents are**
20 **drafts?**

21 A. I'm asking for the final report, not the
22 draft.

23 **Q. You are asking for the final report to be**
24 **translated into Chinese?**

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1 A. I originally asked for both draft and the
2 final report be translated into Chinese, but I
3 never got those documents translated.

4 **Q. Who did you make the request to?**

5 A. All these three documents were requested
6 by my attorney to the school district.

7 **Q. Do you know when?**

8 A. In my last IEP meeting in December, on
9 December 5th, 2017.

10 **Q. When you stated that the school district**
11 **rejected your request, are these the three**
12 **documents you're referring to that were rejected?**

13 A. They did refuse to provide the draft in
14 translation, but they did agree to provide the
15 final report in translation.

16 **Q. The documents you're saying you haven't**
17 **received in simple Chinese yet, the school district**
18 **has told you that they will provide, you just**
19 **haven't received them yet; is that correct?**

20 A. Correct. The school haven't sent it to
21 me yet.

22 **Q. You did have an IEP in place for R.H.**
23 **that was intended to cover through December of 2017**
24 **from last year; is that correct?**

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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 Jason 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

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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.**
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

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1 not a complete evaluation of **R.H.** conditions.

2 **Q. Didn't the district agree to an**
3 **independent evaluation on August 18, 2016?**

4 **A. Yes.**

5 **Q. That was prior to **R.H.** starting**
6 **kindergarten, correct?**

7 **A. Correct. It was done in August prior to**
8 **him enter kindergarten.**

9 **Q. Do you know Quiana Carthen,**
10 **C-A-R-T-H-E-N?**

11 **A. I'm not familiar with the name.**

12 **Q. Do you recall having a meeting prior to**
13 ****R.H.** entering kindergarten where you were provided**
14 **with different forms to fill in to transition to**
15 **kindergarten from early intervention services?**

16 **A. Yes, I remember that meeting.**

17 **Q. Do you remember that there was a woman**
18 **who had documents in simple Chinese that she was**
19 **offering to anyone who needed simple Chinese and**
20 **you said I don't want the simple Chinese, I want**
21 **the English version?**

22 **A. I don't remember.**

23 **Q. Do you remember at the meeting, where the**
24 **parents of children who were transitioning to**

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1 **kindergarten from early intervention were present,**
2 **that there was a woman who had a box of documents**
3 **that had all the forms in simple Chinese and**
4 **offered those, but you said you didn't want the**
5 **simple Chinese version, you wanted the English**
6 **version of the forms?**

7 A. I don't remember.

8 **Q. Were there a lot of parents present at**
9 **the meeting that was the transition from early**
10 **intervention to kindergarten, that you recall?**

11 A. Yes.

12 **Q. Do you recall that you took English forms**
13 **instead of Chinese forms at that meeting?**

14 A. I don't remember the woman you mentioned
15 because at that meeting I had interpreter provided
16 and they gave me an English version of the forms
17 and that interpreter translated the form to me. If
18 there was Chinese form, there wasn't a need for the
19 English interpreter for me.

20 **Q. So the forms were interpreted for you**
21 **from an interpreter who explained to you what the**
22 **forms said?**

23 A. Yes. The interpreter just explained the
24 topic and the subject line of the form for me.

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1 Q. Were you able to complete the form based
2 on the interpreter explaining to you what the form
3 said?

4 A. No, I did not finish the form because I
5 didn't know how to fill it out.

6 Q. Did your child receive special education
7 services when he started in kindergarten?

8 A. When he was in the kindergarten, he
9 received the education service.

10 Q. Special education services?

11 A. Yes.

12 Q. Do you recall a permission to evaluate
13 form being provided to you from the district?

14 A. Is it evaluation agreement?

15 Q. A permission to evaluate.

16 A. Yes.

17 Q. Do you recall that Quiana Carthen
18 provided you with a permission to evaluate in
19 Chinese, but you told her you preferred to have the
20 document in English and you rejected the Chinese
21 form?

22 A. I don't remember.

23 Q. You don't remember a woman carrying
24 around a box that had documents in it, that had

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1 **forms, eight different forms in the Chinese**
2 **language that she offered to you and that you told**
3 **her you didn't want it, and you pulled out the**
4 **English one and told her you wanted the English**
5 **instead; you don't remember that?**

6 A. All I remember was at the meeting the
7 organizer has request parents fill out the forms
8 and submit it by the end of the meeting and they're
9 not allowed to bring it home. However, I could not
10 understood the form, so I need time to go home and
11 translate it. But within the organizer, there was
12 one person who refused to let me take the forms
13 with me. She or he said I must fill it out at that
14 meeting. Therefore, Anna have spoke up to the
15 person, said that parent has the right to take the
16 form home to review and fill out and then to
17 understand before they submit the form.

18 **Q. If I told you that Quiana Carthen recalls**
19 **specifically meeting you and you rejecting the**
20 **Chinese forms, would you tell me that she's**
21 **inaccurate?**

22 A. I don't know. I don't remember.

23 **Q. In the complaint, you state that there**
24 **was information that was omitted that was needed to**

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1 develop appropriate programming for **R.H.** because
2 you didn't have the document translated to
3 Mandarin. Do you recall, sitting here today, what
4 information was omitted that was necessary to
5 develop appropriate programming for **R.H.** ?

6 A. I don't know which meeting you are
7 referring.

8 Q. Do you recall filling in a form for **R.H.**
9 and having one of the teachers at the district help
10 you fill the form in because you were nervous that
11 the school district would push **R.H.** toward an
12 autistic support class?

13 A. I did not ask the school district teacher
14 to help me fill out the form. I did ask a
15 preschool teacher help me fill out a form.

16 Q. Did you later say that the form that was
17 filled out was not accurate?

18 -----
19 (Whereupon, Lin-12 was marked for
20 identification as of this date and is
21 attached hereto.)

22 -----
23 THE WITNESS: I had request the
24 preschool teacher to help me fill out a

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1 form for **R.H.** for the transition to
2 kindergarten school. And I submit the
3 form to the kindergarten at the school
4 district. However, afterward I had
5 mentioned it to Anna and have her look at
6 the form. And after she look at the
7 form, she said it was filled out not
8 accurately.

9 BY MS. OBOD:

10 **Q. Was the preschool teacher's name**
11 **Miss Mary?**

12 A. Yes.

13 **Q. Did you say that you were so nervous that**
14 **the school district will push **R.H.** toward an**
15 **autistic support class that you asked **R.H.****
16 **teacher to help you fill the form in, because you**
17 **thought those answers would help **R.H.**?**

18 A. Because I myself does not fully
19 comprehend English, I'm afraid that when I filled
20 out the form may not been accurately express my
21 son's conditions and also because the teacher was
22 with my child at the school most of the days and
23 she observed what **R.H.** behavior and all the
24 activities that he participate at school, she

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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.

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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

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1 **Q.** You had all of this available to you when
2 you made the request for an IEP meeting on December
3 15th of 2016, correct?

4 A. Approximately around that time, I
5 suppose.

6 **Q.** Was an IEP provided to you after you made
7 the request in March of 2017?

8 A. Yes.

9 **Q.** Was that IEP only translated in the
10 headings?

11 A. Yes.

12 **Q.** Based on the agreement you had with the
13 school district, did you have an opportunity to go
14 and meet with an interpreter and the SEL so that
15 the portions of the draft IEP that were not
16 translated could be explained to you consistent
17 with the mediation agreement?

18 A. At the time I requested for the draft to
19 be translated into Chinese, but however the school
20 district disagreed. So they said they instead have
21 send me, provided me with an interpreter and a
22 teacher to translate for me. However, the content
23 of the report was having many details, so I
24 couldn't fully understand the report.

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1 **Q.** Did you take notes at the meetings you
2 had with the interpreter and the -- was Christine
3 Kenney the school representative from the --
4 special education liaison that was present with Mr.
5 Tang, the interpreter, in the meetings that you had
6 to interpret the draft IEP?

7 A. I did take some notes, but it was too
8 much information. I couldn't fully comprehend
9 everything.

10 **Q.** Did you have an IEP meeting after that
11 draft IEP was provided to you and after you had an
12 opportunity to meet with the interpreter and the
13 SEL to go through the draft IEP?

14 A. At the time, yes, the interpreter Mr.
15 Tang had go through the draft with me. However,
16 there was so many vocabulary that he also need time
17 to look up online. And he also explained it to me
18 that there were too many terminology in the report
19 that he himself couldn't fully comprehend;
20 therefore, that was what was being stated for those
21 meetings.

22 **Q.** If I don't ask a question -- I have to
23 ask a question for you to answer.

24 Is that the discussion we had

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1 earlier, that Mr. Tang was the interpreter and said
2 that there were words that couldn't be translated
3 into Chinese, and so Ms. Kenney then would provide
4 an explanation of what the term meant and that
5 would be interpreted for you so that you would
6 understand the meaning of words that he was not
7 able to translate into Chinese?

8 A. Yes.

9 -----

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

13 -----

14 BY MS. OBOD:

15 Q. I'm going to hand you a document marked
16 19. Do you recall asking for the meeting on the
17 IEP to be postponed to a later date so that you
18 would have additional time to go through the draft
19 IEP, Ms. Lin?

20 A. Yes, I did request it.

21 Q. Was the meeting postponed at your
22 request?

23 A. Yes, he did.

24 Q. If you turn to the second page of the

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1 document, does that refer to Christine Mannino
2 enclosing the reevaluation report on February 15 to
3 provide to you?

4 A. Are you referring to the bottom part of
5 this form?

6 Q. On the document, it's 895 is the last
7 three digits. So the first line says attached,
8 please find the reevaluation report that was
9 created for R.H. .

10 A. Yes. But then later on, they said that I
11 will put this document in translation, but it was
12 not translated.

13 Q. The reevaluation report was not
14 translated?

15 A. At the time, no.

16 Q. But it was later provided to you?

17 A. So it was not translated until after the
18 meeting.

19 Q. The mediation agreement didn't provide
20 that the reevaluation report would be translated;
21 did it?

22 A. Are you referring to the Exhibit 16 and
23 17? It was translated in Chinese. I am not sure
24 what your question was.

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1 **Q. Did you have an IEP meeting in March of**
2 **2017?**

3 A. Yes.

4 **Q. Were you able to provide input from the**
5 **experiences that you witnessed of R.H. when you**
6 **attended school as a volunteer and from experiences**
7 **that you saw at home at that IEP meeting?**

8 A. I did express some of my concern to the
9 IEP meeting. However, because the document at the
10 IEP meeting was not translated into Chinese, so I
11 couldn't fully understand what the report said was
12 exactly what was being said in the meeting or I
13 could not have any opinion on the report.

14 **Q. Forget about the report.**

15 A. Okay.

16 **Q. I'm asking you at the meeting, were the**
17 **words that were said at the meeting, were they**
18 **interpreted for you?**

19 A. Yes.

20 **Q. Was it explained to you at the meeting**
21 **what the issues were with respect to R.H. special**
22 **needs and what needed to be done to address the**
23 **special needs issues that R.H. had at that meeting?**

24 A. The school have mention of their plan,

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1 but because I could not understood the document, so
2 I could not give any input on my thinking, my
3 thoughts.

4 Q. I'm asking you did the school tell you
5 what the plan was for R.H. Without explaining the
6 document, did the school say to you this is the
7 plan for R.H., this is what's going to be done, we
8 are going to provide occupational therapy for
9 thirty minutes? And did they go through for you
10 the different protocols that they were putting in
11 place for R.H. at the meeting?

12 A. So in March of 2017 meeting, they were
13 only discuss the report of the evaluation. They
14 did not provide any implementation of his special
15 needs.

16 Q. How long was the meeting in March of
17 2017?

18 A. Approximately three hours.

19 Q. In those three hours, did the district
20 representatives discuss what the plan was for R.H.
21 in the IEP that they were putting in place for the
22 next school year?

23 A. No, they did not mention the IEP service.
24 They specifically told me that today we will only

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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.

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1 **Q. Who was present with you at the March**
2 **meeting?**

3 A. Dr. Brand was present at the meeting and
4 my attorney as well.

5 **Q. Did your attorney and Dr. Brand, were**
6 **they able to make suggestions at the meeting**
7 **regarding R.H. behavior so that the school could**
8 **include or understand what you were advising them**
9 **would be helpful to R.H. at school?**

10 A. Dr. Brand was the one who evaluated my
11 son's condition, so therefore he expressed his need
12 to the IEP meeting team.

13 **Q. That was also at the March IEP meeting?**

14 A. That was at the March IEP meeting.

15 **Q. Were the suggestions that Dr. Brand made**
16 **taken into consideration by the IEP team?**

17 A. Dr. Brand suggested many recommendation
18 and IEP team has accept some of his suggestions.

19 **Q. Did they reject any of his suggestions?**

20 A. From what I know is that Dr. Brand's
21 report have recommend many things, but not all of
22 those items recommended was on the IEP service.

23 **Q. But some of the things that Dr. Brand**
24 **recommended were on the IEP service; is that**

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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.

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1 Q. Did the parents say that they were able
2 to meaningfully participate in their child's
3 education, even though they were not able to read a
4 document?

5 A. I don't know.

6 Q. You don't know if they meaningfully
7 participated in their child's education; do you?

8 A. I do not understand what other parents,
9 what their thoughts are on the IEP meeting.

10 MS. OBOD: I don't have anything
11 further.

12 BY MS. MCINERNEY:

13 Q. Mandy, I have a few questions for you.

14 A. Okay.

15 Q. Do you speak Mandarin at home?

16 A. Yes.

17 Q. Is your daughter Jailin identified as an
18 English learner by the School District of
19 Philadelphia?

20 A. Yes, when she was little.

21 Q. Have you ever received a NOREP, a notice
22 of recommended educational placement, that was only
23 in English?

24 A. Are you referring to R.H. NOREP?

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1 **at the transition meeting?**

2 A. I do not remember what was being said in
3 the letter, but I remember my friend Anna requested
4 for the interpretation service.

5 **Q. You mentioned that the interpretation**
6 **services provided at some of your meetings were**
7 **deficient, and you said that you knew that because**
8 **of Anna; can you explain that?**

9 A. What I meant was, for example, at some of
10 the meeting when my friend Anna was accompanying me
11 to those meetings, the interpreter could not
12 translate the term FAPE. Marie, the teacher, had
13 explained the meaning of FAPE to the interpreter
14 again. However, she still could not relate the
15 meaning, and therefore my friend Anna has to
16 intervene and explain the meaning to me. Also
17 another occasion when I want my son to go to Kinney
18 Center because at Kinney Center there is an ABA
19 program, but the interpreter could not explain the
20 meaning of ABA.

21 **Q. Was the interpreter able to explain what**
22 **you wanted to the people who were at the IEP**
23 **meeting or was that a problem?**

24 A. Sometimes the interpreter forgot -- left

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1 out some of the content that I express and Anna has
2 to add on to the conversation saying Mandy has
3 mentioned some of the behavior concerns, however
4 the interpreter had missed those information.

5 **Q. Have you consistently requested documents**
6 **that are draft IEP's, draft documents, that you**
7 **could have them before your IEP meetings in order**
8 **to participate in the meeting, in the special**
9 **education meeting?**

10 A. Yes, I did.

11 **Q. How would having the translated document**
12 **assist you in participating in an IEP meeting if**
13 **you had the translated document before you went**
14 **into the meeting?**

15 A. The benefit of having those document
16 beforehand is that it would help me to have enough
17 time to understand the document's contents and also
18 be able to fully participate in the IEP meeting
19 without any delay. Also many time my friend Anna
20 is a busy woman, she cannot always be someone I
21 lean on to provide those service to me.

22 **Q. With regard to the ESY services that were**
23 **offered at one of the meetings that was discussed**
24 **today, did you after that meeting receive the**

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1 communication skill with other peers was decline to
2 only seven percent.

3 Q. You also mention in March of 2017, we
4 talked about that particular IEP meeting, did
5 Dr. Brand attend that meeting?

6 A. Yes, he did.

7 Q. Did that meeting go over all of the
8 recommendations that were provided by Dr. Brand and
9 that's why you recall it as being about the IEE?

10 A. Yes.

11 Q. You mentioned that there was a functional
12 behavioral assessment, positive behavior support
13 plan that was developed by the district, but it
14 still has not been translated into Chinese; is that
15 correct?

16 A. Correct.

17 Q. When was that functional behavioral
18 assessment and positive behavior support plan
19 discussed by the IEP team, when was it talked
20 about?

21 A. It was being discussed on the
22 December 5th IEP meeting.

23 Q. Is it your understanding that the school
24 district does not translate documents until they

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1 that was providing parent input; was that form
2 completed by the preschool teacher in English?

3 THE INTERPRETER: I missed the first
4 part.

5 BY MS. MCINERNEY:

6 Q. You mentioned there was a form that was
7 completed by I think it was Miss Mary, preschool
8 teacher; was that form completed by the preschool
9 teacher in English?

10 A. Yes.

11 Q. So therefore, after she submitted the
12 form, there were corrections that needed to be made
13 because it didn't reflect what you thought, what
14 your opinion was as a parent; is that right?

15 A. Yes. Correct. Because after I have
16 discussed with -- show Anna the form, we together
17 thought the form was not completed accurately.

18 Q. Did you seek her assistance in order that
19 the information provided to the district would be
20 accurate, did you want to make sure it was
21 accurate?

22 A. Yes.

23 Q. You also mentioned that sometimes you use
24 a translation app; how does that work?

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1 Q. I just have a few follow-ups. Did the
2 district initially deny your request for an IEE,
3 isn't that why you went to mediation?

4 A. Correct.

5 Q. At that time, didn't you request to have
6 the draft IEP's translated into Chinese, but the
7 district refused to do that, and that's why in
8 mediation they agreed they would only translate the
9 final IEP's?

10 A. The first time they did provide me the
11 IEP draft in Chinese translation. However, at the
12 mediation meeting, they declined to provide the
13 draft translation.

14 Q. When did they agree to translate the
15 evaluation?

16 A. It's when the school district told me
17 that when I agree with the report, I signed on it,
18 then they will send me a copy in Chinese
19 translation afterward.

20 MS. McINERNEY: After she signs it?

21 THE WITNESS: Correct, after I sign
22 the report.

23 BY MS. McINERNEY:

24 Q. Is that true of the NOREP, that you sign

EXHIBIT 16

**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

DECLARATION OF ANNA PERNG

I, Anna Perng, hereby declare as follows:

1. I submit this declaration based on my own personal knowledge.
2. I am a community organizer. I have helped families of children with disabilities in Philadelphia since 2013. These families either attend schools in the School District of Philadelphia (“the District”), receive early intervention services, or receive special education services for early learners up to youth aged 21.
3. In my capacity as an unpaid, volunteer advocate, I work predominantly with limited English proficient (“LEP”) parents regarding the special education needs of their children. My volunteer work includes, but is not limited to, assisting parents in understanding the special education process and timelines, explaining to parents the rights they have as members of the IEP team, and assisting parents in preparing for individualized education plan (“IEP”) team meetings. I also personally attend IEP meetings with families when time permits.
4. Additionally, I work with a coalition of immigrant-serving organizations, with the goal of connecting these families with existing resources that non-LEP families have access to.

Many of the parents with whom I speak are LEP and often share with me their experiences with IEP meetings during our support group meetings.

5. I am one of the founders of the Temple Cultural and Linguistic Diversity Project, a volunteer-driven effort that grew out of a Philadelphia Autism SEED grant which I wrote in 2015. Chinatown Medical Services, Chinatown Learning Center, Elwyn, Children's Hospital of Philadelphia, Chinese Christian Church and Center, Temple University College of Public Health, residents, and other leaders worked together to establish a continuum of care serving Asian-Americans students with disabilities and their families who were falling through the cracks. Until recently, Elwyn paid for the translation and interpretation services. Over the past 4 years, this Project has served several hundred families through the monthly workshops, community activities, and even research funded through the Patient Centered Outcomes Research Institute (PCORI) and PA Department of Education. This Project also maintains an online support group with approximately 50 parents of students with disabilities and connects families with publicly available resources that LEP families cannot access due to language barriers.

6. I have organized and participated in many community meetings, and presented at conferences, such as the National Autism Conference, the Kennedy Center Leadership Exchange in Arts and Disability (LEAD), and PEAC Inclusion Conference. In 2015, PaTTAN, a project of the Pennsylvania Bureau of Special Education, invited me to join their Parents as Partners in Professional Development program. I am a graduate of Temple University's Competence and Confidence Partners in Policymaking for Families of Children in Early Intervention (C2P2EI), a statewide training program that provides participants with up-to-date information, leadership development training, resources and skills. In 2015, Governor Tom Wolf appointed me to serve on the Governor's Advisory Commission on Asian American Affairs, where I served as the Chair

of the Language Access workgroup and later helped lead the Education Workgroup. In 2017, I helped the District create its “Policy 138, English Language Development/Bilingual Education Program,” advocating for special education to be included in the policy. Finally, in 2018, I received an appointment for the Mayor’s Commission on People with Disabilities.

7. I provided a previous declaration in this case on August 2, 2018, in which I explained that LEP families of students with disabilities in the School District of Philadelphia fail to receive translation and interpretation services throughout the special education process due to the lack of policies, procedures, and practices to ensure access to translation and interpretation services for these parents.

8. Since I submitted a prior declaration on August 2, 2018, the District has developed a fact sheet, referred to as “Special Education Parental/Guardian Rights Notice” to inform LEP parents of their rights to receive translation and interpretation services. However, in my experience, most parents do not receive this fact sheet. In addition, this fact sheet requires families to “enlist” these services on their own. Many LEP parents do not understand what this means and do not know how to do this.

9. Since providing my declaration, I have continued advocating for and counseling LEP parents of students with disabilities who are not offered translation services or translated documents.

10. Without knowing the contents of the written IEP and other untranslated documents, LEP parents lack the opportunity to meaningfully participate in the development and revision of their children’s IEPs with other members of the IEP team.

11. Although the District provides oral interpretation at IEP meetings, all information in an IEP is not interpreted for families and this service creates a burden on LEP parents to

memorize or transcribe lengthy special education documents. In order to address this issue, I am aware of at least one parent who requested to record the oral interpretation but the District denied permission. Being denied reasonable accommodations for parents to better access oral interpretation disadvantages LEP parents, especially when the District does not provide alternatives, including full translation of the draft IEP document discussed at the meeting.

12. The District's position that some parents are not literate should not be used as a justification to deny language access through translated documents to an entire class of people who are LEP. If the District is truly concerned with parents who are not literate, it should consider alternatives, build capacity to provide reasonable accommodations, and work with advocates to develop other supports. The District should work with advocates to reduce barriers for all families to ensure parents have meaningful involvement in the special education process.

13. Through my community work, I am aware of LEP parents who continue not to receive or be offered translated special education documents. All of these parents identify as LEP and have been identified as LEP by the District although two parents understand some limited English. None of the parents are able to understand their children's IEP documents which are provided to them in English. Almost uniformly, the parents who I work with do not receive complete translations of any special education documents, such as a Notice of Recommended Educational Placement ("NOREP"), Functional Behavior Assessment ("FBA"), Positive Behavior Support Plan ("PBSP"), progress monitoring reports, and evaluation and re-evaluation reports. They only receive these documents in English.

14. I am aware that the District has Procedural Safeguards translated but many parents report to me that they have not received a translated version of this document.

15. LEP parents do not receive draft IEPs 10 days before an IEP meeting. In fact, most do not receive draft IEP documents at all prior to IEP meetings. These draft documents are almost always in English, sometimes with subheadings translated, and they receive them at IEP meetings.

16. When parents do receive the draft IEP documents prior to the IEP meeting, they often do not know that they can request oral interpretation prior to the meeting. They are not informed of this by the District in any manner.

17. Almost all parents do not receive fully translated IEPs after their IEP meetings and are not notified that they can request fully translated IEPs.

18. Based on my experience supporting families, the District does not notify parents about the right to receive translated documents. The parents who have received translated documents learned of their right to request translations from community advocates and not from their schools.

19. LEP parents are also limited in their ability to participate in IEP meetings due to the lack of training and expertise of the interpreters. When interpretation is provided for IEP meetings, many parents report to me that the interpretation is not fully accurate or confusing. For example, parents have stated that their interpreter did not know what autism was. As another example, one parent attended an IEP meeting with an outside service provider who had to correct an interpreter who was interpreting the wrong information during the meeting. In addition, many parents report that they do not understand their children's evaluation results due to the lack of clear interpretation of concepts, such as an autism diagnosis or assessment scores. In my experience, understanding a child's evaluation is a necessary prerequisite for parent participation in the special education planning process. Assessments describe data in ways that help the IEP

team see how the student fits into a larger group of people, by comparing the scores of that student with other same-aged students who have taken the test, and determine areas of deficits that require remediation. Assessments and recommendations in the evaluation form the foundation on which special education services and programming are built. When interpreters fail to correctly interpret diagnoses, standardized assessments, subtests, and testing vocabulary, families report to me that they are unable to draw conclusions about what their child needs, and they are unable to effectively request the services, supports, and assistive technology for their children.

20. Without IEP documents in English and as a result of the lack of accurate quality interpretation, parents cannot fully participate in the educational planning process.

21. Without translated documents, parents feel constrained in their ability to advocate for their children with disabilities. Not having a draft IEP prior to the meeting causes parents anxiety because there is insufficient time to organize thoughts or follow what the IEP team is communicating or proposing during the meeting. The parents must rely on the quality of the interpretation provided to learn and process information being discussed. Parents have described the pressure experienced in these situations where, without a draft IEP that the parent can understand, there are no opportunities to prepare questions for the meeting.

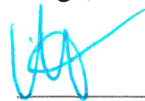
22. Because they do not receive fully translated IEP documents, parents are uncertain about the services that their children receive. For example, one parent raised concerns during an IEP meeting, and the IEP team stated it would consider the parent's concerns. However, the parent has not received any translation of the IEP and therefore does not know if the IEP incorporated the parent's concerns. The school has also not responded to the parent's concerns through an interpreter or other form of communication in this parent's native language.

23. I worked with one LEP parent who requested assistance reading his thirteen-year-old son's IEP, which was solely in English. He was concerned about his son's progress. When I reviewed the IEP with him, we learned that his son had not been evaluated in over four years, contrary to the law's requirement for triennial re-evaluations, and had not had an IEP meeting for two years. The parent informed me that he did not have annual IEP meetings because he could not communicate with the school.

24. LEP parents continue to receive general communications from the school and report cards only in English. Parents report spending a significant amount of time to translate the information.

25. The parent statements presented here reflect my experiences working with LEP parents of children with disabilities.

I declare under penalty of perjury under the laws of the United States of America and pursuant to and subject to the penalties of 28 U.S.C. § 1746, relating to unsworn falsification to authorities, that the foregoing is true and correct to the best of my knowledge, information, and belief.



ANNA PERNG

DATED 11/4/19

EXHIBIT 17

**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

DECLARATION OF BONITA J. MCCABE

I, Bonita J. McCabe, hereby declare as follows:

1. I have worked as an advocate on behalf of children in the special education context for over seventeen years. I have worked in full-time, paid positions as well as volunteer positions during this time.

2. Since 2015, I have been employed as the *Child Advocacy Director* at The Arc of Philadelphia (“The Arc”). The Arc’s mission is to advocate with and for all children and adults with intellectual and developmental disabilities and their families, to promote active citizenship, self-determination, and full inclusion. is an organization that operates nationwide to promote and protect the human rights of people with disabilities by advocating for their full inclusion and participation in their communities throughout their lifetimes. The Arc of Philadelphia is affiliated with The Arc of Pennsylvania and The Arc of the United States and is a member of the SpArc Philadelphia family of organizations. In my capacity as Child Advocacy Director, I work directly with families to ensure their children are appropriately and thoroughly evaluated and receive appropriate special education services. My work at The Arc includes, but is not limited

to, assisting parents in preparing for individualized education plan (“IEP”) team meetings. I also personally attend IEP meetings with families.

3. Over the past three years, I have attended numerous IEP meetings, including some meetings with Limited English Proficient (“LEP”) parents of students with disabilities. Additionally, during that time I have supervised four staff members who also attended IEP meetings. As a supervisor, I regularly discuss cases and trends with other Arc staff.

4. In my experience, a parent’s status as LEP creates many barriers to their ability to meaningfully participate in the special education process which need to be addressed in part by the District.

5. LEP parents of students with disabilities are at an immediate and profound disadvantage because of their status as LEP. This barrier, alone, makes it challenging for LEP parents to meaningfully participate because they are unable to fully understand what is happening in a meeting without support. Also, they are unable to speak directly to other meeting participants in their own native language.

6. A parent’s status as LEP creates a huge power imbalance. LEP parents of students with disabilities feel like they are at the mercy of the District and are required to vest absolute trust in the system. This is not the case for parents who speak English. In my experience, this results in the tendency of LEP parents to blindly accept what the District says as true without asking questions, even when the parent actually has questions and concerns.

7. Relatedly, some parents are embarrassed by their LEP status and needing additional support and encouragement so that they can fully engage in the process.

8. High quality interpretation is essential to ensuring that LEP parents of students with disabilities can meaningfully participate in the special education process.

9. It is extremely difficult to interpret or convey a concept that a person does not fully understand. It is almost paradoxical that people who have no understanding of special education terms are tasked with helping LEP parents understand the same terms. Providing an interpreter who is trained regarding special education terminology is essential to ensuring that LEP parents participate in the process. Interpreters must understand special education terms and concepts in order to interpret fully and accurately.

10. In my experience, the School District of Philadelphia uses interpreters who are untrained regarding special education terminology and, as a result, these interpreters do not fully understand the terms they are asked to interpret. As such, they are unable to fully and accurately convey those terms to LEP parents. This includes Bilingual Counseling Assistants (“BCAs”), language line interpreters, as well as school staff who are also utilized as interpreters for special education meetings.

11. Because LEP parents don’t accurately or fully understand key terms, they are unable to meaningfully participate in the IEP process.

12. Quality interpretation also means providing an interpreter who is trained in the art of interpreting and who has had their linguistic skills vetted. Merely being bilingual does not qualify a person to provide interpretation services at any meeting. In my experience, the School District of Philadelphia routinely utilizes untrained and unskilled individuals to interpret at IEP team meetings.

13. For example, in 2015, after the complaint was filed in this case, I attended a meeting with a Spanish speaking parent whom the District knew needed interpretation services. Despite that knowledge, they did not arrange for a trained interpreter to be present at the meeting. A few minutes before the meeting started, upon my asking about an interpreter, they

realized they had not arranged for one to be present. So, they pulled a Spanish speaking regular education teacher into the meeting to provide interpretation services for the parent. I do not believe she was a Spanish teacher and there was no evidence that the teacher was qualified to provide interpretation services. As a result, the interpreter did not understand her role, failed to ensure that the LEP parent understood what was being offered, and the LEP parent could not participate in the meeting without my intervention and advocacy.

14. It is my understanding that the District frequently utilizes teachers and other random administrative staff to provide interpretation services to LEP parents of students with disabilities.

15. Additionally, in my experience, the interpreters utilized by the District also fail to completely interpret throughout the entire meeting. On average, for every paragraph that is spoken in a meeting, the interpreters typically only render two or three short sentences. In my opinion, they provide the “cliff notes” version of what has been said, which denies parents full participation in the meeting because they are not fully informed about what has been discussed.

16. Relatedly, interpreters utilized by the District typically only interpret what is verbally said during a meeting. They do not sight translate the entire IEP, evaluation, etc. Accordingly, the parent still leaves the meeting without understanding their child’s disability, proposed school placement and services.

17. In my experience, interpreters sit across the table from parents and do not interpret documents at all, even if the document is read from during a meeting. This is extremely troubling considering parents most often do not receive translated documents, so they cannot go back and read the document themselves. The District’s interpreters also do not facilitate parents

asking follow-up questions and do not inquire into whether parents need clarification or have questions for the group.

18. Lastly, I do not believe the District typically provides interpretation services at meetings such as parent teacher conferences. Parent teacher conferences are an important tool to engage LEP parents and ensure children with disabilities are making progress.

19. The District's practice of failing to provide quality interpretation services denies LEP parents the ability to engage in the special education process and the educational process of their children, more generally.

20. In my experience, including this school year, the School District of Philadelphia does not inform parents of their right or ability to request that special education documents be translated into a language they can read or understand. LEP parents have no awareness of a right to request translations or how to do this. As such, practically no LEP parent of a student with disabilities receive documents in their native language. This includes, but is not limited to, special education documents such as evaluation reports, the individualized education plan, and progress monitoring reports as well as regular education documents such as report cards.

21. Parents are not informed of any right to ask for translated documents and therefore they do not request translated documents.

22. The failure to provide parents with documents in a language they can understand results in their not fully understanding their child's disability and/or what services or program their child is being offered. Accordingly, they are unable to make informed decisions regarding their child's special education program. Not having translated documents also means families are not able to review past documents to determine if a child has or has not made progress.

23. Notably, in some instances the District does not translate documents that are specifically required to be translated such as NOREPS and permission to evaluate forms.

24. I am currently working with an LEP parent who continues to receive documents in English, despite having submitted a written request that the District communicate with her in her native tongue. In that case, the District has sent multiple documents to the parent in English.

25. In my experience, that example is not an anomaly. The District routinely presents important documents such as evaluation reports, mediation agreements, NOREPS, and settlement agreements to LEP parents in English, even when the parent has affirmatively requested documents in their native language or when the District knows they cannot read English.

26. The District's practice of denying LEP parents of students with disabilities documents translated into a language they understand adversely impacts parents' ability to meaningfully participate.

27. In my advocacy, the result of denying LEP parents translated documents is that parents go to meetings without knowing anything about their child's disability or program. They have no way to prepare for these meetings and are therefore unable to engage in conversation at the meeting or to understand what occurs at the meeting. As a result, the meetings are very one-sided. Generally, the District's representatives talk, and the parent passively listens.

28. Also, LEP parents I have worked with routinely e-mail me documents and, fraught with anxiety, ask me to help them understand what the District is trying to convey to them. The Arc is limited in our ability to translate or sight interpret documents for families, however, we try to the best of our ability to assist LEP families in understanding documents the District sends them in English. The District's failure to translate documents for LEP parents of

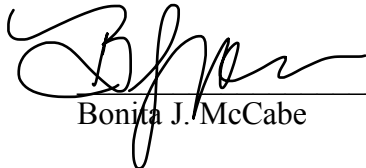
students with disabilities results in advocates spending time trying to explain District letters and documents to parents. Of course, most LEP parents have no advocates to support them through this process.

29. Denying parents translated documents also results in families being unable to ask questions in meetings, thereby denying them the opportunity to engage in the process and meaningfully participate in their child's education.

30. Also, the District's practice of denying translated documents to LEP parents inhibits a parent's ability to participate in other meetings. Because LEP parents do not receive translated documents, they cannot participate in parent-teacher conferences, manifestation determinations, or any other meetings relating to and impacting the education of their child.

31. Providing LEP parents with translated documents would have an extremely important and positive impact on LEP parents of students with disabilities. It would ensure they are able to prepare for meetings in advance and show up to meetings able to engage in an informed, two-sided, discussion. Also, providing LEP parents with translated documents would allow them to have a way to monitor their child's progress because they would have a document they could refer to which will tell them whether their child is making progress towards IEP goals. Fully translating documents such as NOREPS, mediation agreements, IEP's, progress reports, report cards, and settlement agreements would ensure parents are making informed decisions regarding their child's special education program and result in better outcomes for their children.

I declare under penalty of perjury under the laws of the United States of America and pursuant to and subject to the penalties of 28 U.S.C. § 1746, relating to unsworn falsification to authorities, that the foregoing is true and correct to the best of my knowledge, information, and belief.


Bonita J. McCabe

Dated: 08-02-2018

EXHIBIT 18

Page 1

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

Friday, December 8, 2017

Oral testimony of DONNA L.

SHARER, Ph.D, taken at Drinker, Biddle &
Reath, LLP, Philadelphia, Pennsylvania,
commencing at 9:40 a.m., before Janice L.
Welsh, Court Reporter and Notary Public; in
and for the Commonwealth of Pennsylvania.

* * *

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I N D E X

- - -

Testimony of: Donna L. Sharer, Ph.D

By Mr. Saint-Antonine. 4

E X H I B I T S

- - -

| NUMBER | DESCRIPTION | PAGE MARKED |
|-----------|--------------------------|-------------|
| Exhibit-1 | 2017/18 Handbook. . . | 54 |
| Exhibit-2 | 2015/16 Handbook. . . | 72 |
| Exhibit-3 | English Language Program | 76 |
| Exhibit-4 | Draft 3. | 104 |
| Exhibit-5 | Emails. | 106 |

1 may be a bilingual counseling assistant that
2 helps, they may call what is now called
3 Language Line, what used to be Pacific
4 Interpreter, that helps with that. There's
5 many scenarios how that would get filled in.

6 For me, for example, if I
7 needed to contact a parent because we had a
8 class trip, the student hadn't brought in the
9 permission slip -- we do have the permission
10 slip translated in a number of languages --
11 but the student didn't bring it in, I tell the
12 student if you want to go on this trip I need
13 a permission slip. So, I'm going to call your
14 home. And then I just ask the student should
15 I get an interpreter, or should I just call
16 your house, and that's how I would find out,
17 but that's anecdotal and specific to certain
18 situations.

19 Q Was there any way other than anecdotally
20 that the teacher or principal would know if
21 the parent or guardian of the student had
22 English proficiency?

23 A I assume, just like with my situation,
24 it's case by case. If they need to contact

1 the parent or guardian, they find out. My
2 understanding, the home language survey is a
3 product of NCLB, No Child Left Behind
4 legislation, every state has to give a
5 proficiency test for English learners, and
6 that was part of that decision. So, that's
7 why that is part of the procedure for
8 enrollment. In other words, it's a federal
9 requirement. So, it follows federal
10 guidelines.

11 Q To your knowledge, has anything changed
12 since you stopped being a teacher within the
13 School District, that would allow teachers or
14 principals within the school to know the
15 language proficiency of a parent or guardian
16 other than anecdotally?

17 A I don't know. What I would usually rely
18 on first is the bilingual counseling
19 assistant. For example, when we would have a
20 meeting with the student, the parent, and a
21 group of teachers, the bilingual counseling
22 assistant would set that up and would know
23 whether or not interpretation was needed.

24 Q You mentioned Language Line. Did you

1 teacher I never wrote an IEP. In the school
2 the SEL, the special ed liaison, is
3 responsible for informing classroom teachers
4 who in your class has an IEP, and giving you
5 by October, or when the student arrives, a
6 copy of the IEP at a glance. So, that's what
7 I have seen. I'm not familiar with what an
8 entire IEP looks like.

9 Q With that background, do you have a view
10 about whether or not an IEP plan is an
11 important communication to parents?

12 MS. OBOD: Objection. You can
13 answer.

14 THE WITNESS: I think the IEP is
15 important to parents. The IEP at a glance is
16 very important for the teacher and the parent
17 because that tells me, as a teacher, what
18 accommodations and modifications I have to
19 make. So, the IEP at a glance is what is
20 actualized. I don't know what all is in the
21 IEP, but that's what has to be acted upon.

22 BY MR. SAINT-ANTONINE:

23 Q And you consider that an important
24 communication to parents and to teachers?

1 A The IEP at a glance?

2 Q Yes.

3 A Yes.

4 Q How about an evaluation of a student, is
5 that in your view and experience an important
6 communication to parents?

7 MS. OBOD: Objection to form.
8 You can answer.

9 THE WITNESS: You mean the
10 process of creating the IEP?

11 BY MR. SAINT-ANTONINE:

12 Q At this point I'm asking about
13 evaluations of students.

14 A Sure. The parents need to know all
15 along why the student is being evaluated,
16 what's the procedure, the possible
17 consequences.

18 Q Can you take a look, Dr. Sharer, at page
19 50 of the document? Do you see the
20 description of bilingual counseling assistant
21 on that page?

22 A Yes.

23 Q Is this consistent with your
24 understanding of the role of BCA's?

1 here, but we didn't talk about that depth of
2 the verbiage in the document. Like I said, we
3 met in small groups. So, I'm not privy to all
4 the discussions that happened there other than
5 what would be in the minutes, and I would have
6 to look at those minutes again to see if
7 something was raised.

8 Q Are you aware of any policies or
9 procedures that informed parents of their
10 rights to either translation services, or
11 interpretation services, or both?

12 A No.

13 Q There's a reference in that same
14 paragraph to trained professionals. Do you
15 see that?

16 A Right. The last sentence.

17 Q The second to the last sentence.

18 A Right.

19 Q Of the first paragraph under that
20 heading.

21 A You mean these services? Or the
22 district will insure?

23 Q The sentence begins, these services, and
24 then it goes on to say, shall be provided by

1 seen the email?

2 A No.

3 Q If you take a look on page three of the
4 document with the title, quick reference guide
5 translation and interpretation services, for
6 the record it's a four-page document, does
7 this document look familiar to you at all?

8 A No. But I may have seen it somewhere
9 before. It's far more detailed than anything
10 we ever saw relating to the language policy.

11 Q As far as you know, have you had any
12 input with respect to the content of this
13 document?

14 A No.

15 Q Have you ever seen any previous versions
16 of this document?

17 A No.

18 Q Do you have any understanding about how
19 this document relates to the language policy
20 or the handbook that we talked about earlier?

21 A Glancing through it right now I can see
22 it references BCA's, Language Line. So, in
23 that sense it's related. But, as I said, this
24 is very detailed as far as it looks like the

1 Q Do you know whether or not this document
2 reflects current policies or procedures of the
3 district?

4 A I would have to read it to determine
5 that. I'm not familiar with SEL's protocols.
6 So, I can't say if this is what they do. And
7 since this says Language Line I assume it's
8 fairly recent. I really don't know what their
9 protocols are as far as an SEL in establishing
10 meetings with parents. I don't know how they
11 do that.

12 Q Let me ask you this, Dr. Shearer,
13 putting this document aside, to your knowledge
14 is there any policy or procedure within the
15 School District currently that specifically
16 addresses the rights of LEP parent or student
17 with disabilities to language services?

18 A I'm not aware of a policy.

19 MR. SAINT-ANTONINE: Let's take
20 another short break.

21 - - -

22 (Whereupon a short recess was
23 taken.)

24 - - -

C E R T I F I C A T E

- - -

I, Janice L. Welsh, a Notary Public, do hereby certify that the foregoing deposition of Donna L. Sharer, Ph.D., was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision and computer-aided transcription; that the deposition is true and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Witness my hand and official seal this 8th day of December, 2017.



JANICE L. WELSH

Notary Public

EXHIBIT 19

1 A P P E A R A N C E S :

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16 Counsel for Defendant(s)

17

18

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24

1 A. -- thank you.

2 Q. How about the IEP plan itself, it
3 is your understanding that that has to be in
4 writing?

5 A. Yes.

6 Q. Do you have any knowledge about
7 the extent to which all the IEP students in the
8 district currently there is a written IEP?

9 A. Can you say that again?

10 Q. Sure. Do you have an
11 understanding now about the extent to which the
12 school is compliant with the requirement of
13 having a written IEP?

14 A. I don't know.

15 Q. Do you have an understanding,
16 based on your experience in this school
17 district, about the parent's rights to
18 participation in the IEP planning process?

19 A. Yes.

20 Q. What is your understanding?

21 A. That parents have to have
22 meaningful participation.

23 Q. What is your understanding of
24 what meaningful participation entails?

1 A. I mean I know that -- I believe
2 that they have to be informed about what
3 programs and instructional programs that their
4 children are receiving and be able to
5 contribute to decision making on that.

6 Q. Does that include having access
7 to the written IEP plan?

8 A. I don't know. I would -- I would
9 have to guess on that.

10 Q. So, you don't know whether in
11 order for the parent's rights to meaningful
12 participation to be fulfilled they have to have
13 access to a written IEP plan?

14 A. I don't know.

15 Q. Okay. Can you -- is there a
16 situation, Ms. Still, in which a parent's
17 rights to meaningful participation would be
18 fulfilled without giving them access to a
19 written IEP plan?

20 MS. OBOD: Objection.

21 MR. SAINT-ANTOINE: You can
22 answer.

23 MS. OBOD: You can answer.

24 THE WITNESS: Okay. I don't

1 she knows, but she's not here as a
2 lawyer.

3 BY MR. SAINT-ANTOINE:

4 Q. Let me restate the question, Ms.
5 Still, so the record is clear --

6 A. Yeah.

7 Q. -- there's a lot of back and
8 forth.

9 A. Okay.

10 Q. Are you aware of a situation, Ms.
11 Still, where a parent's right to meaningful
12 participation would be fulfilled even through
13 they were denied access to the written IEP?

14 A. No.

15 Q. Okay. A couple more questions
16 and then we'll take a short break.

17 A. Okay.

18 Q. In your present role as Deputy
19 Chief, Ms. Still, do you have any involvement
20 in the budget for the school district?

21 A. Some. So, I'm -- I'm -- I think
22 -- I forgot the official title, but I oversee
23 the Title 3 Project, so, those are Federal
24 funds and, so, I kinda determine that budget

1 A. Yes.

2 Q. There's a question here for
3 number two about what language does the parent
4 speak to his or he child most of the time?

5 A. Yes.

6 Q. Is that question also intended to
7 identify students that are English learners?

8 A. Yeah, the -- yes.

9 Q. Are any of these questions
10 specifically designed to identify parents that
11 are limited English proficient?

12 A. No.

13 Q. Are there any questions that are
14 asked of parents or other information collected
15 for the specific purse of identifying parents
16 as limited English proficient?

17 A. Nothing about their English
18 proficiency, but on the first page, we do
19 collect what their primary language is.

20 Q. Other than that, any other
21 systematic way of identifying parents limited
22 English proficiency?

23 A. No, we just go on what they
24 complete here on the EH-40, what they indicate.

1 Q. But just knowing their primary
2 language wouldn't tell you whether they had
3 English proficiency or not; is that a fair
4 statement?

5 A. Yes.

6 Q. The other two documents,
7 document eight and nine, it sounds like you had
8 some familiarity with them?

9 A. Yes.

10 Q. Do you know in what context?

11 A. I mean, I understand this would
12 be documents are the office of specialized
13 services uses for -- for the different
14 processes they have in place for identifying
15 students with special needs.

16 Q. Do you remember in what context
17 you saw these documents?

18 A. No.

19 Q. Do you know how either the
20 documents, Exhibit-8 or 9 relate to the
21 identification of English learners, students
22 who are English learners?

23 A. No.

24 Q. So, I take it you don't know why

1 the policies, procedures and practices of the
2 district for identifying English proficient
3 parents.

4 A. Um-hum.

5 Q. Can you describe for me what
6 those policies, practices and procedure are?

7 A. Yeah, I mean, we don't identified
8 students as limited English proficient. We ask
9 for their primary language at the time of
10 enrollment.

11 Q. You said student --

12 A. I mean parents, yeah.

13 Q. So, you ask the parents when they
14 are filling out the EH-40 what their primary
15 language is?

16 A. Um-hum.

17 Q. But the current policy doesn't
18 systematically ask for any other information to
19 flag parents with limited English proficient?

20 A. No.

21 Q. Does the district compile a list
22 of parents that may or may not be limited
23 English proficient?

24 A. I'm not sure.

1 learners and it indicates what their home
2 language is and that's usually the same as
3 their parents. It's not always, but they would
4 have to ask and find out.

5 Q. Okay. So, the systematic
6 question talks about the primary language, but
7 I think that you agree that that doesn't tell
8 you whether they have English proficiency or
9 not. They could be bilingual, correct?

10 A. Yes.

11 Q. So, am I right in terms of member
12 of the school district personnel becoming aware
13 of issues of proficiency by the parent, is it
14 fair to describe that as sort of an ad hoc
15 process?

16 A. I guess, yes. We usually just
17 find out from asking them. As a teacher, with
18 my students, we would have different
19 communications and I would say do you want this
20 in, these different languages for your parents
21 and they would say yes or no.

22 Q. Okay. And that was -- was there
23 for form that the students filled out for that?

24 A. No.

1 Q. It was just a teacher
2 individually asking a student and relying on
3 the student's feedback?

4 A. Yeah. Again, this isn't -- my
5 officer doesn't do the parent outreach as much,
6 so, I can't really speak to systems in place
7 now.

8 Q. To the extent there is on an ad
9 hoc basis information acquired by a teacher or
10 another school district person about a parent's
11 English proficiency, is that information
12 recorded anywhere in any systematic way?

13 A. Their English proficiency?

14 Q. Yeah.

15 A. No.

16 Q. Do you know how many parents of
17 students in the school district have limited
18 English proficiency, parents or guardians?

19 A. No.

20 Q. Is there any way to compile that
21 information?

22 A. No. We collect their primary
23 language.

24 Q. Is there a reason why on the

1 EH-40 there was no question for the parent
2 whether they had issues with limited English
3 proficiency?

4 A. I mean I think the question about
5 -- their question when you're asking for their
6 primary language, that's important to know,
7 what language they primarily use. That's
8 collected in that way.

9 Q. Understood, but is there a reason
10 why it doesn't include the additional language
11 about whether they have English proficiency?

12 A. I don't know the reason for why
13 it's not there.

14 Q. Going back for a moment to the
15 interrogatory number five. It includes
16 policies on -- with respect to identifying both
17 students that are English language learners as
18 well as parents with limited English
19 proficiency and identifies a number of
20 documents that we went through, exhibits four
21 through nine, are there any other written
22 documents that you're aware that that relate to
23 identifying parents as limited English
24 proficient?

1 others are not?

2 A. That's my understanding, yes.

3 Q. How about the IEP plan itself, do
4 you know what the policy is for that?

5 A. I'm not super familiar with it,
6 but my understanding is that there's kind of a
7 protocol to go through to determine if the IEP
8 is translated or not.

9 Q. And the protocol thank you are
10 referring to, is that a new protocol?

11 A. I believe it's a practice that's
12 been in place, but recently kinda more
13 formalized.

14 Q. How far back does the practice go
15 that's been more formalized in the protocol?

16 A. I'm not sure.

17 Q. Does it go back before 2017?

18 A. I believe so.

19 Q. Do you know how far back it goes?

20 A. No.

21 Q. Does it go back before 2016?

22 A. I don't know.

23 Q. I think you also mentioned, Ms.

24 Still, providing translation of documents upon

1 parent and what's in the IEP, if it
2 assists or not to meaningful
3 participate. I don't know.

4 BY MR. SAINT-ANTOINE:

5 Q. Well, the law requires a written
6 IEP plan for English speaking parents?

7 A. Yes.

8 Q. Can you identify any situation
9 where a non-English speaking parent would also
10 benefit from a written document in the language
11 they could read?

12 MS. OBOD: Objection.

13 THE WITNESS: No.

14 BY MR. SAINT-ANTOINE:

15 Q. Do you know of any situations
16 where a request has been made for translation
17 of an IEP document and the school district has
18 turned down the request?

19 A. No.

20 MS. OBOD: Objection. Just
21 give me a second to object.

22 BY MR. SAINT-ANTOINE:

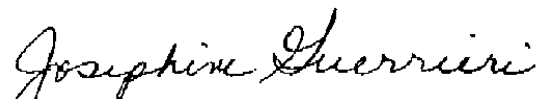
23 Q. Do you have any information, Ms.
24 Still, about how many requests now are made?

- - -

C E R T I F I C A T I O N

I, JOSEPHINE GUERRIERI,
Professional Court Reporter and Notary Public,
do hereby certify that the proceedings and
evidence noted are contained fully and
accurately in the notes taken by me at the
deposition of the above matter, and that this
is a correct transcript of the same.

I further certify that I am not
an attorney or counsel of any of the parties,
nor a relative or employee of any attorney or
counsel in connection with the action, nor
financially interested in the action.



Josephine Guerrieri

My Commission Expires:

March 23, 2019

(The foregoing certification of this
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direct control and/or supervision of the
certifying reporter.)

EXHIBIT 20



October 31, 2018

Abena Osei
Director of Special Education
Office of Specialized Services
School District of Philadelphia
440 North Broad Street
Philadelphia, PA 19130

Dear Ms. Osei:

As the result of a Complaint Investigation Report (CIR) regarding the School District of Philadelphia's (SDP) issues concerning the transition process for special education students transitioning from early intervention (EI) to school-aged programs dated August 9, 2017 and amended on November 14, 2017 the Bureau of Special Education (BSE) conducted a file review on October 24, 2018. The purpose of the file review was:

- To ensure the SDP is implementing its evaluation process regarding English Language Learners whose native language is other than English. Specifically, the BSE looked to see that either students were evaluated in their native language or that bilingual counseling assistants (BCAs) were used, as well as non-verbal measures to yield accurate information on what the child knows and can do academically, developmentally, and functionally.
- To ensure the SDP has incorporated the established process for complying with Federal and State laws with regards to transitioning EI students to school-aged programming. Specifically, the BSE looked for timely evaluations and Individualized Education Program (IEP)s and that students received Free Appropriate Public Education (FAPE) (documentation of a SDP IEP or continuation of EI IEP) within the first 10 school days of the 2018-2019 school year.

The BSE reviewed 50 randomly selected students' files from the spreadsheet which was provided to the BSE from the SDP with the names of all students who transitioned from EI to school-aged programming during the 2018-2019 school year. 25 of those students had a language, other than English, as their native language.

Following are a summary of findings from the file review:

Native Language Other than English:

- According to the SDP's 2018-2019 EI data, 251 Permission to Reevaluate Forms (PTREs) were issued to parents of students whose native language was other than English. 217 evaluations were completed for these students. 94 of the evaluations or 43% of the evaluations were conducted by bi-lingual psychologists.
- 20 of 25 files or 80% of the files reviewed revealed that students had some proficiency using English either receptively and/or expressively.
- Only one of the 25 files reviewed, or four percent of the files indicated that the evaluation was conducted in the student's native language. 24 of 25 files or 96% of the files reviewed revealed that the evaluations were not conducted in the students' native languages.
- Only one of the 25 files reviewed indicated that a BCA was part of the evaluation team.
- Seven of the 25 files or 28% of the files reviewed indicated that non-verbal measures were used to evaluate the students.

- Three of the files reviewed were for speech and language evaluations. None of these evaluations were conducted in a student's native language, used a BCA, or non-verbal measures.
- Only one of the 25 reevaluation reports (RR), which were reviewed, indicated that the student had limited English proficiency. This box was not checked on 96% of the RRs reviewed.
- Only two of the files reviewed or eight percent of the files, indicated that the required forms of notice, including PTREs, and Notice of Recommended Educational Placement/Prior Written Notice (NOREP) were provided to the parents in their native language. The requirement for providing notice to parents in their native language is cited in:

IDEA- §300.503 Prior notice by the public agency; content of notice.

(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the Parents of a child with a disability a reasonable time before the public agency—

- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(b) Content of notice. The notice required under paragraph (a) of this section must include—

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
- (7) A description of other factors that are relevant to the agency's proposal or refusal.

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be—

- (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure—
- (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

The results of the file review, with regards to evaluating students whose native language is other than English, reveal that the SDP has failed in its obligation to ensure that evaluations are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally. The regulation is cited in:

IDEA § 300.304 Evaluation procedures.

(a) *Notice.* The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
 - (i) Whether the child is a child with a disability under § 300.8; and
 - (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for
- (c) *Other evaluation procedures.* Each public agency must ensure that—
 - (1) Assessments and other evaluation materials used to assess a child under this part—
 - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

The file review revealed that the SDP failed to implement its own procedures with regards to evaluating English Language Learner (ELL) students as follows:

“English language learners (ELL) student's language proficiency is assessed through standardized measures, such as the WIDA. The WIDA Screener is an English language proficiency assessment given to incoming students in Grades 1–12 to assist educators with the identification of students as ELL. If a student is not proficient, the appropriate bilingual psychologist will be assigned. If not feasible, psychologists will use SDP Bilingual Counselor Assistants (BCA) and/or nonverbal measures that are appropriate for the student's known level of language. “

All of the evaluations reviewed, except one, were conducted entirely in English without the use of a BCA or a bi-lingual psychologist, despite the clear need for a bi-lingual evaluation. In so doing, the SDP failed to conduct evaluations in the form most likely to yield accurate information regarding what the students know and can do academically, developmentally, and functionally.

As a result of this file review the SDP is required to complete the following corrective action with regards to evaluating students whose native language is other than English:

- Establish a more accurate reporting of student's native language and English proficiency for students transitioning from EI to school-aged programming.
- Revise the SDP's procedures for evaluating students whose primary language is other than English to align with the requirements of 34 C.F.R. 300.304 (c)(1)(ii), including speech and language evaluations.
- Reconvene the IEP teams for the 123 students whose evaluations were not conducted by bi-lingual psychologists and have the teams make a determination as to whether or not reevaluations need to be conducted, with consent of the parent, in order to ensure that the evaluations yield accurate information on what the child knows and can do academically, developmentally, and functionally.
- Provide staff development to all relevant staff with regards to conducting evaluations for ELL students, including the completion of the English Proficiency check box on the ER/RR.
- Issue a memorandum/email to all relevant staff to verify that the SDP is in compliance with the regulation cited above, ensuring that the SDP provides the required documents (PTE/PTRE, NOREP, Consent for initiation of special education services, Consent to excuse an IEP team member from an IEP team meeting, Notice that fully informs parents of the requirements regarding the confidentiality of personally identifiable information, and Procedural Safeguards Notice) to parents in their native language

FAPE:

- 46 of 50 files or 92% of the files reviewed revealed that students were provided with FAPE within the first 10 school days of the student's enrollment for the 2018-2019 school year when the SDP issued the parent either a NOREP for continuation of EI comparable services or a NOREP for a new SDP IEP.
- Four of 50 files or eight percent of the files reviewed revealed that students did not have an IEP in place within the first 10 days of their school enrollment and were denied FAPE, but for no more than 32 days at the maximum.

The findings from the file review reveal that the SDP has greatly improved in its efforts to incorporate the established process for complying with federal and state laws with regards to transitioning EI students to school-aged programming and ensuring that students transitioning from EI to school-aged programming are provided with FAPE within the first 10 school days of their school enrollment.

As a result of the file review the following students are owed compensatory education from September 11, 2018, which is 10 school days from the first day of school on August 27, 2018, to the date that the SDP implemented an IEP for each individual student:

| STUDENT NAME | DATE OF SDP IEP | DATE OF SDP NOREP |
|--------------|-----------------|-------------------|
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] |

The Superintendent or his designee will convene a meeting to develop a compensatory education agreement and issue a NOREP to the parent of each student listed above to approve or disapprove of the compensatory education agreement. The amount of compensatory education services to be provided will be the number of hours of special education and related service support per day as required in the student's EI IEP from September 11, 2018 to the date the SDP's IEP was implemented.

The calculation for compensatory education services excludes student absences, holidays, and school closings. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product, or device that furthers the goals of the student's program or otherwise assists in overcoming the effect of the disability. The compensatory education shall be in addition to, and shall not supplant educational services, products, and/or devices that should appropriately be provided by the school district through the student's IEP to assure a meaningful educational process. The exact nature, delivery schedule, and logistics of the compensatory education are to be determined at the meeting, based on the student's needs.

Should the parent and the SDP be unable to come to an agreement, the SDP will submit a written request for assistance from the BSE by **December 21, 2018**, to include a list of the proposals for compensatory education from each party, and signed by both parties. This request is to be sent to: Walter L. Howard, Chief, Division of Monitoring and Improvement - East, Pennsylvania Department of Education, Bureau of Special Education, 333 Market Street, 7th Floor, Harrisburg, PA 17126-0333, Fax (717) 783-6139.

As verification of the required corrective action please forward the following documents:

- Procedure for identifying EI transitioning students' primary language.
- Revised procedures for evaluating students whose primary language is other than English.

- A spread sheet including all ELL students who transitioned from EI to school-aged programs during the 2018-2019 school year and whose evaluations were not administered by a bi-lingual psychologist. The spread sheet should include name of student, native language, date of RR, date that IEP team reconvened to discuss RR, outcome of the IEP team meeting.
- A copy of the training information and meeting agendas, including dates, which have been provided to all relevant personnel, regarding the administration of evaluations for ELL students, including the completion of the English Proficiency check box on the ER/RR.
- A copy of the memorandum/e-mail, which has been issued to all relevant staff regarding the provision of required documents in a parents' native language.
- A copy of the plan for compensatory education and a copy of the Compensatory Education NOREP/Prior Written Notice, which has been issued to the parent of each of the students listed above.

Please send these documents to my attention at: Pennsylvania Department of Education, Bureau of Special Education, 333 Market Street, 7th Floor, Harrisburg, PA 17126-0333, **no later than Friday, December 21, 2018.**

Following receipt and review of the corrective action documents I will make a determination if any further corrective action is required, including a follow-up file review of ELL students who have been evaluated by the SDP. If you have any questions or need assistance regarding the information in this letter, you may contact me at (610) 642-1237 or by email at rfurman@pa.gov.

Thank you for your cooperation.

Sincerely,



Ruth B. Furman
Division of Monitoring & Improvement – East

cc: Dr. William Hite, Jr., Superintendent
Natalie Hess, Deputy Chief, Office of Specialized Services
Kim Mecca, Executive Director
Sean J. McGrath, Esquire, Complainant
Lisa Werts, Program Manager
Quiana Carthen, SDP EI Coordinator
Dr. Schehera Coleman, SDP Coordinator for Psychological Services
Debra Heaven, SDP Coordinator for Speech and Language Services
Walter L. Howard, Chief, Division of Monitoring & Improvement – East
Carey Zeigler, BSE Adviser
John Murphy, BSE Adviser
Central File

EXHIBIT 21

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

3 * * *

4
5 T.R., et al., : CIVIL ACTION
6 Plaintiffs, :
7 :
8 v. :
9 :
10 SCHOOL DISTRICT OF :
11 PHILADELPHIA, : NO.
12 Defendant. : 15-cv-4782
13

14 * * *

15 Monday, February 12, 2018

16 * * *

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

 * * *

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

1 APPEARANCES:

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THE PUBLIC INTEREST LAW CENTER
BY: MICHAEL CHURCHILL, ESQUIRE
1315 Walnut Street, Suite 400
Philadelphia, Pennsylvania 19107
(215) 346-6906
mchurchill@pubintl.org
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BY: MARJORIE McMAHON OBOD, ESQUIRE
BY: DANIELLE M. GOEBEL, ESQUIRE
1500 Market Street, Suite 3500 East
Philadelphia, Pennsylvania 19102
(215) 575-7000
MObod@dilworthlaw.com
DGoebel@dilworthlaw.com
Representing the Defendant

ALSO PRESENT:

JAVIER AGUILAR,
Spanish Interpreter

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* * *

I N D E X

WITNESS:

MADELINE PEREZ

| EXAMINATION BY: | PAGE |
|-----------------|--------|
| MS. GOEBEL | 4, 108 |
| MR. CHURCHILL | 100 |

* * *

E X H I B I T S

| NUMBER | DESCRIPTION | PAGE |
|---------|--|------|
| Perez-1 | Settlement Agreement, 7 pages | 26 |
| Perez-2 | First Amended Class Action Complaint, 78 pages | 90 |
| Perez-3 | Verification | 91 |
| Perez-4 | Plaintiffs' Objections and Supplemental Responses to Defendant School District of Philadelphia's First Set of Discovery Requests, 14 pages | 93 |

1

* * *

2

(JAVIER AGUILAR,

3

Interpreter, was duly sworn to

4

translate the following from

5

English to Spanish and Spanish to

6

English.)

7

* * *

8

MADELINE PEREZ, having been

9

first duly sworn through the

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Interpreter, was examined and

11

testified as follows:

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* * *

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(It is hereby stipulated and

14

agreed by and between counsel that

15

reading, signing, sealing, filing

16

and certification are waived; and

17

that all objections, except as to

18

the form of the question, will be

19

reserved until the time of trial.)

20

* * *

21

EXAMINATION

22

* * *

23

BY MS. GOEBEL:

24

Q. Good morning, Mrs. Perez.

1 Q. Was that Ryann Rouse?

2 A. Who is Ryann Rouse?

3 Q. She is at Building 21.

4 A. I usually talk through an
5 interpreter, so I don't know names or
6 faces, I just talk to whoever is there
7 with an interpreter.

8 Q. Where were you when you made
9 the request?

10 MR. CHURCHILL: Objection.

11 What request are you talking
12 about? What time?

13 MS. GOEBEL: She's speaking
14 generally about the IEP meeting.

15 MR. CHURCHILL: You said,
16 where were you, so I assume you
17 had some particular time you were
18 concerned about. Identify what
19 time you are concerned with.

20 BY MS. GOEBEL:

21 Q. Is there more than one time
22 you asked for translation?

23 A. Almost every time I go to
24 the IEPs I ask for translation because

1 they are in English.

2 When I came here to
3 Philadelphia and I enrolled my children,
4 my kids didn't speak English at the time
5 either and I signed some papers the
6 district gave me to enroll the children
7 and I requested that all documents be
8 translated because of that same reason.

9 Q. Ms. Perez, what's your
10 education?

11 A. High school.

12 Q. Where did you go to high
13 school?

14 A. In Puerto Rico.

15 Q. Do you speak any language
16 other than Spanish?

17 A. No.

18 Q. Can you read Spanish?

19 A. Yes.

20 Q. Do you ever speak in
21 English?

22 A. No. Just "good morning," I
23 can say that, but not -- I'm not able to
24 carry a conversation with a person.

1 Q. Can you read in English?

2 A. Well, things, if they give
3 me a form that requires my name, the
4 date, my address, those type of things,
5 I've had to fill out many of them and I
6 can do that.

7 Q. When did you come to the
8 U.S. from Puerto Rico?

9 A. In 2012 here to
10 Philadelphia, in May.

11 Q. Did your children come with
12 you at that time?

13 A. Yes.

14 Q. Have you had any jobs in the
15 United States?

16 A. No.

17 Q. Have you taken any classes?

18 A. I've gone to parents
19 meetings, parents class, I think it's
20 called.

21 Q. What kind of class is that?

22 A. It's training provided by
23 Philadelphia HUNE, H-U-N-E.

24 Q. Was that a literacy class?

1 with the children's issues; medical
2 appointments, IEP meetings, take them to
3 their medical appointments.

4 Q. Has he been to any school
5 meetings with you?

6 A. No.

7 Q. And you don't talk to him at
8 all about what happens at those meetings?

9 A. No.

10 Q. Does he know that you're a
11 part of this lawsuit?

12 A. No.

13 Q. Does he know that J.R. and
14 D.R. and L.R. are part of the lawsuit?

15 A. No.

16 Q. Does he know that J.R. and
17 D.R. and L.R. get special education
18 services from the school?

19 A. Yes, he knows they have
20 problems and that they are in special
21 education, just as he knows that I take
22 them to their appointments, medical
23 appointments, and they take medication.

24 Q. Does he know anything about

1 what kind of services the children
2 receive?

3 A. He knows that they have
4 psychiatric issues, that they are in
5 special education, and that I seek for
6 help for them to get them to interact in
7 society in English with other kids and so
8 on.

9 Q. What is your understanding
10 of L.R. diagnosis?

11 A. He has ODD, ADHD and autism.

12 Q. And how do you know that?

13 A. Because they've told me so.
14 The ADHD was diagnosed by the
15 psychiatrist. The ODD too. And the
16 autism, because he was evaluated at the
17 autistic center.

18 Q. I'm sorry. Going back to
19 the ADD (sic), you said "they" told you.

20 Who are you referring to?

21 A. ODD.

22 Q. ODD.

23 Who told you that?

24 A. The psychiatrist. That it's

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

Madeline Perez

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. 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. 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 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

Madeline Perez

1 MR. CHURCHILL: Can we take
2 a break for a minute?

3 MS. GOEBEL: Sure.

4 * * *

5 (Whereupon, a short break
6 was taken.)

7 * * *

8 (Whereupon, the court
9 reporter marked Exhibit Perez-1
10 for purposes of identification.)

11 * * *

12 BY MS. GOEBEL:

13 Q. Ms. Perez, I'm going to show
14 you a document that's been marked as
15 Perez-1.

16 Do you recognize this as the
17 settlement agreement for your son **L.R.**?

18 A. Yes.

19 Q. If you'd turn to the last
20 page.

21 Is that your signature?

22 A. Yes.

23 Q. And it's dated February
24 27th, 2017; correct?

1 A. Yes.

2 Q. Where were you physically
3 when you signed this?

4 A. I don't remember.

5 Q. Was there a meeting with
6 your attorney?

7 A. I think it was Mimi Rose
8 with me and she gave me this to sign at
9 Philadelphia HUNE. That's how I learned
10 about Mimi Rose, through Philadelphia
11 HUNE.

12 Q. Does Mimi Rose speak
13 Spanish?

14 A. No.

15 Q. So was there an interpreter
16 there?

17 A. Yes.

18 Q. So did you understand this
19 agreement when you signed it?

20 A. It was explained to me what
21 it was about.

22 Q. So you felt comfortable
23 signing it based on the explanation that
24 you got?

1 update on how L.R. [REDACTED] is doing on his goals?

2 A. We usually talk about how
3 he's doing. We just talk about how he's
4 doing in school, how he's doing
5 basically.

6 Q. So you get like a general
7 idea of what his progress is?

8 A. Yes.

9 Q. You said that he's doing
10 well; he's making progress?

11 A. Yes.

12 Q. At that --

13 A. Slowly, but surely. That's
14 important thing, that he makes progress.

15 Q. At the IEP meeting at
16 Devereux, did you ask for translation of
17 any documents?

18 A. Yes. They said they would
19 get them to me.

20 Q. Did you ask through
21 Elizabeth?

22 A. Correct.

23 Q. And what was the response?

24 A. That they would get them to

1 me.

2 Q. Who said that?

3 A. The person who was on the
4 phone. But when I went in person, the
5 special education teacher.

6 Q. The Devereux special
7 education teacher?

8 A. Yes.

9 Q. And did you ever get those
10 documents?

11 A. Completely in Spanish, no.

12 Q. What do you mean?

13 A. Like everything else, they
14 just have the title in Spanish, but not
15 the body of the text, and the summary is
16 in English. They told me that I would
17 receive something by mail, a package that
18 is in Spanish. That was the only school
19 that has told me that I will get
20 something at least by mail in Spanish.

21 Q. Was that the teacher at
22 Devereux who told you you would get it in
23 the mail?

24 A. Yes. Correct.

1 Q. Was there anyone from the
2 school district who was at that meeting
3 that you asked for translated documents?

4 A. No, not from the school
5 district.

6 Q. And you didn't bring your
7 attorney to that meeting; correct?

8 A. No.

9 Q. Why not?

10 A. It was not necessary.

11 Q. Have you brought Mr.
12 Churchill to any IEP meetings?

13 A. Never.

14 Q. Did you ever make any
15 request in writing for translated
16 documents?

17 A. No. Nobody told me I had to
18 do it in writing.

19 Q. After you signed the
20 settlement agreement that is Perez-1, did
21 you ever request a translated document
22 from someone at the school district?

23 A. This one? (Indicating.)

24 Q. Right. After that.

1 A. Yes, I read several
2 Complaints before I joined the case and
3 this was to obtain the documents in
4 Spanish.

5 Q. What do you mean you read
6 several Complaints?

7 A. What the paper said.

8 Q. Are you talking about
9 something that was filed in court?

10 A. That there were several
11 parents like me who don't get the
12 documents in Spanish.

13 Q. Where did you get that from?

14 A. At Philadelphia HUNE there
15 were several parents with the same
16 problem, we talked about it there. When
17 we asked documents to be translated into
18 Spanish, mostly what they translate is
19 only the headings, the titles to Spanish,
20 and the summary comes in English
21 nonetheless. I don't think that's a
22 translation into Spanish. To me, to
23 translate it to Spanish is that
24 everything is in Spanish.

1 Q. Who are the other parents
2 that you were talking to?

3 A. I didn't get their names,
4 but there were two or three parents
5 there, I don't know their names, but we
6 were talking about how important it would
7 be to have the documents translated.

8 Q. Are those parents of
9 children receiving special education
10 services?

11 A. Yes. Yes, there's all kinds
12 of parents with children with special
13 needs. Not like my case, but there's
14 other ones in wheelchairs or disabled, so
15 they all have different needs.

16 Q. I think earlier that you
17 said you read several Complaints from
18 other parents.

19 What were you talking about?

20 A. About the Spanish topic.
21 The talk of the parents saying, look,
22 look at my document, it only has the
23 header in Spanish, and another will say,
24 yeah, look at mine, you know, stuff like

1 A. No.

2 Q. What do you want out of this
3 case?

4 A. To have the documents in
5 Spanish in order to get more help for my
6 children. I can be more helpful if I
7 have everything in Spanish.

8 So I say it again, it's
9 three different children with three
10 different needs. Having it in Spanish, I
11 can go refer to it and know what's going
12 on. Because the diagnosis changes, their
13 progress, how much they're progressing.

14 Q. But you did receive some
15 documents fully translated, right?

16 A. Yes. Yes, I learned this
17 morning about two evaluations of J.R.
18 which I didn't know they had been
19 translated. And they came with the IEP
20 and the titles came in Spanish, the rest
21 is in English. I'm assuming it's about
22 the same thing, it's all in English.

23 Q. But it wasn't all in
24 English.

1 A. No.

2 Q. If the special education
3 teacher said that it was a few hours
4 long, does that sound about right to you?

5 A. Not a lot of hours. Not a
6 long -- very long meeting.

7 Q. More than one hour?

8 A. I couldn't tell how long.
9 It's never more than two or three hours.
10 It's not a whole-day meeting.

11 Q. But like two or three hours,
12 is that about right?

13 A. One or two would be a lot.
14 To me, it would be a lot.

15 Q. Who interpreted at that
16 meeting for you?

17 A. With **D.R.** I went several
18 times with the special education teacher.
19 Once I went with Carmen Cruz from
20 Philadelphia HUNE. And the other two I
21 went with Philadelphia HUNE. Ms. Lugo
22 accompanied me to one of them. And on
23 other occasion Mr. Alex.

24 Q. Who's Mr. Alex?

1 A. He's from Philadelphia HUNE.

2 Q. Did anybody at that meeting
3 ask you about what strategies work at
4 home with D.R. ?

5 A. I don't remember.

6 Q. Do you remember that someone
7 at the meeting suggested using lunch or
8 after-school detentions as a tool with
9 D.R. ?

10 A. I think she was in detention
11 once in that school, only once I think
12 she was in detention. If there were
13 more, I don't remember.

14 Q. Do you remember that the --
15 that it was suggested to use detention
16 and you said that that wasn't a good
17 strategy?

18 A. I don't remember.

19 Q. Did you ask at that meeting
20 for D.R. for documents to be
21 translated?

22 A. Yes. They gave me the
23 parents rights in Spanish and the
24 policies. I've always received that

Madeline Perez

1 completely in Spanish at the IEP
2 meetings.

3 Q. Did anyone tell you that the
4 IEP was going to be translated for you?

5 A. Yes, they said they would
6 give me a translated copy. There was a
7 time that I went to -- I don't remember
8 if it was Ms. Lugo or Mr. Alex and they
9 gave me the translated IEP. And she
10 said, sorry, it's translated, but not
11 well translated. And that's when I
12 realized the only thing that was
13 translated was the title, the header, and
14 not the body.

15 Q. Who said it wasn't well
16 translated?

17 A. The person, the teacher who
18 gave me the document.

19 Q. At the IEP meeting?

20 A. She said, this is what we
21 could translate. She's the only person
22 who has apologized and said, look, it's
23 not all translated, but there's something
24 translated.

1 Q. Did you ask for the whole
2 thing to be translated?

3 A. Yes, to Spanish.

4 Q. Did they tell you that they
5 would do that for you?

6 A. She said this was the best
7 they could have translated.

8 Q. Who was that?

9 A. I don't remember her name.

10 Q. Was it Mrs. Smith, Deanna
11 Smith?

12 A. I don't remember.

13 Q. With your interpreter there,
14 were you able to participate in that
15 meeting?

16 A. Yes.

17 Q. Did anyone at the district
18 ask you if you understood what was going
19 on in the meeting?

20 A. Not from the school
21 district. At the end, I just told the
22 person who was translating to me that I
23 wished I had the translated version in
24 Spanish, because they give it to me in

Madeline Perez

1 English like that.

2 Q. Do you ever get phone calls
3 from D.R. [REDACTED] 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. [REDACTED] ?

20 A. They've always given me the
21 progress notes in English and in Spanish.
22 For J.R. [REDACTED], D.R. [REDACTED], L.R. [REDACTED], 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 homework, projects, things like that.

2 And they do other things in addition.

3 Q. Why have you brought someone
4 from HUNE to the IEP meetings in the
5 past?

6 A. Because I don't know
7 English.

8 Q. So you'd bring them purely
9 to interpret for you?

10 A. Yes.

11 Q. Does the HUNE advocate ever
12 express any opinions about the services
13 for your kids?

14 A. She just translates what I
15 need.

16 Q. Do you talk to the HUNE
17 advocate before the meeting to prepare?

18 A. No. You mean if I meet at
19 an office before I go to the meeting at
20 the school? Is that what you're asking?

21 Q. Right.

22 Do you ever talk to the
23 person from HUNE just to go over what's
24 going to happen at the meeting?

Madeline Perez

1 that input?

2 A. Yes, the district listens to
3 the input of the after-school or my
4 concerns. The problem is not listening
5 to me; the problem is, I don't have the
6 papers to read in Spanish.

7 Q. But even without the papers,
8 you're able to ask questions?

9 A. Yes, I can ask questions,
10 but if something happens like I forget,
11 I'd like to have the documents in Spanish
12 so I can go over them.

13 Q. Isn't there someone you can
14 talk to if something happens?

15 A. I don't have anybody around
16 the clock to read to me what it says in
17 English.

18 Q. I'm sorry.

19 I meant, if a problem comes
20 up with one of the children, can't you
21 reach out to someone at the school about
22 that problem?

23 A. When something happens to
24 the children, I go in person to the

Madeline Perez

1 Q. Do you think that they would
2 be helped if they had summer school
3 services?

4 A. Yes. D.R. would.

5 Q. And have you ever discussed
6 at IEP meetings getting summer services
7 for D.R. ?

8 A. No.

9 Q. Did you know that the IEPs
10 for D.R. and for L.R. and J.R. say
11 they do not need summer services?

12 MS. GOEBEL: Objection.

13 That's not true.

14 MR. CHURCHILL: That is
15 true. But anyway.

16 BY MR. CHURCHILL:

17 Q. Do you have any knowledge of
18 what the IEPs say are needed for D.R.
19 in the way of summer services?

20 A. No, because D.R. has only
21 participated once in summer school.

22 Q. And have they --

23 Has anyone at the school
24 district during the IEP told you that --

Madeline Perez

1 discussed with -- I'm sorry, we already
2 asked that one.

3 Do you believe you could be
4 a more effective advocate for D.R. [REDACTED] if
5 you had a translated IEP for her before
6 the meeting took place?

7 A. Yes.

8 Q. And would that be true also
9 for J.R. [REDACTED]?

10 A. Yes. And L.R. [REDACTED]. What is in
11 my interest is to have the documents in
12 Spanish.

13 Q. Now, let us -- would you
14 look at Perez No. 4?

15 And on page 7, in the middle
16 of the page it says, [REDACTED]

17 [REDACTED]
18 (sic), Madeline Perez and J.R. [REDACTED] are
19 guardians that live with L.R.

20 Is that true?

21 A. Yes.

22 Q. And did you provide that
23 information to me to provide to the
24 school district?

Madeline Perez

1 acceptable.

2 Did you have IEP meetings
3 without any interpreter being provided by
4 the school district?

5 A. Yes. Sometime, yes. For
6 example, there was a time that there was
7 no interpreter, but Dr. Rivera was there,
8 who was the principal. And whatever
9 translation they provide will never be
10 the same as having it written in Spanish.
11 What I am interested in is having the
12 document in Spanish, because the
13 translator tells me what's going on at
14 the moment right there, but I might
15 forget what it was about.

16 MR. CHURCHILL: I don't
17 think I have any further
18 questions.

19 MS. GOEBEL: I have some
20 follow-up.

21 * * *

22 EXAMINATION

23 * * *

24 BY MS. GOEBEL:

Madeline Perez

1 Q. Have you ever had an IEP
2 meeting where there was no interpreter?

3 A. If we're talking about
4 somebody like Mr. Rivera or a teacher,
5 yeah, he interpreted once he was present.
6 But the ratio of interpretation was not
7 the same as -- I saw that they were
8 talking back and forth, but not
9 interpreted everything to me.

10 Q. What IEP meeting was this?

11 A. One of many in Hunter. I
12 don't remember the date.

13 Q. It was at Hunter?

14 A. In Hunter.

15 Q. Was that for L.R. ?

16 A. No, I think it was for
17 D.R. . I think it was for D.R. .

18 Q. It would have been a few
19 years ago, right?

20 A. Yes.

21 Q. You're saying that the
22 principal, Mr. Rivera, was the
23 interpreter, right?

24 A. Yes. But Mr. Rivera was not

Madeline Perez

1 an official interpreter. Like, he would
2 say, okay, hold on, let me see what's
3 going on and I will give you the gist of
4 it.

5 Q. So were you still able to
6 understand what the plan was for D.R. [REDACTED]?

7 A. Some.

8 Q. Have you ever heard of
9 Language Line?

10 A. No.

11 Q. Has the school district ever
12 used an interpreter on the phone?

13 A. In one occasion they use
14 somebody by phone, but they didn't use it
15 all the time. It was not always readily
16 available for any IEP.

17 Q. Since that one meeting with
18 Mr. Rivera as the interpreter, have you
19 had sufficient interpretation since then?

20 MR. CHURCHILL: Objection.
21 She did not say one meeting; she
22 said several.

23 MS. GOEBEL: I think that's
24 a mischaracterization, but.

EXHIBIT 22

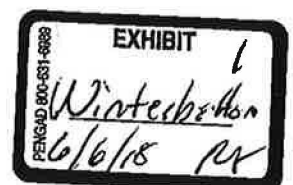
EXPERT REPORT OF KATHERINE A. WINTERBOTTOM, Ed.S., NCSP

**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 |
|--|-------------------------------|

**EXPERT REPORT
OF
KATHERINE A. WINTERBOTTOM, Ed.S., NCSP**

May 11, 2018



EXPERT REPORT OF KATHERINE A. WINTERBOTTOM, Ed.S., NCSP

I. QUALIFICATIONS AND BACKGROUND

I am a Nationally Certified School Psychologist with the National Association of School Psychologists (NASP) and am fluent in Spanish. Over the past fifteen years, I have focused on expanding my knowledge base regarding childhood development, school psychological practice, and cultural/linguistic competence. From the time I entered college until the present, I have concentrated on providing academic and social-emotional interventions for children and families, as well as building positive collaborative relationships with the students and families that I serve.

In 2007, I received a Bachelor of Science degree in both Psychology and Spanish from Ursinus College. As part of my undergraduate coursework, I studied abroad in Mexico. Aside from helping me to develop my Spanish-language skills, that independent learning experience gave me great insight with respect to the cultural differences and diversity among Spanish-speaking people. I also took specific courses in Latin American culture and translation during my time at Ursinus. As part of my Psychology major, I conducted research in a middle school in Pennsylvania that centered on the impact of parental involvement on adolescents' health choices.

After graduating from Ursinus, I enrolled at Rowan University in 2007. There, I completed my Master of Arts and Educational Specialist degrees in School Psychology. During my time at Rowan, I worked as a Graduate Assistant and helped with research in the Psychology department. I also worked as an interpreter for Rowan University's Early Intervention Program (EIP). In this role, I provided Spanish-language interpretation services, as well as developmental intervention, to children from birth to three years of age. Following graduation, I maintained employment with the EIP until 2012. My work included frequent consultation with service providers, case managers, and families.

Katherine A. Winterbottom, Ed.S., NCSP

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Williamstown, NJ 08094

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609-760-1439

EDUCATION

- | | |
|------|--|
| 2010 | Rowan University Ed.S. in School Psychology |
| 2008 | Rowan University M.A. in School Psychology Thesis: Perceptions of General Education Teachers in Inclusive Settings |
| 2007 | Ursinus College B.S. in Psychology and Spanish |

CLINICAL PRACTICE

Camden County Educational Services Commission, 2016-present

- Conduct Spanish-language psychoeducational evaluations for students in grades P-12.
- Consult with teachers and case managers from referring districts in order to plan programs.
- Utilize a wide array of assessment tools aimed at measuring language dominance, cognitive abilities, and academic skills.

Monroe Township Public Schools, 2010-2018

- Served as case manager for students in district as well as in out-of-district placements.
- Provided counseling services for students to increase their adaptability and social skills.
- Presented to staff on eligibility decisions for students with Specific Learning Disabilities.

Bridgeton Public School District, 2009-2010

- Participated in weekly mentoring sessions with the supervisor of special services.
- Completed work as an intern in all relevant areas of school psychology practice.
- Collaborated with the school psychologists throughout the district in developing school-based intervention teams.

Franklin Township School District, 2009

- Evaluated and counselled children in four district schools.
- Prepared and implemented lessons and activities for group counseling with children with ADHD and those coping with divorce.
- Interpreted evaluation data at eligibility, IEP, and re-evaluation meetings.

Jewish Community Day School, 2008

- Trained elementary teachers and students in Co-Writer computer program.
- Facilitated large student social skills group.
- Collected behavioral data for several students.

ADDITIONAL PROFESSIONAL EXPERIENCE

Graduate Assistant, Rowan University – Psychology Department, 2007-2009

- Create and execute interventions as a Program Assistant for the University's Early Intervention Program, including developmental intervention, paraprofessional services, and translation/interpreting for Spanish-speaking families and children.
- Mentor Master's level school psychology students as they complete the Institutional Review Board process, conduct research, and analyze data for their thesis projects.
- Perform duties of a Teaching Assistant for several undergraduate psychology courses, facilitating lectures and reviewing students' work.

Field Consultant/Liaison, Developing Safe and Civil Schools (DSACS) Project, Rutgers, the State University of New Jersey, 2008-2009

- Presented trainings and in-service days with school staff to promote Social Emotional and Character Development (SECD).
- Consulted with P-12 schools in New Jersey, reviewing climate data and brainstorming ways to increase SECD programs and enhance overall school climate.
- Tracked climate data of staff, students, and parents and disseminate this information to school coordinators, administrators and SECD teams.

PROFESSIONAL MEMBERSHIPS

National Association of School Psychologists - Nationally Certified School Psychologist

PRESENTATIONS AND PUBLICATIONS

Conner, K. & Sinko, A. (2009). Social Emotional and Character Development (SECD), Students' Academic Growth, and Safe, Civil, Engaging School Climates: The Essential Connection. In-service presented at Woodbury Heights Elementary School, Woodbury Heights, NJ.

Conner, K. (2009). Intervention and Referral Services. *New Jersey School Psychologist*, Winter 2009.

Conner, K. (2008). Perceptions of General Education Teachers in Inclusive Settings. Poster Presented April 16, 2008 at the 34th Annual Psychology Research Conference, Rowan University.

Conner, K., Rosi, V. & DaCosta, K. (2007). Healthy Choices: The Effects of Parental Involvement and Modeling on Adolescents. Poster presented at the 2007 Delaware Valley Undergraduate Research Conference and the Celebration of Student Achievement Day (COSA) at Ursinus College.

Exhibit A

- Braden, M.C. & Miller, J.A. (2007). Increasing Parental Involvement in Education. *Communiqué*, 36, 1.
- Chávez, Reyes, C. (2010). Inclusive approaches to parent engagement for young English language learners and their families. *National Society for the Study of Education*, 109, 474-504.
- Cheatham, G. (2011). Language interpretation, parent participation, and young children with disabilities, 31, 78-88.
- Cho, S. & Gannotti, M. (2005). Korean-American mothers' perception of professional support in early intervention and special education programs. *Journal of Policy and Practice in Intellectual Disabilities*, 2, 1-9.
- National Association of School Psychologists. (2010) Model for comprehensive and integrated school psychological services. Bethesda, MD: NASP.
- Ortiz, S, Flanagan, D. & Dynda, A. (2008). Best practices in working with culturally diverse children and families. In Thomas, A. & Grimes, J. *Best Practices in School Psychology V*, (pp 1721-1738) Bethesda, MD: The National Association of School Psychologists.
- Prasse, D.P. (2008) Best practices in school psychology and the law. In Thomas, A. & Grimes, J. *Best Practices in School Psychology V*, (pp 1721-1738) Bethesda, MD: The National Association of School Psychologists.
- Rhodes, R.L., Ochoa, S.H., & Ortiz, S.O. (2005) *Assessing Culturally and Linguistically Diverse Students: A Practical Guide*. New York: The Guilford Press.
- Tilly, W. D. III (2008) The evolution of school psychology to science-based practice: problem solving and the three-tiered model. In Thomas, A. & Grimes, J. *Best Practices in School Psychology V*, (pp 17-36) Bethesda, MD: The National Association of School Psychologists.
- Zhang, C. & Bennett, T. (2003), Facilitating the meaningful participation of culturally and linguistically diverse families in the IFSP and IEP process. *Focus on Autism and Other Developmental Disabilities*, 18, 51-59.

Case-Related Materials

- Expert Report of Nelson L. Flores, Ph.D., April 13, 2018
- Plaintiffs' First Amended Complaint
- Deposition of Ludy Soderman, December 6, 2017
- Deposition of Natalie Hess, January 25, 2018
- Deposition of Barbara Galarza, January 26, 2018
- Deposition of Manqing Lin, January 30, 2018
- Deposition of Madeline Perez, February 12, 2018
- Deposition of Marie Capitolo, February 21, 2018

- **Special Education Quick Reference Guide**
- **Quick Reference Guide — Translation and Interpretation Services**
- **Special Education Parental/Guardian Rights Document**
- **Memo from Natalie Hess to Special Education Teachers, October 9, 2017**
- **Special Education PowerPoint Presentation**

EXPERT REPORT OF KATHERINE A. WINTERBOTTOM, Ed.S., NCSP

Aside from my experience working with Rowan's EIP, I completed three different field experiences. I logged 60 hours at the Jewish Community Day School in Northfield, New Jersey, 150 hours at Franklin Township Public Schools in Franklin Township, New Jersey, and 1,200 hours at Bridgeton Public Schools in Bridgeton, New Jersey. In these three field placements, I conducted observations of students, provided intervention on academic and social-emotional concerns, and interpreted evaluation data at eligibility, Individualized Education Program (IEP), and re-evaluation meetings, among other things.

After completing my Educational Specialist degree in 2010, I obtained employment at Monroe Township Public Schools in Williamstown, New Jersey. For the first two years, I sat on the preschool Child Study Team, where I spent a significant amount of my time conferencing with parents who were new to the special education process. During this time, I became keenly aware of the challenges that parents face when navigating the special education process. Then, I served as case manager for the District's Autism Spectrum Disorders program. Finally, for the past four years, I have worked on an elementary team which involved some out-of-district case management each year. As the role of case manager is held by the Child Study Team members in New Jersey, I have fulfilled the role of chairperson for IEP meetings, served as the point person in regard to parents' IEP-related questions, and consulted with special education teachers on development of goals, objectives, modifications, and behavior plans. My experience, therefore, encompasses P-12 special education services provided to students across all eligibility categories.

In 2015, the supervisor of Special Services of Camden County Educational Services Commission requested that I provide services completing Spanish-language psychological and psychoeducational evaluations for both public and non-public schools in the County. The

EXPERT REPORT OF KATHERINE A. WINTERBOTTOM, Ed.S., NCSP

Commission serves a significant population of Spanish-speaking students and families. In my role as an independent contractor for the Commission, I have conducted numerous evaluations and have participated in various special education meetings, including IEP meetings, either as a Spanish-language interpreter or as the school psychologist.

In order to maintain my credentials as a Nationally Certified School Psychologist,¹ I am required to complete at least 75 hours of continuing professional development every three years. In addition to my training and continuing professional development through NASP, my district requires that I participate in 100 clock hours every five years. Moreover, in New Jersey, all Child Study Team members must complete specific training on a number of topics. In keeping up with these various requirements, I have received training on Affirmative Action, Civil Rights, and Ethics and Boundaries for School Employees, to name a few.

Over the course of my professional experience, I have participated in over 800 IEP meetings. I have served as a case manager/chairperson in nearly half of those meetings. In addition to attending IEP meetings, I have also taken part in many other types of meetings associated with the special education process including identification and evaluation planning, eligibility conferences, manifestation determinations, and transition planning/summary of performance meetings. I have served as a Spanish-language interpreter in nearly thirty-five special education-related meetings. In addition, I have conducted psychological and psychoeducational evaluations for well-over 400 students. When necessary, I have conducted these evaluations in Spanish or employed a bilingual assessment. Nearly fifty of the evaluations I have completed have involved English Language Learners.

¹ I became a Nationally Certified School Psychologist in 2010.

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A copy of my Curriculum Vitae is attached to this report. I have never testified in a court of law as an expert. I am providing my services to the School District of Philadelphia as an expert in this matter at a rate of \$200 per hour.

II. METHODOLOGY AND FACTS/DATA CONSIDERED

In drafting this report, I referred to information and materials I received during various trainings and professional development, which are listed in Exhibit A. In addition, I reviewed texts and articles that I have previously read and used in my daily practice, which are also listed in Exhibit A. I have also read the expert report of Dr. Nelson Flores, as well as some of the articles cited within it. I familiarized myself with the facts of this case, as well as School District practices and procedures, by speaking with staff members from the School District of Philadelphia, including Ludy Soderman, Marie Capitolo, and Natalie Hess. I have read the deposition transcripts of these staff members as well. I have also reviewed the deposition transcripts of each of the parent plaintiffs in this case. Finally, I reviewed the School District's website and familiarized myself with various practices and procedures related to this matter, which are listed in Exhibit A.

Based on my review of the materials listed above, my understanding is that the School District identifies the language parents speak at home through the Home Language Survey that is completed at registration. (Hess, 49). At the start of each school year, or when a new student arrives at a local school, assigned teachers contact the student's parent to introduce themselves and assess the appropriate mode of communication. For Limited English Proficient (LEP) parents, teachers utilize Bilingual Counseling Assistants (BCAs) or Language Line, a telephonic interpretation service, to communicate with parents about the student's education, including special education. (Ibid. 44-45).

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In terms of special education, Notices of Recommended Educational Placement (NOREPs), Procedural Safeguards, Permissions to Evaluate, and Permissions to Re-evaluate are translated into the parent's native language. (Ibid. 143, 147). The School District's EasyIEP system, BCAs, and the Pennsylvania Training and Technical Assistance Network (PaTTAN) can be used to translate these forms. (Ibid. 91-94, 144).

The Special Education teacher assigned to a student coordinates IEP meetings through the school's assigned Special Education Liaison (SEL). The IEP team includes the SEL, the Special Education teacher, a representative of the local education agency, and the student's parent(s), among others. Parents are considered vital to the process and important members of the IEP team. (Capitolo, 42). The IEP team works together to schedule mutually convenient times to meet. (Special Education Presentation, PSD017712). Usually, the SEL will arrange for a BCA to attend the IEP meeting to interpret for LEP parents. (Hess, 50). BCAs, together with SELs, are made available to LEP parents before IEP meetings to review documents. (Ibid. 123-124, 191-192).

During these meetings, the BCA is tasked with interpreting the dialogue at the meeting as well as acting as a cultural broker to assist in ensuring understanding. (Soderman, 26). Parents are asked if they understand what is being discussed at IEP meetings. (Capitolo, 41-42). Parents frequently provide input and suggestions at IEP meetings, and that information is often implemented in the IEP. (Hess, 165-167). Parents are advised of their rights in the IEP process, including their ability to request translation and interpretation services if needed. (Capitolo, 213-214). If a parent requests translated special education documents, the request is evaluated by the assigned Special Education Director. (Hess, 210-212). The SEL and the Special Education Director conference with the parent when handling a translation request. (Ibid. 158). If a request

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for translation is granted, the Office of Specialized Services sends the document to a third-party contractor for translation. (Ibid. 236, 257, 261, 262). My understanding is that the School District has not denied a parent's translation request. (Ibid. 108, 161, 197, 208).

In rendering my opinion in this matter, I considered whether the School District's actions related to this matter align with the guidance set forth by NASP and other authorities. Of course, my vast experience participating in IEP and other special education meetings and providing Spanish-language interpretation services during those meetings and during special education evaluations has informed my opinion as well.

III. ANALYSIS

Both the Individuals with Disabilities Education Act (IDEA) and NASP place a significant emphasis on parents' rights and their participation and collaboration throughout the special education process. NASP has cautioned against taking a "one size fits all" approach to parental collaboration. Specifically, NASP has advised that "[r]oles for families should be broadly conceived, but individually applied." (NASP, 2010). As such, parental participation and engagement may look different for each individual family. Indeed, a parent's ability to participate and collaborate in the special education process can be impacted by a variety of factors, including the parent's ability to understand and communicate in English. (Braden & Miller, 2007). Based on the research that I have conducted, and the materials I have reviewed, I am of the opinion that, consistent with NASP guidance, the School District of Philadelphia provides various ways to provide Limited English Proficient (LEP) parents with access to information regarding their children's education, and ensures that LEP parents are able to take part in the special education process. Moreover, the School District has made clear that it is

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always striving to improve where necessary to meet the needs of the students and families they serve. (Hess, 114, 182, 192, 213; Soderman, 22-23).

A. OUTREACH TO LEP PARENTS

The first step in ensuring that LEP parents can participate and collaborate in the special education process is to identify them. The School District's registration materials are available in eight languages other than English.² The application form includes a question regarding a student's primary language, as well as a Home Language Survey that asks the enrollee a variety of questions, including what language the child's family speaks at home and what language the parent speaks to the child most of the time. (Admission Application, PSD003046-47). Aside from identifying a parent's native language at the enrollment stage, it is typical for teachers to ask their students and their students' parents which languages are spoken at home. Through the home language survey, as well as informal conversations between BCAs, teachers, students, and their parents, connections are made between school and home. (Chávez-Reyes, 2010). It is through these connections that a trusting relationship can be formed between schools and the families they serve.

Upon visiting the School District's website, the top of the page includes options to translate the webpages into the District's eight languages other than English. BCAs assigned to schools are required to contact LEP parents to advise them when they will be available at the school and the services they provide, including interpretation, at the beginning of each school year. (Soderman, 78). The website also identifies the Office of Family and Community Engagement (FACE) and describes the roles of BCAs and SELs. The website also explains that

² Those languages are Albanian, Arabic, Cambodian (Khmer), Chinese, French, Russian, Spanish, and Vietnamese.

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the School District offers interpretation and translation services, including translation of District-wide and school-specific documents—such as District policies, flyers, forms, communications intended for parents and/or students, foreign transcripts, immunization records, the Code of Student Conduct, school calendars—in eight languages other than English. The website also lists a telephone number that parents can use if they have any questions.

In addition, the School District regularly hosts workshops and parent information sessions and arranges for BCAs to attend those functions to provide interpretation services in the event that LEP parents are in attendance. (Soderman, 68, 187-188). Parents are invited to the schools on a regular basis, including report card conferences, back to school night, and other school events. BCAs are made available at those events as well. (Ibid. 42-43). If BCAs are not available, the school will use Language Line. (Ibid. 64). Over the course of these events, LEP parents become aware that either BCAs or Language Line are available to interpret and allow the parents to communicate with the children's schools.

It is important to bear in mind that special education operates beneath the umbrella of general education and the school system as a whole. LEP parents have the benefit of the aforementioned outreach well-before the special education process even begins. Thus, there is a trusting school-home relationship that extends beyond the special education process to identify parents who do not speak English and provide the appropriate language support services to communicate with them.

B. INVOLVING LEP PARENTS IN THE SPECIAL EDUCATION PROCESS

Again, both the IDEA and NASP place importance on parental participation throughout the special education process. Given that an IEP is created by a team of both professionals and parents (Prasse, 2008), building a relationship between school and home is paramount in the

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provision of special education services. The positive effects of a strong relationship between the parent and the IEP team is evident from the deposition testimony of Plaintiff Madeline Perez, who talked at length about the information she offers to the school team about her concerns for her children and how the IEP team is then able to provide suggestions and accommodations to help her children. For example, Ms. Perez talked about how she shared a concern regarding her daughter D.R.'s reading comprehension and a special education teacher recommended that she listen to books on tape at home, which has had a positive effect on D.R. (Perez, 22-23). Ms. Perez also mentioned concerns regarding her son J.R.'s ability to navigate public transportation, so the school agreed to provide door-to-door cab service. (Ibid. 64-66). These are just two examples of how a strong relationship between the school and parents can have a positive impact on students' education.

Certainly, the special education process can be daunting for any parent to navigate, including those who are native speakers of English. Undoubtedly, a language barrier will further complicate the process of understanding and participating in IEP preparation. (Zhang & Bennett, 2003). It is my understanding that the School District takes various steps to help LEP parents overcome these barriers and participate in the special education process. By way of one example, the School District encourages parents to bring other family members, friends, and/or community advocates with them to various special education meetings, including IEP meetings. (QRG – Translation and Interpretation Services, 2). Doing so can help LEP parents feel more comfortable during the process and put them at greater ease. Indeed, two of the parent plaintiffs have brought third parties with them to special education meetings. (Perez, 33-34, 70-71, 77-80; Lin, 66-67, 119-120).

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1. Use of BCAs

One way that the School District helps engage LEP parents during the special education process is through the use of BCAs who provide interpretation services at various special education meetings. According to NASP's best practices, "competence in being able to provide psychological services to children and families from diverse cultural and ethnic backgrounds is not merely a desirable skill, but a necessity." (Ortiz, Flanagan, & Dynda 2008). This essential piece of NASP practice model is commensurate with the spirit of the IDEA and requires school-based teams to engage the participation of families in the special education process through multiple avenues. One of the many ways in which the School District satisfies this requirement is through its use of BCAs during the special education process.

The School District currently has 78 BCAs who collectively speak 42 different languages. (Soderman, 36). I understand that ten more BCAs will be hired for the 2018-2019 school year. Some BCAs are assigned to specific schools based on English for Speakers of Other Languages (ESOL) data, while other BCAs rotate between schools as needed. (Ibid. 51-53). The School District expects BCAs to introduce themselves to LEP parents and let the parents know how they can contact the BCAs, should they need interpretation services or other assistance. (Ibid. 78). BCAs are cultural brokers who are meant to help schools understand students' cultural norms, aside from providing interpretation services. (Ibid. 26). They are given three-day, intensive trainings at the beginning of each school year and attend monthly trainings on particular topics of interest. (Ibid. 25-26). Because BCAs are used to provide interpretation services at special education meetings,³ they receive training on how to interpret during IEP

³ In the event that a parent speaks a language other than the 42 languages spoken by the BCAs, IEP team members have access to Language Line, which is a telephonic interpretation service that offers interpretation for over 200 languages and dialects. (Soderman, 39, 64).

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meetings, and the School District provides them with a glossary of special education terms. (Ibid. 45). The training that BCAs receive ensures that BCAs collaborate effectively, understand and convey cultural knowledge, and accurately render IEP team members' statements. (Cheatam, 2011). BCAs can be an essential part of school-home collaboration, as interpreters often develop relationships that can serve to maintain parent participation during the special education process. (Rhodes, Ochoa, & Ortiz, 2005).

Aside from providing interpretation services during special education meetings, BCAs are also made available to LEP parents to review special education documents in advance of an upcoming meeting. For example, in most cases, the School District provides parents with a draft IEP ten days prior to the IEP meeting where the IEP will be discussed, possibly revised, and finalized. (Capitolo, 43-44). For LEP parents, the headings and standardized language in the IEP are translated, while the student-specific content remains in English. (Hess, 94, 119, 122). LEP parents are invited to come to their child's school or School District headquarters to sit down with the assigned SEL and a BCA and review the draft IEP prior to the meeting. (Ibid. 191-192). To ensure accessibility to parents, the School District offers to make BCAs available to parents after school hours. (Ibid. 194-195). One of the parent plaintiffs, Ms. Manqing Lin has made use of this opportunity and took part in eight sessions reviewing various documents with the SEL and a BCA. (Capitolo, 66-67, 75). This situation exemplifies how helpful this process can be and how it puts parents in a position to participate at the upcoming IEP meeting in a way that simply reading a draft IEP does not. Specifically, during one of these sessions, Ms. Lin noted that a draft IEP contained terms that the BCA was unable to interpret for her, as those terms have no counterpart in Mandarin. (Lin, 143-144). However, the SEL was then able to explain and give context to the terms, which the BCA was able to communicate in Ms. Lin's

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native language. (Ibid.) The School District's explanation of the terms being used to identify or describe a child's issues provides greater understanding than a rote interpretation or translation could.

2. Translation Services

Though BCAs are primarily meant to provide interpretation services, they will occasionally translate short documents for parents. (Soderman, 51, 124). For instance, BCAs will translate flyers notifying parents of school activities like field trips or extracurricular clubs. (Soderman, 124). In addition, it is my understanding that the School District translates all consent documents. (Hess, 143, 147; Special Education Presentation, PSD017735). For IEPs, standardized language and headings are translated for LEP parents. (Hess, 94, 119, 122). On occasion, parents will ask for IEPs and other special education documents to be translated in full. It is my understanding that the School District's practice has been to decide on a case-by-case basis whether to fully translate a special education document. (Ibid. 158). As such, the School District considers a variety of factors when determining whether a fully translated document will help ensure a parent's meaningful participation in the special education process. (Ibid. 154-163). I understand that the School District has never denied a parent's request for a translated special education document. (Ibid. 108, 161, 197, 208).

In my experience, the single most important consideration as to whether to translate an IEP is the fact that the IEP is a "living" document. Rather than a mere prescription for services, the IEP is a blueprint that is created by the entire IEP team, including parents. For students with disabilities, growth and progress is the expectation. As children develop skills and abilities, which can occur rapidly, IEPs must be revised to reflect current needs. In my years of practice, I have never provided a draft IEP prior to a meeting. While draft IEPs are certainly created in

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advance of these meetings, they usually contain minute and/or routine details. In my experience, is not until the IEP meeting that the student's needs are discussed in detail with the entire IEP team in order to decide upon appropriate programming. Interpretation of evaluation results and present levels of performance are paramount in establishing a student's needs. These needs drive program decisions and establish a baseline to create goals and objectives. Simply put, the heart of the IEP is not fleshed-out until the meeting itself, where all stakeholders are present, and it is the parents' participation in that discussion that must be captured to ensure that the parent provides input for the IEP.

3. Ensuring Parents' Participation

Parental participation at an IEP meeting is particularly important. Thus, parents are crucial members of the IEP team which may also include the SEL, the Special Education teacher, a representative of the local education agency, and any service providers—like occupational or speech therapists—who work with the student. The IEP team works together to schedule mutually convenient times to meet, and the School District makes every effort to ensure that parents participate in IEP meetings. (Special Education Presentation, PSD017712, PSD017734). In addition to the IEP team, a BCA may be at an IEP meeting to provide interpretation services if needed. As stated above, a parent may also choose to bring their own interpreter or other family member, friend, or advocate. (QRG – Translation and Interpretation Services, 2).

During the IEP meeting, the special education teacher reads the School District's abbreviated, "at-a-glance" version of the Procedural Safeguards—Special Education Parental/Guardian Rights. (Hess Memo, PSD015350; Capitolo, 214). It is my understanding that the School District implemented this process during the 2017-2018 school year and that the Special Education Parental/Guardian Rights document has been translated into eight languages.

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In addition, both the Procedural Safeguards and the summary document are provided to parents at least annually. (Hess Memo, PSD015350). The abbreviated Special Education Parental/Guardian Rights document can be useful to any parent, regardless of language spoken, as lengthy special education documents may be overwhelming to parents. Of particular importance to LEP parents, this summary document advises them that they can request translation or interpretation services at any time during the special education process. (Special Education Parental/Guardian Rights).

A child's parent is an important part of the IEP team. As previously noted, BCAs also attend IEP meetings and provide interpretation services for LEP parents. The School District makes every effort to have a BCA available for an IEP meeting. (Soderman, 58-59). If, however, a BCA who speaks the parent's native language is not available, the School District will make alternative arrangements such as rescheduling the IEP meeting, asking a bilingual teacher or staff member to interpret during the meeting, or using Language Line. (Soderman, 118, 127-128, 202; Hess, 45). SELs are always present to provide further explanation for the IEP team. Through the use of interpreters, LEP parents are given the opportunity to provide information regarding their child, ask questions about the process and recommendations, give suggestions, and express disagreement, among other things. Thus, LEP parents are "able to function as an equal partner in the educational process as well as have input and recourse when they disagree with the school over what the IDEA requires." (Cho & Ganotti, 2005). Indeed, the School District wants to make sure that parents are included in the process, (Hess, 166) and that all parents understand everything that is being discussed so that they are "able to participate like any other IEP team member." (Capitolo, 42).

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As set forth above, IEPs are not finalized until all key stakeholders have the opportunity to give their input. The school teams ask many follow-up questions during the IEP meeting to allow them to monitor the parent's engagement in the process, and the school teams are encouraged to record that engagement in the IEP itself. (Hess, 166). As a matter of fact, each of the parent plaintiffs testified that, with interpretation services, they were able to ask questions, provide information about their child, and fully participate in decisions regarding their child's programming. (Perez 19-25, 37, 59-61; Galarza 14-16, 36-39, 129-131, 154-157; Lin 140-141, 156-157). In each IEP meeting that I have chaired, these are the things I look for to make sure that parents are understanding and participating in the process. Particularly important to note is that the parent plaintiffs understand and agree with the services being offered to their children, which is the School District's paramount concern. (Perez 64, 19-25; Galarza 14-16, 129-131; Lin 126-127, 162).

Following the IEP meeting, parents who have additional questions or concerns regarding the IEP or their child's special education program can always reach out to any member of the IEP team for further information or assistance. For example, Ms. Galarza testified about her ongoing communications with Mrs. Gonzalez, a bilingual member of her daughter T.R.'s IEP team, about an array of concerns that came up after the IEP meeting, sometimes unrelated to special education. (Galarza, 22-29). Assigning SELs to specific schools can help establish the critical relationship between parents and schools. If the parent still has difficulty accessing or understanding the IEP after the meeting or after speaking further with the SEL and BCA, the parent can always make a request for the document to be translated, as previously stated.

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C. POTENTIAL PITFALLS OF PLAINTIFFS' APPROACH

As set forth above, I have reviewed Dr. Nelson Flores' report. Given the information presented above, there are several drawbacks and practical difficulties in terms of applying the recommendations made by Dr. Flores. These include IDEA timelines, literacy levels of parents, and the complexity of terminology, which could lead to misunderstanding and confusion.

Child Study Team evaluations must be conducted in 60 calendar days. (Hess, 122). Due to the nature of the assessments used and the requirement for multiple measures by multiple evaluators, the assessment process can take several weeks. In order to provide written translations of evaluation reports or draft IEPs prior to the meetings, school psychologists and other evaluators would have far less time than the allotted 60 days, which could negatively impact the depth and breadth of the evaluations. Indeed, they would need to complete their assessments and drafting relatively quickly in order to leave enough time for the drafts to be fully translated.

Dr. Flores' report also failed to consider the literacy level of LEP parents in their native language. This is a critical oversight, as at least one of the School District's special education directors has encountered many LEP parents who did not read their native language. (Capitolo, 28, 33). Similarly, one of the parent plaintiffs in this matter had never considered the possibility that an LEP parent may not be able to read in their native language, despite being able to speak it. (Lin, 93-94). Thus, simply providing a translated proposed IEP as a matter of course under the assumption that a parent can read fluently and comprehend written text is a very unfortunate misstep. In situations in which parents are illiterate or have a low lexile level, a written document like an IEP is insufficient to engage parental participation and may even alienate parents, deterring participation.

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Aside from potential literacy issues, much of the terminology used to discuss assessment tools, special education programs, and goals and objectives is highly complex. The technical vocabulary used is not readily understood by many parents, regardless of language spoken. Beyond that, some of the specialized vocabulary used may not have a direct translation into the parent's native language or carry the same meaning as when presented in English. For example, a speech-language goal about use of an apostrophe after the letter "s" to denote possession could be confusing to a Spanish-speaking parent because that is not how possession is conveyed in Spanish. Likewise, a reading goal for phonological awareness may include decoding of sounds that do not exist in the native language of the student. Thus, in instances such as these, providing written translation as a matter of course would not necessarily assist the parent in comprehending the meaning of the special education document at issue.

Finally, Dr. Flores seems to acknowledge the difficulty with overloading LEP parents with long, complicated special education documents by suggesting that the School District also provide "a summary of the IEP in less technical terms." (Flores, 12). Yet, in the same breath, Dr. Flores opines that the School District should still provide translated versions of all drafts *and* final IEPs. (*Id.*) This stands in stark contrast to the research upon which Dr. Flores relies. In fact, one of the articles he referred to in his report notes that "[b]ombarding families with too much information may alienate them from professionals and agencies and make future contacts more challenging" and recommends that schools reduce the volume of written information in order to facilitate parental participation in the special education process. (Zhang & Bennett, 2003). Adopting Dr. Flores' recommendation to provide LEP parents with translated versions of each and every draft and final IEP runs contrary to this advice.

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IV. CONCLUSION

In sum, it is my professional opinion that the School District of Philadelphia complies with NASP's practice model and guidance by taking necessary steps to ensure that LEP parents are given access to information regarding their children's education, as well as the opportunity to engage in the process. Once LEP parents are identified during registration or through a more informal process, the School District provides resources in order to ensure that they can participate in the special education process effectively. Through the Procedural Safeguards that are distributed, all parents are notified about their rights and responsibilities. By using the Special Education Parental/Guardian Rights document, the School District has gone a step further and advises parents of their ability to request interpretation and translation services throughout the special education process. By having trained BCAs in attendance at IEP and other special education meetings, LEP parents are engaged and able to provide information, ask questions, make suggestions, and express disagreement. As cultural brokers, the BCAs go beyond that which a translated document can provide, as they establish relationships with parents and can create the much-needed link between the school and the family. In instances in which these interpretation services are not sufficient to assist a parent's understanding or participation, the School District will translate special education documents such as IEPs. Again, this decision is made on a case-by-case basis. It is my understanding that none of the parent plaintiffs have any substantive complaints with the services being offered to their children, which strongly indicates that the School District's current practice is working and meeting the goal of parent participation for all families. The same way the School District provides individualized programming for students with disabilities, it must also individualize and modify its processes to allow parental participation depending on the unique circumstances of each parent. The School

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District's current practices adhere to these principles and avoid a "one size fits all" approach to parental collaboration.

Dated: May 11, 2018


KATHERINE A. WINTERBOTTOM, Ed.S., NCSP

EXHIBIT 23

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

- - -

| | | |
|------------------------|---|--------------|
| T.R., et al | : | CIVIL ACTION |
| | : | |
| Plaintiffs | : | |
| | : | |
| vs. | : | |
| | : | |
| THE SCHOOL DISTRICT OF | : | |
| PHILADELPHIA, | : | |
| | : | |
| Defendants. | : | |

- - -

WEDNESDAY, JUNE 6, 2018

- - -

Oral Deposition of KATHERINE A.
WINTERBOTTOM, Ed.S, NCSP, taken pursuant to
Notice, at the law offices of Drinker, Biddle
& Reath, One Logan Square, Suite 2000,
Philadelphia, Pennsylvania, commencing at
approximately 9:35 a.m., on the above date,
before Rose A. Tamburri, RPR, CM, CCR, CRR,
USCRA Speed and Accuracy Champion and Notary
Public.

- - -

VERITEXT LEGAL SOLUTIONS
Mid-Atlantic Region
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I N D E X

TESTIMONY OF: KATHERINE A. WINTERBOTTOM

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By Ms. Obod.....162, 186

E X H I B I T S

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| Winterbottom 3 | Special Education Parental/Guardian Rights | 49 |
| Winterbottom 4 | Quick Reference Guide Translation and Interpretation Services | 62 |

DEPOSITION SUPPORT INDEX

DIRECTION TO WITNESS NOT TO ANSWER

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REQUEST FOR PRODUCTION OF DOCUMENTS

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STIPULATIONS

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PREVIOUSLY MARKED EXHIBITS REFERRED TO

| EXHIBIT NUMBER | PAGE REFERENCED |
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|------|--|
| None | |
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1 (Whereupon, the deposition
2 commenced at 9:35 a.m.)

3 - - -

4 (It is stipulated by and among
5 counsel for the respective parties that
6 sealing, certification and filing are waived;
7 and that all objections, except as to the form
8 of the question, are reserved until the time
9 of trial.)

10 - - -

11 ...KATHERINE A. WINTERBOTTOM,
12 ED.S, NCSP, having first been duly sworn
13 and/or affirmed, was examined and testified as
14 follows...

15 - - -

16 EXAMINATION

17 - - -

18 (Whereupon, two documents were
19 marked, for identification purposes, as
20 Exhibits Winterbottom 1 and Winterbottom 2.)

21 - - -

22 BY MR. CHURCHILL:

23 Q. Miss Winterbottom, my name is Michael
24 Churchill and I'm an attorney for the
25 plaintiffs in this matter.

1 meeting, and that meeting in person is
2 preferable to just only having the translated
3 document.

4 So when we look at interpretation
5 services, I think it's the first question
6 because you want to make sure that parents
7 have the opportunity to have a conversation
8 with the school staff about what they're
9 planning and what they're recommending.

10 Q. For an English-speaking parent, the
11 opportunity to ask those questions is at the
12 IEP meeting; is that right? They get a draft
13 and then they get to ask questions about it?

14 A. Yes, that's correct.

15 Q. So it's not an either/or. You can
16 have something in writing and ask questions;
17 correct?

18 A. That is the procedure of the School
19 District of Philadelphia, yes.

20 Q. Okay.

21 And if a parent says, I would like
22 to be able to read the entire document before
23 talking to the interpreter and getting my
24 questions answered because my questions will
25 be much better if I have read the document, is

1 there any reason why they should not receive
2 that?

3 A. What we do is provide services to
4 students, and that's what we're looking at as
5 our primary concern, is being able to provide
6 the services. So if we can have a meeting and
7 explain our recommendations through
8 interpretation as opposed to waiting for a
9 document to be translated and taking that
10 additional time that it would require, then
11 we're able to more quickly provide the
12 services to the students.

13 Q. So one solution to this problem then
14 would be to offer to proceed without it or to
15 say we can have this translated, but we will
16 have to delay the meeting; is that correct?

17 MS. OBOD: Objection to form.

18 THE WITNESS: So if the
19 translation is going forward, it would most
20 likely delay the meeting. Is that what you're
21 asking?

22 MR. CHURCHILL: Yes.

23 THE WITNESS: Okay.

24 BY MR. CHURCHILL:

25 Q. Is that not a choice -- is there any

1 Q. And do you understand that one of the
2 reasons why Philadelphia does provide the
3 draft is so that parents can review the
4 services and the information ahead of time to
5 improve the discussion and the questions that
6 they may be able to address to the IEP team?

7 MS. OBOD: Objection to form. You
8 didn't cite anything, did you?

9 MR. CHURCHILL: No, I didn't. I'm
10 asking if that's her understanding of why they
11 do it.

12 THE WITNESS: I'm not sure why
13 they do it.

14 BY MR. CHURCHILL:

15 Q. Did you read Natalie Hess's
16 description of why they did it?

17 A. I read her deposition. I don't
18 recall explicit reasons for why they send
19 them.

20 Q. If the District believes it is
21 important for a parent to have access to that
22 information before the meeting, is there any
23 reason in your view why the LEP parent should
24 not have access to that information before the
25 meeting?

1 MS. OBOD: Objection to form.

2 You're asking her to speculate.

3 THE WITNESS: Well, they do have
4 access to the information prior to the meeting
5 because they have the ability to enlist the
6 services through interpretation at the
7 schools.

8 MR. CHURCHILL: Okay.

9 BY MR. CHURCHILL:

10 Q. What is your understanding of how
11 many parents have enlisted that service?

12 A. As previously stated, I don't have
13 specific data on parents requesting
14 interpretation.

15 Q. You understand that that service has
16 been only offered since September of this last
17 year?

18 MS. OBOD: Objection to form.

19 You're asking her to speculate.

20 BY MR. CHURCHILL:

21 Q. Well, do you know when the District
22 incorporated that practice into their Quick
23 Reference Guide?

24 MS. OBOD: Objection to the form.

25 You can answer.

1 required to be held?

2 MS. OBOD: Objection to form. You
3 can answer.

4 BY MR. CHURCHILL:

5 Q. Can anything that takes place prior
6 to that meeting substitute for what actually
7 is required to take place in that meeting?

8 A. The IEP meeting would need to have
9 all of the components that it typically has.

10 Q. And to make that interaction in that
11 meeting effective so that parents can
12 participate, you have said, I think, that for
13 limited English parents, they have available
14 to them the IEP draft with an interpretation
15 process before the meeting.

16 If that were -- is that correct,
17 that is one of the components of the process
18 that you said that means that the District has
19 ensured that they can take part in the
20 process?

21 A. Yes, certainly that's part of it.

22 Q. Okay.

23 But some parents, we don't know
24 how many, may not be able to or may not choose
25 to use that interpretation service; correct?

1 A. Yes.

2 Q. Some schools don't even have BCAs at
3 them; right? So it's not going to take place
4 at that school; right?

5 A. Well, my understanding is that the
6 BCAs are provided based on a needs assessment
7 of the languages spoken in the area and the
8 students that comprise those populations.

9 Q. Right, but a Mandarin-speaking child
10 in a school that has a Spanish-speaking BCA is
11 not going to get the BCA interpretation
12 service prior to the IEP meeting, will they?

13 A. I would not agree with that
14 statement.

15 Q. All right. Why not?

16 A. Well, because as needs are
17 established, if there are BCAs available, and
18 there are in Mandarin, then they could be
19 dispatched to that school where that student
20 has the need.

21 Q. So it could happen, but it wouldn't
22 be the BCA at that school; right?

23 MS. OBOD: Objection to form.

24 THE WITNESS: I suppose there are
25 instances in which a BCA is not typically at

1 Q. The question here is they considered
2 factors when determining whether a fully
3 translated document will help ensure
4 participation, and I'm asking, does
5 participation in a prior meeting govern
6 whether or not translation will assist the
7 parent?

8 MS. OBOD: Objection to form. You
9 can answer.

10 THE WITNESS: I think in and of
11 itself, not necessarily, but if the
12 participation in the meeting prior enabled the
13 parent to understand the draft, then a
14 translated copy would not be necessary prior
15 to the meeting.

16 BY MR. CHURCHILL:

17 Q. And if they can understand the draft
18 when it was discussed, is there any benefit to
19 having a written copy so that you can refer to
20 it at the time of the actual meeting and not
21 rely on your memory or on notes that you may
22 or may not have taken when it was interpreted
23 for you?

24 A. I'm sure people would find that
25 helpful.

1 Q. And as I understand, the District's
2 position is they will provide a copy of the
3 draft, even though it may not be required, to
4 all English-speaking parents. And because in
5 the District's view, it will assist them in
6 the participation in the meeting; is that
7 correct?

8 A. Earlier we discussed that I was not
9 sure of the reasons why the District provided
10 draft IEPs before the meeting.

11 Q. But they do provide them to all
12 English-speaking parents; right?

13 A. That's my understanding.

14 Q. And they do that without any
15 pre-conditions; correct?

16 A. My understanding is that the
17 procedure is to send out the draft IEP to the
18 families.

19 Q. Without any pre-conditions; right?
20 They don't ask them whether or not they can
21 read English, they don't ask them whether they
22 prefer to talk to somebody before getting it;
23 correct?

24 A. Right. A copy is sent to each
25 family.

EXHIBIT 24



DIRECT DIAL NUMBER:
(215) 575-7015

Marjorie Obod
mobod@dilworthlaw.com

November 21, 2017

VIA ELECTRONIC MAIL

Paul H. Saint-Antoine
Drinker Biddle & Reath LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103-6996
Paul.Saint-Antoine@dbr.com

Re: *T.R. et al. v. The School District of Philadelphia*, No. 15-04782-MSG (E.D. Pa.)

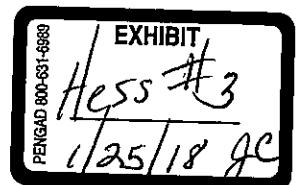
Dear Paul:

As you know, during the course of discovery, Plaintiffs and the School District of Philadelphia (the "District") agreed that the District would attempt to collect specific categories of documents/information via traditional methods, in lieu of running Plaintiffs' search terms, which generated an inordinate amount of hits/results to review. Pursuant to the Parties' agreement, the District sets forth as follows:

1. The number and identities¹ of members of the Parent Class and members of the Student Class

For the 2015-2016 school year, there were 3,507 special education students who lived in a household with a home language other than English. For the 2016-2017 school year, there were 3,783 special education students who lived in a household with a home language other than English. While the District keeps a record of students' home language, the District is unable to confirm whether each student's parent/guardian is limited English proficient pursuant to the definitions set forth at 20 U.S.C. § 1401(18) and 34 C.F.R. § 300.27.

¹ The District cannot reveal the identities of students and their parents, as this information is protected from disclosure pursuant to the Family Educational Rights and Privacy Act ("FERPA").



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2. The annual number of IEP process documents prepared

The District does not keep a master list of the annual number of IEP process documents that are prepared.

3. The annual number of requests for translation of IEP process documents

| Year | Annual Number of Requests for Translation of IEP Process Documents² |
|-------------|---|
| 2015 | 16 |
| 2016 | 47 |
| 2017 | 50 |

In addition, the document produced by the District at PSD014957 sets forth requests for translation of IEP process documents that were directed to the Office of Specialized Services and granted.

4. The annual number of IEP process documents translated (beyond just headings)

The document produced by the District at PSD014957 sets forth requests for translation of IEP process documents that were directed to the Office of Specialized Services and granted. An additional fifty (50) IEP-related documents were translated or revised by the Translation & Interpretation Center and/or an outside vendor from 2015 to October 27, 2017.

5. The annual budget figures for translation and interpretation services provided in connection with IEP meetings and IEP process documents

The District has produced a spreadsheet at PSD015356 detailing all translation and/or interpretation contracted services and staff within the Office of Family & Community Engagement. The District has also produced various contracts with outside vendors for translation and/or interpretation services at PSD002010-2125, PSD002331-2747, and PSD015353-15355, PSD015357-15366.

² These numbers reflect requests for translation that were directed to the District's Translation & Interpretation Center.

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6. All policies, practices and procedures for identifying parents with limited English proficiency who have children with disabilities enrolled in the District;

When any parent/guardian enrolls his/her child in the District, the parent/guardian is required to complete an Application for Admission of Child to School (EH40). That form includes a home language survey, where parents/guardians are asked to identify the language spoken at home by the family most of the time, as well as the language spoken by the parent/guardian to the child most of the time, *inter alia*. While the District uses this form to identify a student's home language, the District is unable to confirm whether each student's parent/guardian is limited English proficient pursuant to the definitions set forth at 20 U.S.C. § 1401(18) and 34 C.F.R. § 300.27.

7. All policies, practices and procedures for identifying students with disabilities who are English language learners

To the extent they exist, any such policies, practices and procedures have already been produced.

8. All policies, practices and procedures for translating IEP process documents

To the extent they exist, any such policies, practices and procedures have already been produced.

9. All policies, practices and procedures for translating regular education forms

To the extent they exist, any such policies, practices and procedures have already been produced.

10. All contracts with providers for translation or interpretation services; all budgets for such translation and interpretation services; and all expenditures by the District for such services

See response to Item No. 5 above; *see also* PSD002126-2258, PSD005179-5197.

11. Each request made by a LEP parent for translation of an IEP process document; and each decision by the District on whether to provide the translation of an IEP process document.

See responses to Item Nos. 3-4 above regarding requests for translation and the number of IEP process documents that were translated. As previously set forth, while the District uses an EH40 form to identify a student's home language, the District is unable to confirm whether each student's parent/guardian is limited English proficient pursuant to the definitions set forth at 20 U.S.C. § 1401(18) and 34 C.F.R. § 300.27.

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Finally, as set forth in Marie DiFillippo's letter dated November 15, 2017, enclosing the District's fourth document production in this matter, the District will be making additional document productions. Indeed, the District made a supplemental production this afternoon. Given the upcoming Thanksgiving holiday, the District anticipates making another document production by November 28, 2017.

Regards,

/s/ Marjorie Obod

Marjorie Obod

Cc: All counsel of record (*via email*)

EXHIBIT 25

**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 |
|---|-------------------------------|

**EXPERT REPORT
OF
NELSON L. FLORES, Ph.D.**

APRIL 13, 2018

EXPERT REPORT OF NELSON L. FLORES, PH.D.

I. Qualifications and Background

I have extensive expertise in Teaching English to Speakers of Other Languages (TESOL) as well as the role of the native language in supporting English Learners (ELs) and their families in effectively participating in the US educational system. Most of my professional experience has involved observing the abilities and difficulties of speakers of other languages to comprehend and communicate either in English or through interpreters.

I hold a bachelor's degree in Education and Political Science from Swarthmore College, where I pursued a Pennsylvania Teacher Certification in Social Studies. I also completed a senior thesis examining both the historical and contemporary state of the education of ELs in the United States with a specific focus on Philadelphia. In addition to conducting a secondary review of the literature, I also conducted an ethnographic study of a Philadelphia school that included classroom observations and teacher interviews to better understand the challenges confronting the school in serving ELs. A key aspect of this study was to better understand the ways that the school sought to involve parents of ELs in the educational process of their children. In addition to writing a thesis, I also shared recommendations with the school on how to improve the educational support it provided to ELs as well as strategies for increasing the involvement of their parents.

After graduating in 2003, I began my career as an ESL teacher in Philadelphia before moving to New York City. I transferred my Social Studies teacher certification to New York and taught high school social studies for one year. I, then, once again became an ESL teacher at the same high school. As one of the few bilingual staff members in the school, I witnessed firsthand the challenges confronting Limited English Proficient (LEP) families who often struggled to communicate with other staff members, several of whom relied on me to be their primary liaison.

EXPERT REPORT OF NELSON L. FLORES, PH.D.

I also participated in a few Individual Educational Program (IEP) meetings as an ESL teacher and, therefore, have some personal experience with both the importance of these meetings and the challenges caused by language barriers for LEP parents and caregivers trying to navigate this complex process. I remained in this position for 3 years. During this time, I also completed a Master's degree in TESOL at Lehman College in 2007 and received my New York State teacher certification in TESOL. As part of my studies, I completed a master's thesis focused on understanding the opportunities and challenges of implementing a collaborative team-teaching model where the general education teacher and the ESL teacher plan and implement instruction together in a classroom that includes both ELs and non-ELs. It included recommendations on how to maximize the potential of this teaching approach, recommendations that have since been published as part of an edited volume on collaborative team teaching models of ESL entitled *Co-teaching and other collaborative practices in the EFL/ESL classroom: Rationale, research, reflections, and recommendations*.

I began doctoral studies in Urban Education at the Graduate Center of the City University of New York in 2007, receiving my Ph.D. in 2012. As part of my doctoral studies, I had the opportunity to work on several different projects focused on bilingualism in education. Two of these projects were funded by the New York City Department of Education. The first project sought to better understand the academic challenges confronting "Long Term English Learners" (LTELs), students who remained English Learners (ELs) after 6 or more years. The second project sought to understand the impact of New York City's transition from large comprehensive high schools to small high schools on the academic achievement of ELs. The key findings from both projects related to the importance of seeing bilingualism as a resource for teaching and learning as well as in developing strong family-school connections. In 2011, I became the

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interim project director of the CUNY New York State Initiative on Emergent Bilinguals (CUNY-NYSIEB), a New York State Education Department funded project designed to provide schools with large numbers of ELs support in instituting school-wide reforms designed to improve the academic achievement of these students. A major component of this project was supporting schools in strengthening family-school connections by treating bilingualism as a resource. Informed by all of this work, my dissertation offered a historical perspective on US language policy, pointing to the ways that contemporary approaches to language diversity in education have been shaped by historical forces that were designed to marginalize multilingual communities. My dissertation ended with recommendations for how schools can reframe multilingualism as a resource for teaching and learning as well as a resource for engaging LEP parents and caregivers in the education of their children.

I have continued working in this vein since my arrival at the University of Pennsylvania in 2012. I received funding from the Philadelphia School District's Office of Multilingual Curriculum and Programs (OMCP) from 2013-2015 to provide professional development, consultant work and evaluations related to their efforts to implement new dual language programs that have the goal of students becoming bilingual and biliterate. In collaboration with some of my University of Pennsylvania colleagues, we also received funding from Kennett Square School District to conduct an external evaluation of their EL programs. I am also currently the EL expert working with the Center for Standards, Alignment, Instruction and Learning (C-SAIL), an Institute for Education Sciences (IES) funded study of the implementation of college and career ready standards in several states around the country. A key focus in all of these projects has been understanding the important role that the native language

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plays in both improving the educational outcomes of LEP children and increasing the involvement of their families in their schooling process.

I have published several peer-reviewed articles in top journals in the field related to the topic of TESOL and language diversity in education, including *TESOL Quarterly*, *Harvard Educational Review*, *Urban Education* and *Language Policy*. I also serve on the editorial board of the *Annual Review of Applied Linguistics*, *Reading Research Quarterly* and the *International Journal of the Sociology of Language*. I am a member of both the American Educational Research Association (AERA) and the American Association of Applied Linguistics (AAAL) and am a regular presenter at both of their annual conferences. I have also been invited to give keynote presentations at many practitioner conferences both in the Philadelphia area and around the country. This practitioner-based work has focused primarily on providing teachers and administrators with strategies for how to effectively frame language diversity as a resource for teaching and learning as well as for ensuring active participation from LEP parents and caregivers in the schooling process. This work has been conducted with practitioners from a range of contexts including schools that have bilingual education programs and schools that offer ESL programs as well as teachers with a range of language proficiencies from monolingual to multilingual.

I have attached my CV, including a list of my professional affiliations and activities to this report. I have never testified before as an expert witness in a court of law. I am providing my services as an expert in this matter, including testimony at trial, free of compensation.

EXPERT REPORT OF NELSON L. FLORES, PH.D.

II. Methodology and Information Considered

I conducted a thorough review of the existing literature related to the experiences of LEP parents and caregivers specifically with regard to navigating the special education process with a particular focus on their experiences developing, approving and implementing their child's IEP. I reviewed 20 peer reviewed journal articles on the topic in order to develop a coherent analysis of what the research indicates is necessary to ensure LEP parents and caregivers are able to understand and engage in the IEP process. Based on this review of the literature, I developed a list of principles describing the research consensus on what needs to be done to ensure that LEP parents and caregivers are able to fully comprehend and participate in the IEP process. I used these principles as a point of entry for analyzing the current situation in Philadelphia related to the experiences of LEP parents and caregivers as they navigate the IEP process. This included the descriptions of the plaintiffs as described in the complaint, complemented by evidence provided through deposition testimony of named plaintiffs. I focused on how the descriptions offered in the complaints and deposition testimony align with what the research indicates needs to happen to ensure that LEP parents and caregivers can adequately participate in the IEP process.

Attached as Exhibit "A" to this report is a detailed listing of the materials I considered in conducting this analysis.

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III. Analysis

My experience and the research indicates three principles that must be adhered to in order to ensure that LEP parents and caregivers can effectively participate in the IEP process:

1. High quality translations of documents must be available to LEP parents and caregivers prior to discussing them at the IEP meeting.
2. Qualified and trained interpreters must be available to LEP parents and caregivers for the entire IEP meeting.
3. High quality translations of documents must be available to LEP parents and caregivers after the IEP meeting with any changes made based on the conversation.

Based on my review of the available evidence, my conclusion is that the practices of School District of Philadelphia fail to adhere these principles and failed to ensure that LEP parents and caregivers are able to fully participate in the LEP process.

Below I further elaborate on the research that forms the basis of these three principles. I begin with a general overview of the challenges confronting LEP parents and caregivers in becoming involved in the education of their children. I then examine challenges specific to the IEP process. I offer an overview of the research related to the characteristics of high quality translation as well as the research related to high quality interpretation. In each of these sections, I describe the ways that the practices of the District fail to adhere to the research.

Challenges Confronting LEP Parents and Caregivers in the US Educational System

There are a number of recognized challenges confronting LEP parents and caregivers as they seek to navigate the US educational system. Obviously, they confront language barriers. This language barrier is often exacerbated by the many other stresses confronting LEP families including cultural differences (Delgado-Gaitan, 1991), poverty (Chávez-Reyes, 2010), an

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unfamiliar educational bureaucracy (Auerbach, 2011) and a precarious immigration status (Ayon & Becerra, 2013). This coupled with the fact that many LEP parents and caregivers come from cultural backgrounds where the norm is to defer to the expertise of teachers and other professionals (Coll, et al., 2002) can create challenges for efforts to ensure their active involvement in the education of their children. LEP parents and caregivers often have to juggle many different priorities and can find the US public school system to be confusing and uninviting. Adding a language barrier to these many other challenges provides a small glimpse into the many impediments LEP parents and caregivers face to their active involvement in their children's education.

Research suggests that a language barrier is the most significant hurdle even when controlling for these other variables (Coll, et al., 2002). That is, even when accounting for challenges associated with poverty, immigration status and all of the other challenges that LEP families may confront, the language barrier between home and school remains the biggest hurdle they face in their interaction with schools. To ensure the inclusion of LEP parents and caregivers in the educational process of their children, it is critical to provide high-quality translation and interpretation services.

Challenges Confronting LEP Parents and Caregivers in the Special Education Process

If a language barrier is the biggest challenge for LEP parents and caregivers in their general interaction with schools, it is particularly true when they are trying to participate in a high-stakes and complex process associated with the development, approval and implementation of their child's IEP. This process includes many complex procedures and foreign concepts that can be overwhelming to any parent trying to ensure that their voice is heard as important decisions are made about the special educational program of their child with a disability. The

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special education process starts with an evaluation of the child by an educational psychologist who develops a technical report that offers recommendations for whether the child is entitled to special education services and, if so what the diagnosis is and what supports are needed.

Typically, this report is shared with both the families and the school who are expected to use this information to collaboratively develop an IEP that will meet the specific needs of the child. This culminates in an official IEP meeting where all of the key stakeholders come together to finalize the educational program the child will receive through a robust and interactive discussion of the child's educational needs, services, and placement options. This is followed by the development of finalized paperwork that lays out a detailed plan of goals, benchmarks, and services for the child.

One could imagine that such a complex process would be a challenge for any parents or caregivers to navigate. This is significantly and exceptionally more challenging for LEP parents and caregivers who also confront a language barrier. As a result, LEP parents and caregivers often experience a great deal of confusion and need for clarification as they try to navigate the IEP process. This confusion can range from uncertainty as to the meaning of particular terminology to a complete lack of understanding of the IEP process itself (Lo, 2008). In one study, an LEP mother reported not knowing that her child had been placed into a self-contained classroom for an entire school year despite having participated in the IEP meeting and having signed the document indicating her approval (Harry, 1992). This suggests an important point that must be considered when working to ensure the active involvement of LEP parents and caregivers in the IEP process—that it is possible that they will sign forms suggesting they have given their informed consent when they have, in fact, not fully understood what they are signing.

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Indeed, this is exactly what happened with the plaintiffs in this case with one of the plaintiffs reporting that she was not aware that her child's autism was not being addressed because of her inability to understand the IEP document that was provided to her. Another plaintiff reported hearing that her child had an intellectual disability for the first time during the IEP meeting because she was not able to understand documents that had been sent to her in preparation for the meeting. A third plaintiff reported signing a consent form giving the district permission to evaluate her child without understanding what she was consenting to. In line with previous research on this topic, the failure to offer translation and interpretation support for the LEP parents and caregivers in this case led to a range of confusions and misunderstandings that impeded their active involvement in the development and effective implementation of their child's IEP. Had the District offered and provided translation and interpretation support through the IEP process, it is likely that these misunderstandings and many others that transpired would have been prevented.

Yet simply offering translation and interpretation services may not be able to fully address the power differentials between LEP parents and caregivers and school professionals that must also be addressed. LEP parents and caregivers have reported that they often find it difficult to disagree with professionals at IEP meetings for a range of reasons. They often report feeling as if they are not able to completely follow the conversation, even with an interpreter present but do not feel entitled to insist that their lack of understanding be addressed (Lo, 2008). In addition, many LEP parents and caregivers come from cultures where they are expected to be deferential to the professional status of teachers (Kalyanpur, Harry & Skrtic, 2000). LEP parents and caregivers have sometimes reported times where they have adamantly disagreed with the recommendations being suggested at an IEP meeting but did not feel empowered in the moment

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to speak up, only to change their minds after the meeting when they had already signed the IEP document (Harry, 1992). These challenges suggest that it is not sufficient to offer only some translation and interpretation services and only when persistently sought by the LEP parent. Instead, these services must be of high quality and designed to alleviate some of the power differentials that exist between professionals and LEP parents and caregivers (Cheatham, 2011).

Providing High Quality Translation of Documents

A key component in ensuring the active participation of LEP parents and caregivers in the IEP process entails the high quality translation of the IEP documents. A key cause of confusion for many LEP parents and families has been a result of schools failing to translate these important documents (Zetlin, Padron & Wilson, 1996). Based on these challenges, LEP parents and caregivers consistently identify the translation of documents and interpretation services during IEP meetings as their most pressing need in ensuring their participation in the IEP process (Cho & Gannotti, 2005; Hughes, Valle-Riestra & Arguelles, 2002; Lian & Fontáñez-Phelan, 2001). This can also be seen in the testimony of the plaintiffs in this case with one of the plaintiffs stating in her deposition that a failure to offer translated documents prevented her from being able to ask questions about her child's IEP. When persons do not feel confident in a language, the opportunity to review materials in advance in a language they are comfortable in helps provide the confidence to ask questions because they have had the opportunity to look for the answers in the written material.

Experts agree with LEP parents and caregivers about the importance of ensuring translation of documents throughout the IEP process. What experts add to the conversation is what the nature of this translation should be to ensure its high quality. In particular, researchers have emphasized the importance of ensuring high quality translation of documents for LEP

EXPERT REPORT OF NELSON L. FLORES, PH.D.

parents and caregivers throughout the entire IEP process. This includes providing translated versions of IEP documents developed by bilingual experts in special education prior to the IEP meeting in order to allow LEP parents and caregivers to prepare themselves for the meeting by soliciting any support they may need and preparing any question they may have (Lo, 2012). Ideally, this should be followed-up by preliminary debriefs on the documents with a bilingual professional who can help ensure that parents and caregivers understand the procedure as well as the technical terms that are often used in IEP documents (Tamzarian, Manzie & Ricci, 2012). As a follow-up after the IEP meeting, it is important for families to receive the final IEP in their native language again translated by a bilingual expert in the field. Ideally, they would also have a summary of the IEP in less technical terms that is also translated by a bilingual expert so that LEP parents and caregivers have a resource for helping them with the technical language of the IEP itself (Lo, 2012).

The School District of Philadelphia has failed to implement these components of high-quality translation. For one, translated documents have not been provided prior to the IEP meetings. This contradicts research that indicates the importance of having all documents translated for LEP parents and caregivers before the IEP meeting to provide them with time to review the documents and prepare any questions that they may have. Because the District fails to translate the documents prior to the meeting, LEP parents are less able to understand and participate in the IEP process.

In addition, when the District did attempt to translate documents, typically, only the section headings were translated. This means that the rest of the document, including the most important information about the educational placement and services being provided to their children, was not presented to them in a language that they understand. By failing to translate the

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entire document prior to the meeting, the District failed to ensure the plaintiffs were able to fully understand and participate in their children's IEP process.

Finally, the District typically failed to send translated final documents after the IEP meetings. This contradicts research that emphasizes the importance of following up with LEP parents and caregivers by sending them translated final documents along with translated explanations that summarize the major aspects of the IEP documents in a way that is more accessible to non-experts in the field. Though the District sometimes promised to send translated final documents, they often failed to do so. Often they only provided a translation of the section headings. As noted above, this does not provide an adequate translation and prevents LEP parents and caregivers from fully understanding the services being provided to their children and at what level. In absence of such knowledge, LEP parents are unable to fully hold schools accountable for fulfilling its obligations to their children

Providing High Quality Interpretation Services

The second component in ensuring the active participation of LEP parents and caregivers is the presence of a trained, qualified interpreter at every meeting held between LEP parents and caregivers and school professionals. On the day of the IEP meeting, it is essential to have a highly qualified interpreter who has expertise in special education, has been informed of the specifics of the case and has the ability to ensure that families are able to understand the conversation and to enable their meaningful participation in the process (More, Hart & Cheatham, 2013).

As is the case with a failure to translate documents, a failure to include a trained interpreter has also been found to lead to confusion and misunderstanding (Lo, 2008). Many LEP parents and caregivers who participated in IEP meetings have reported being uncertain as to

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the nature of the conversation or its implications for their child's education even with the presence of any interpreter (Zetlin, et al., 1996). This has been attributed to a range of factors, including interpreters being unfamiliar with the technical language they are being asked to translate as well as with their lack of training in ensuring that the meanings of these technical terms are explained to LEP parents and caregivers (Lo, 2008).

Research has documented four different types of interpretation errors that can occur at an IEP meeting that can lead to misunderstandings: (1) omission, where important information is deleted, (2) addition, where new information is added, (3) condensation, where information is simplified and (4) substitution, where words not used by the speaker are used by the interpreter (Hart, Cheatham & Jimenez-Silva, 2012). As an example, Hart, et al. (2012) offer a description of an interpretation of an IEP meeting for a Chinese LEP parent. The interpreter, unfamiliar with educational terminology being used substituted the meaning of the Wilson reading program being discussed with the name of a person named Wilson leading the parent to completely misunderstand what was being discussed. Similar dynamics have been described in Philadelphia in the context of this litigation where, for example, one interpreter was not able to explain FAPE (Free Appropriate Public Education), a key concept in special education policy that is crucial for LEP parents and caregivers to understand in order to understand the rights of their children with disabilities.

This research speaks to the many skills needed by interpreters working with parents and caregivers to ensure their participation in the IEP process. Successful interpreters must be fluent in the technical language necessary for an IEP meeting in both languages (Zhang & Bennett, 2003). Their role is not simply to translate what is being said but to ensure that what is being

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translated is also being understood by parents and caregivers participating in the IEP meeting (Pang, 2011).

The School District of Philadelphia has failed to adhere to these principles related to offering high quality interpretation services. For one, qualified interpreters are not present at all meetings. This contradicts research that indicates the importance of having trained interpreters present at all meetings held in conjunction with the IEP process. By failing to provide an interpreter, the District failed to ensure the meaningful participation of the plaintiffs in the IEP process of their children.

Secondly, when interpreters were offered, they were often not familiar with the case and did not have access to the IEP documents. This contradicts research that indicates the importance of interpreters who are familiar with the technical terminology associated with special education as well as the specifics of the case being discussed. Multiple plaintiffs reported that the interpreter provided did not understand the technical language of the IEP documents being discussed and had a difficult time translating them for her during the meeting. They reported that the interpreter had not had the chance to review the documents in advance and was unprepared to translate them accurately.

In addition, plaintiffs also reported that some of the IEP meetings utilized Language Line for their interpretation services. IEPs are complex documents with a great deal of technical language that may be unfamiliar to somebody without any background or training in special education. This lack of familiarity is exacerbated when the interpreter has not had the opportunity to review the IEP document and other relevant documents either during or prior to the meeting in any manner where he or she is providing interpretation services. This lack of preparation and lack of access to the actual document under consideration likely has a negative

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impact on the quality of interpretation provided, impeding the participation of the plaintiffs in the IEP process of their children. The necessity to read the document to the interpreter who then must interpret it back based on working memory and recall increases the likelihood of inaccuracies and also slows the process of the meeting, putting pressure on the participants not to ask for clarifications or for complete translations.

Finally, it is important to note that there is no research which documents that parents will understand a proposed IEP and be able to participate in an IEP meeting as well if the interpretation at an IEP meeting is used as a substitute for translations provided before a meeting. It is my professional judgment, based on a review of the research and my own professional experience, that interpretation of documents presented for the first time at a meeting is not a substitute for fully translated documents provided in advance in order to enable LEP parents and caregivers to more fully understand and participate in the IEP process.

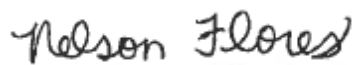
IV. Conclusion and Opinion

In summary, in my professional opinion, the descriptions of events offered by the plaintiffs in this case indicate that the School District of Philadelphia is not providing adequate translation and interpretation services to LEP parents and caregivers throughout their child's IEP process. This prevents LEP parents and caregivers from actively participating in developing and providing input into the IEP, engaging in the IEP process, or monitoring implementation of their child's IEP. The existing research provides clear directives and guidance to the District to develop a coherent and consistent plan for providing high-quality translation and interpretation services that ensure the meaningful participation of LEP parents and caregivers in the development and implementation of their child's IEP.

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Specifically, the District should ensure that high-quality translation of documents is offered to LEP parents and caregivers in advance of IEP meetings to provide them with sufficient time to review the documents. The District should also ensure that highly-qualified interpreters who have expertise in special education terminology and procedures are available for all IEP-related meetings rather than using untrained personnel. These interpreters should have the opportunity to review documents prior to any meetings to familiarize themselves with the case. Language Line should not be used unless absolutely necessary. Finally, the District should ensure that translated final documents are provided to LEP parents and caregivers after the meeting so that they can refer to the documents to participate in monitoring and to hold schools accountable for adhering to the educational services and supports promised to their child. Should the District implement these policies, I am confident that LEP parents and caregivers will be able to understand and actively participate in the IEP process and be able to advocate for their children to ensure they receive the appropriate educational supports they need in an appropriate educational placement to ensure their academic success.

Respectfully submitted,

A handwritten signature in black ink that reads "Nelson Flores". The signature is written in a cursive, slightly slanted style.

Nelson L. Flores, Ph.D.

(April 13, 2018)

Exhibit A: List of Materials

Peer Reviewed Journal Articles

- Auerbach, S. (2011). Learning from Latino families, 68(8), 16-21.
- Ayón, C. & Becerra, D. (2014). Mexican immigrant families under siege: The impact of anti-immigrant policies, discrimination, and the economic crisis.
- Chávez, Reyes, C. (2010). Inclusive approaches to parent engagement for young English language learners and their families. *National Society for the Study of Education*, 109, 474-504.
- Cheatham, G. (2011). Language interpretation, parent participation, and young children with disabilities, 31, 78-88.
- Cho, S. & Gannotti, M. (2005). Korean-American mothers' perception of professional support in early intervention and special education programs. *Journal of Policy and Practice in Intellectual Disabilities*, 2, 1-9.
- Coll, C. Akiba, D., Palacios, N., Bailey, B., Silver, R., DiMartino, L & Chin, C. (2002). Parent involvement in children's education: Lessons from three immigrant groups. *Parenting: Science and Practice*, 2, 303-324.
- Delgado-Gaitan, C. (1991). Involving parents in the schools: A process of empowerment. *American Journal of Education*, 100, 20-46.
- Denney, M., Itkonen, T. & Okamoto, Y. (2007). Early intervention systems of care for Latino families and their young children with special needs: Salient themes and guiding implications. *Infants & Young Children*, 30, 326-335.
- Harry, B. (1992). An ethnographic study of cross-cultural communication with Puerto Rican-American families in the special education system. *American Educational Research Journal*, 29, 471-494.
- Hart, J., Cheatham, G. & Jimenez-Silva, M. (2012). Facilitating quality language interpretation for families of diverse students with special needs. *Preventing School Failure*, 56, 207-213.
- Hughes, M. & Valle-Riestra, D., & Arguelles, M. (2002). Experiences of Latino families with their children's special education program. *Multicultural Perspectives*, 4, 11-17.
- Kalyanpur, M., Harry, B., Skrtic, T. (2000). Equity and advocacy expectations of culturally diverse families' participation in special education. *International Journal of Disability, Development and Education*, 47, 119-136.
- Lian, M & Fontáñez-Phelan, S. (2001). Perceptions of Latino parents regarding cultural and linguistic issues and advocacy for children with disabilities. *Journal of the American Society of Hypertension*, 26, 189-194.
- Lo, L. (2008). Chinese families' level of participation and experience in IEP meetings. *Preventing School Failure*, 53, 21-27.
- Lo, L. (2012). Demystifying the IEP process for diverse parents of children with IEPs. *Teaching Exceptional Children*, 44(3), 14-20.
- More, C., Hart, J. & Cheatham, G. (2013). Language interpretation for diverse families: Considerations for special education teachers. *Intervention in School and Clinic*, 49, 113-120.
- Pang, Y. (2011). Barriers and solutions in involving culturally linguistically diverse families in the IFSP/IEP process. *Making Connections: Interdisciplinary Approaches to Cultural*

Diversity, 12(2), 42-51.

Tamzarian, A., Menzies, H., & Ricci, L. (2012). Barriers to full participation in the individualized education program for culturally and linguistically diverse parents.

Journal of Special Education Apprenticeship, 1(2), 1-11.

Zetlin, A., Padron, M. & Wilson, S. (1996). The experience of five Latin American families with the special education system. *Education and Training in Mental Retardation and Development Disabilities*, 31, 22-28.

Zhang, C. & Bennett, T. (2003), Facilitating the meaningful participation of culturally and linguistically diverse families in the IFSP and IEP process. *Focus on Autism and Other Developmental Disabilities*, 18, 51-59.

Legal Documents

- Amended Complaint to Add New Plaintiffs, March 27, 2017
- Deposition of Barabara Galarza, January 26, 2018
- Deposition of Manqing Lin, January 30, 2018
- Deposition of Madeline Perez, February 12, 2018

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EDUCATION AND CERTIFICATION

2012 Graduate Center, City University of New York
Ph.D. in Urban Education
Interdisciplinary Concentration in Queer Studies

2007 Lehman College, City University of New York
M.S.Ed. in Teaching English to Speakers of Other Languages (TESOL)

2003 Swarthmore College
BA in Education and Political Science

New York State Certification in Secondary Social Studies (7-12) and TESOL (K-12)

FELLOWSHIPS AND AWARDS

National Academy of Education/Spencer Postdoctoral Fellowship, 2017-2018
AERA Bilingual Education Research SIG Early Career Award, 2017
American Association for Hispanics in Higher Education/Educational Testing Services
Outstanding Dissertation Award, 2nd place, 2013
National Association for Bilingual Education Outstanding Dissertation Award, 3rd place, 2013
National Academy of Education/Spencer Dissertation Fellowship Finalist, 2011-2012
City University of New York Writing Fellow, 2011-2012
City University of New York Provost's Office University Fellowship, 2011-2012
MAGNET Two-Year Presidential Fellowship, 2009-2011

GRANTS

Principal Investigator, Philadelphia Bilingual Education Institute

Grant received December, 2013 for \$15,000 to support the district in its move away from a transitional bilingual education model to a dual language model. The grant was renewed in December, 2014 for \$10,000, September, 2015 for \$20,000 and September, 2016 for \$20,000.

Principal Investigator (with Anne Pomerantz and Betsy Rymes), **Kennett Consolidated School District ESL Evaluation**

Granted received December, 2014 for \$35,000 to conduct an evaluation of ESL programing in Kennett Consolidated School District.

PROFESSIONAL EXPERIENCE

| | |
|--------------|---|
| 2012-present | Assistant Professor Educational Linguistics Division University of Pennsylvania |
| 2011-2012 | Project Director New York State Initiative on Emergent Bilinguals |
| 2008-2012 | Research Assistant Research Institute for the Study of Languages in Urban Society |
| 2010-2011 | Adjunct Lecturer Department of Linguistics and Communication Disorders Queens College, City University of New York |
| 2010-2011 | Adjunct Lecturer Program in Bilingual Education and TESOL City College, City University of New York |
| 2008-2010 | Adjunct Lecturer Department of Education College of Staten Island, City University of New York |
| 2004-2009 | High School Bilingual/ESL Teacher & Coordinator Morris Academy for Collaborative Studies New York City Department of Education, Bronx, NY |
| 2003-2004 | Elementary School Bilingual/ESL Teacher & Coordinator Luis Muñoz-Marín Elementary School School District of Philadelphia |

PUBLICATIONS**Books**

García, O., Flores, N. & Spotti, M. (2016). (eds). *Oxford Handbook of Language and Society*. New York: Oxford University Press.

Published Articles in Refereed Journals

- Flores, N. and Chaparro, S. (in press). What counts as language education policy? Developing a materialist anti-racist approach to language activism. *Language Policy*.
- Rosa, J. and Flores, N. (2017). Unsettling race and language: Toward a raciolinguistic perspective. *Language in Society*, 46, 621-647.
- Flores, N. and García, O. (2017). A critical review of bilingual education in the United States: From Basements and Pride to Boutiques and Profit. *Annual Review of Applied Linguistics*, 37, 14-29.
- Flores, N. and Aneja, G. (2017). "Why needs hiding?" Seeking translingual (re)orientations in TESOL teacher education. *Research in the Teaching of English*, 51, 441-463.
- Rymes, B., Flores, N., and Pomerantz, A. (2016). The common core state standards and English learners: Finding the silver lining. *Language*, 92, e257-e273.
- Flores, N. and Lewis, M. (2016). From truncated to sociopolitical emergence: A critique of super-diversity in sociolinguistics. *International Journal of the Sociology of Language*. 241, 97-124.
- Flores, N. (2016). A tale of two visions: Hegemonic whiteness and bilingual education. *Educational Policy*, 30, 13-38.
- Flores, N. and Rosa, J. (2015). Undoing appropriateness: Raciolinguistic ideologies and language diversity in education. *Harvard Educational Review*, 85, 149-171.
- Flores, N., Kleyn, T. and Menken, K. (2015). Looking holistically in a climate of partiality: Identities of students labeled 'long-term English language learners.' *Journal of Language, Identity, and Education*. 14, 113-132.
- Flores, N. and Schissel, J. (2014). Dynamic bilingualism as the norm: Envisioning a heteroglossic approach to standards-based reform. *TESOL Quarterly*, 48, 454-479.
- Flores, N. (2014). Creating republican machines: Language governmentality in the United States. *Linguistics and Education*, 25, 1-11.
- Flores, N. (2013). Silencing the subaltern: Nation-state/colonial governmentality and bilingual education in the United States. *Critical Inquiry in Language Studies*, 10, 263-287.
- Flores, N. (2013). The unexamined relationship between neoliberalism and plurilingualism: A cautionary tale. *TESOL Quarterly*, 47, 500-520.
- García, O., Woodley, H., Flores, N., and Chu, H. (2012). Latino emergent bilingual youth in high schools: Transcaring strategies for academic success. *Urban Education*, 48, 798-827.

- Flores, N. and Chu, H. (2011). How does size matter? The impact of the rise of small schools on Latinos and emergent bilinguals in New York City. *International Journal of Bilingual Education and Bilingualism*, 14, 155-170.
- García, O., Flores, N., and Chu, H. (2011). Extending bilingualism in U.S. secondary education: New variations. *International Multilingual Research Journal*, 5, 1-18.
- Flores, N. (2010). Beyond charity: Partial narratives as a metaphor for basic writing. *The Journal of Basic Writing*, 29, 31-49.

Book Chapters in Edited Volume

- Flores, N. (2017). From language as resource to language as struggle: Resisting the Coke-ification of bilingual education. In M. Flubacher & A. Del Percio (eds.), *Language, education and neoliberalism: Critical studies in sociolinguistics* (pp. 62-81). Bristol, UK: Multilingual Matters.
- Rosa, J. & Flores N. (2017). Do you hear what I hear? Raciolinguistic ideologies and culturally sustaining pedagogies. In D. Paris & H. Alim (eds.), *Culturally sustaining pedagogies: Teaching and learning for justice in a changing world*. New York: Teachers College Press.
- García, O, Flores, N. & Spotti, M. (2017). Introduction—language in society: A critical poststructuralist perspective. In O. García, N. Flores, & M. Spotti (eds.), *Oxford handbook of language and society* (pp. 1-16). New York: Oxford University Press
- Flores, N. (2017). Bilingual education. In O. García, N. Flores, & M. Spotti (eds.), *Oxford handbook of language and society* (pp. 525-544). New York: Oxford University Press.
- Flores, N., Spotti, M. & García, O. Conclusion: Moving the study of language and society into the future. In O. García, N. Flores, & M. Spotti (eds.), *Oxford handbook of language and society* (pp. 545-552). New York: Oxford University Press
- Flores, N. & Bale, J. (2016). Sociopolitical issues in bilingual education. In O. García, A. Lin, & S. May (eds.), *Encyclopedia of language and education* (pp. 1-13). Cham, Switzerland: Springer International Publishing. [doi:10.1007/978-3-319-02324-3_5-1](https://doi.org/10.1007/978-3-319-02324-3_5-1))
- Flores, N. & Baetens Beardsmore, H. (2015). Programs and structures in bilingual and multilingual education. In W. Wright, S. Boun, and O. García (ed.), *Handbook of bilingual and multilingual education*. (pp. 205-222). Oxford, UK: Wiley-Blackwell
- Flores, N. (2015). How have different groups of English language learners/emergent bilinguals been categorized and what issues are raised by these categorizations? In G. Valdés, K. Menken and M. Castro (eds.), *Common core, bilingual and English language learners: A resource for educators*. (pp. 16-17). Philadelphia, PA: Caslon Publishing.

- Flores, N. & García, O. (2015). What do the common core state standards mean for bilingual education? In G. Valdés, K. Menken and M. Castro (eds.), *Common core, bilingual and English language learners: A resource for educators*. (pp. 25-26). Philadelphia, PA: Caslon Publishing.
- García, O., Flores, N. & Woodley, H. (2015). Constructing in-between spaces to “do” bilingualism: A tale of two high schools in one city. In J. Cenoz & D. Gorter (eds.), *Multilingual education: Between language learning and translanguaging*. (pp. 199-224). Cambridge, UK: Cambridge University Press.
- García, O. and Flores, N. (2014). Multilingualism and the common core standards in the US. In S. May (ed.), *The multilingual turn: Implications for SLA, TESOL, and bilingual education*. (pp. 147-166). New York, NY: Routledge.
- Flores, N. and García, O. (2013). Linguistic third spaces in education: Teachers’ translanguaging across the bilingual continuum. In D. Little, C. Leung and P. Van Avermaet (eds.), *Managing Diversity in Education: Key Issues and Some Responses*. (pp. 243-256). Clevedon, UK: Multilingual Matters.
- García, O. and Flores, N. (2013). Literacy in multilingual classrooms. In C. Chapelle (ed.), *Encyclopedia of applied linguistics*. Oxford, UK: Wiley-Blackwell.
- Ascenzi-Moreno, L. and Flores, N. (2012). A case study of bilingual policy and practice at Cypress Hill Community School. In O. García, Z. Zakharia, and B. Otcu (eds.), *Bilingual community education for American children: Beyond heritage languages in a global city*. (pp. 219-231). Clevedon, UK: Multilingual Matters.
- García, O., Flores, N. and Woodley, H. (2012). Transgressing monolingualism and bilingual dualities: Translanguaging pedagogies. In A. Yiakoumetti (ed.), *Harnessing linguistic variation to improve education*. (pp. 45-76). Bern, SUI: Peter Lang.
- Flores, N. (2012). Power differentials: Pseudo-collaboration between ESL and mainstream teachers. In A. Honigsfeld and M. Dove (eds.), *Co-teaching and other collaborative practices in the EFL/ESL classroom: Rationale, research, reflections, and recommendations*. (p. 185-194). Charlotte, NC: Information Age Publishing.

Non-Referred Journal Articles

- Flores, N. (2017). Developing a materialist anti-racist approach to language activism. *Multilingua*, 36, 565-570.
- Flores, N. (2017). The specter of semilingualism in the bilingualism of Latino students. *Texas Education Review*, 5, 76-80.

- Flores, N. (2016). Deficit perspectives and bilingual education in a post-Civil Rights era. *Journal of Language and Literacy Education*, Scholars Speak Out.
- Flores, N. (2016). Combatting marginalized spaces in education through language architecture. *Perspectives on Urban Education*, 13, 1-3.
- Rosa, J. and Flores N. (2015). Hearing language gaps and reproducing social inequality. In Invited Forum: Bridging the “Language Gap”, *Journal of Linguistic Anthropology*, 25, 77-79.
- Flores, N. (2013). Undoing truth in language teaching: Toward a paradigm of linguistic aesthetics. *Working Papers in Educational Linguistics*, 28(2), 1-17.

Book Reviews

- Flores, N. (2011). The promises and limitations of a psychological approach to understanding immigration: Review of *Learning a New Land* by C. Suarez-Orozco, M. Suarez-Orozco, and I. Todorova. *The New Educator*, 7, 103-106.
- Flores N. (2010). Review of *Chicana/Latina Education in Everyday Life* edited by D. Delgado Bernal, C. Elenes, F. Godinez, and S. Villenas. *Gender and Education*, 22, 469-470.

PRESENTATIONS

Invited Presentations

- Flores, N. (December, 2017). Disciplining Bilingual Education in the post-Civil Rights era. Wisconsin Ideas in Education Series, Madison, WI.
- Flores, N. (October, 2017). Raciolinguistic ideologies and the ideological architecture of whiteness as property. Georgetown Linguistics Department Friday Speaker Series, Washington, DC.
- Flores, N. (August, 2017). A raciolinguistic perspective on language education conference. 2017 Multidisciplinary Approaches in Language Policy and Planning Conference keynote speaker, Toronto, ON.
- Flores, N. (April, 2017). “Why needs hiding?” Translingual (re)orientations in TESOL teacher education. Graduate Students of Language at Temple Conference keynote speaker, Philadelphia, PA.
- Flores, N. (March, 2017). A raciolinguistic perspective on bilingual education. Georgia Association for Multilingual, Multicultural Education Symposium keynote speaker, Atlanta, GA.

- Flores, N. (February, 2017). A raciolinguistic perspective on identity politics and bilingual education. Gender, race, language: The politics of identity in the 2016 election and beyond. CUNY Graduate Center, New York, NY.
- Flores, N. (February, 2017). Defining public scholarship in the age of social media. Swarthmore College, Swarthmore, PA.
- Flores, N. (November, 2016). “There’s a Spanish word in there!”: Supporting language architecture with translingual mentor texts. Penn TESOL East plenary speaker, Glenside, PA.
- Flores, N. (October, 2016). Visionary leadership: Repositioning multilingualism in 21st century classrooms. American Reading Company Literacy Leadership Conference keynote speaker, King of Prussia, PA.
- Flores, N. (October, 2016). “I like to use my bilingual brain.” Language architecture in the bilingual classroom. Research for Action Researcher Meeting, Philadelphia, PA.
- Flores, N. (September, 2016). Raciolinguistic ideologies and the marginalization of racialized communities. CUNY Graduate Center Racism and Discrimination in Urban Education Speaker Series, New York, NY.
- Flores, N. (July, 2016). Using bilingualism as a resource for teaching and learning. American Reading Company Staff Professional Development, King of Prussia, PA.
- Flores, N. (June, 2016). “I like to use my bilingual brain.”: Bilingualism as a resource for meeting the literacy demands of the PA Core. School District of Philadelphia 2016 Summer Literacy Conference Keynote speaker, Philadelphia, PA.
- Flores, N. & Rosa, J. (May, 2016). A raciolinguistic approach to educational linguistics. CUNY Graduate Center Advanced Research Collaborative Speaker Series, New York, NY.
- Flores, N. (April, 2016). From bilingual to bi-languaged: Language ideologies and bilingual education in the face of neoliberalism. University of Connecticut, Mansfield, CT.
- Flores, N. (March, 2016). The raciolinguistic underpinnings of academic language and the marginalization of Latino children. Loyola University Literacy Leadership Award Ceremony, Baltimore, MD.
- Flores, N. (March, 2016). A Raciolinguistic perspective on bilingual education. University of Illinois at Chicago Curriculum and Instruction Colloquium Series, Chicago, IL.
- Flores, N. (December, 2015). Translanguaging as a resource in the Common Core era. Illinois Statewide Conference for Teachers Serving Linguistically and Culturally Diverse Students, Oak Brook Hills, IL.

- Flores, N. (August, 2015). De mono-lenguajizado a bi-lenguajizado: Gubernamentalidad lingüística y la educación bilingüe. International Symposium on Bilingualism and Bilingual Education in Latin America, Lima, Peru.
- Flores, N. (August, 2015). Translenguando como recurso en la educación bilingüe. International Symposium on Bilingualism and Bilingual Education in Latin America, Lima, Peru.
- Flores, N. (March, 2015). From social transformation to official anti-racism: The unexamined whiteness of bilingual education. University of Massachusetts, Amherst Perspectives on Inequality Lecture Series, Amherst, MA.
- Flores, N. (February, 2015). Translanguaging as a resource for literacy development: Part 2. Children's Literacy Initiative Staff Professional Development, Philadelphia, PA.
- Flores, N. (January, 2015). Building on the language resources of emergent bilinguals. Keynote Address at ASPIRA Schools Language Symposium, Philadelphia, PA.
- Flores, N. (November, 2014). Revitalizing a race radical vision of bilingual education. Temple University Applied Linguistics Speaker Series, Philadelphia, PA.
- Flores, N. (October, 2014). Translanguaging as a resource for literacy development. Children's Literacy Initiative Staff Professional Development, Philadelphia, PA.
- Flores, N. (April, 2014). Can the revolution be funded? The case of bilingual education in Philadelphia. Swarthmore College, Swarthmore, PA.
- Flores, N. (April, 2014). Translanguaging as a resource for literacy development. School District of Philadelphia Research, Policy, and Practice Conference, Philadelphia, PA.
- Flores, N. (March, 2013). From nation-states to neoliberalism: Language ideologies and governmentality. American Association of Hispanics in Higher Education, San Antonio, TX.
- Flores, N. (May, 2012). Emergence, dynamic bilingualism, and translanguaging in the CUNY-NYSIEB project. Research Institute for the Study of Language in Urban Society Forum, New York, NY.
- Flores, N. and Woodley, H. (May, 2011). What is working? Successful schools for Latino emergent bilinguals. Research Institute for the Study of Language in Urban Society Forum, New York, NY.
- Flores, N. (January, 2011). Dynamic bilingualism: Developing academic literacy in a common language model. Pan American International High School, New York, NY.

Flores, N, Chu, A., Kaplan, L. and Woodley, H. (May, 2010). Where are we? Latinos in New York City High Schools. Research Institute for the Study of Language in Urban Society Forum, New York, NY.

Menken, K., Kleyn, T., Asenzi-Moreno, L., Chae, N., Flores, N., and Funk, A. (May, 2010). Three years of lessons learned: Long term English language learners in New York City schools. Research Institute for the Study of Language in Urban Society Forum, New York, NY.

Refereed Conference Presentations

Flores, N. (January, 2018). Raciolinguistic ideologies and the ‘selling’ of bilingual education. Linguistic Society of America, Salt Lake City, UT.

Flores, N. (July, 2017). Neoliberalizing bilingual education in the school district of Philadelphia. International Association of Applied Linguistics World Congress, Rio de Janeiro, Brazil.

Rosa, J. & Flores, N. (July, 2017). Theorizing a raciolinguistic perspective. International Association of Applied Linguistics World Congress, Rio de Janeiro, Brazil.

Flores, N. (April, 2017). Neoliberal multiculturalism and the political incorporation of bilingual education. American Educational Research Association, San Antonio, TX.

Flores, N. (April, 2017). From truncated to sociopolitical emergence: A critique of super-diversity in sociolinguistics. American Educational Research Association, San Antonio, TX.

Flores, N. (April, 2017). “We leave it up to the district”: Meeting the needs of English learners in standards-based reform. American Educational Research Association, San Antonio, TX.

Flores, N. (March, 2017). Developing a raciolinguistic approach to educational linguistics. American Association for Applied Linguistics, Portland, OR.

Flores, N. (February, 2017). Where are the native speakers? Moving beyond two-way immersion in bilingual education. Ethnography Forum, Philadelphia, PA.

Flores, N. (November, 2016). Translating translanguaging into Common Core-aligned instruction. National Council for the Teaching of English, Atlanta, GA.

Flores, N. (October, 2016). “I like to use my bilingual brain.” Translanguaging texts in dual language bilingual classrooms. WIDA National Conference, Philadelphia, PA.

Flores, N. (July, 2016). A raciolinguistic perspective on “semilingualism.” Sociolinguistic Symposium, Murcia, Spain.

- Flores, N. (April, 2016). What counts as bilingual education policy? Developing a materialist approach to bilingual education activism. American Educational Research Association, Washington DC.
- Flores, N. (April, 2016). The raciolinguistic underpinnings of academic language and the marginalization of Latino students. American Educational Research Association, Washington DC.
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SERVICE TO THE PROFESSION

Editorial Board, *Annual Review of Applied Linguistics*, 2018-present

Editorial Review Board Member, *Reading Research Quarterly*, 2017-present

Board Member, Pan American Academy Charter School, 2017-present

Editorial Board Member, *International Journal of the Sociology of Language*, 2016-present

AAAL Outreach Award Committee, 2016-2017

Board Member, Children's Literacy Initiative, 2015-present

Board Member, La Casa Latina, University of Pennsylvania, 2015-present

AAAL Virtual Communities Task Force, 2015

Member, School District of Philadelphia Language Policy Task Force, 2013-2014; 2017

Northeast Regional Board Member, National Latino/a Education Agenda Project, 2009-2012

PROFESSIONAL MEMBERSHIP

American Association for Applied Linguists (AAAL)

American Education Research Association (AERA)

Linguistics Society of America (LSA)

EXHIBIT 26

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 JENNA MONLEY,
held at the Law Offices of DRINKER, BIDDLE &
REATH, LLP, One Logan Square, Suite 2000,
Philadelphia, Pennsylvania, on March 19, 2018,
commencing at approximately 9:30 a.m., before
Susan Endt, Court Reporter and Notary Public.

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DEPOSITION SUPPORT INDEX

DIRECTIONS NOT TO ANSWER:

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REQUEST FOR DOCUMENTS OR INFORMATION:

PAGES: None

STIPULATIONS AND/OR STATEMENTS:

PAGES: 5

MARKED QUESTIONS:

PAGES: None

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WITNESS:

JENNA MONLEY

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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

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, not interested in the outcome thereof.

WITNESS my hand and official seal this 29th day of March 2018.



Notary Public

EXHIBIT 27

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 NANCY VELEZ,
11 held at the Law Offices of DRINKER, BIDDLE &
12 REATH, LLP, One Logan Square, Suite 2000,
13 Philadelphia, Pennsylvania, on February 16,
14 2018; commencing at approximately 9:29 a.m.,
15 before Susan Endt, Court Reporter and Notary
16 Public.

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22 Veritext Legal Solutions
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DEPOSITION SUPPORT INDEX

DIRECTIONS NOT TO ANSWER:

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STIPULATIONS AND/OR STATEMENTS:

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MARKED QUESTIONS:

PAGES: None

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1 - - -
2 PROCEEDINGS
3 - - -

4 (By agreement of counsel,
5 all objections, except as to the form
6 of the question, have been reserved
7 until the time of trial.)

8 - - -
9 NANCY VELEZ, having been
10 first duly sworn, was examined and
11 testified as follows:

12 - - -
13 EXAMINATION
14 - - -

15 BY MR. MICHELEN:

16 Q. Hi, Ms. Velez. My name is Lucas
17 Michelen. I'm with the Law Firm of Drinker,
18 Biddle & Reath. We represent the plaintiffs in
19 this action.

20 Before we get started, I'll just go
21 over a few basic ground rules to talk about.

22 First, as we go through, let me know
23 if you have any questions. Feel free -- with
24 regard to the ground rules, let me know if you

Page 188

1 they always have from a -- from non-English to
2 English.

3 Q. Okay. Do you know why they won't
4 translate the opposite way?

5 A. I don't. I don't.

6 MR. MICHELEN: Okay. We
7 can go on to the next document.

8 THE WITNESS: Can we take a
9 break?

10 MR. MICHELEN: Yes, of
11 course.

12 - - -

13 (At this time, a discussion
14 was held off the record.)

15 - - -

16 (At this time, a short
17 break was taken.)

18 - - -

19 (At this time, a document
20 was marked for identification as
21 Exhibit No. Velez-11.)

22 - - -

23 BY MR. MICHELEN:

24 Q. Have you reviewed the document,

1 Ms. Velez?

2 A. Um-hum.

3 Q. When is this dated?

4 A. Well, it starts October 2016 through
5 November of 2016.

6 Q. Okay. And what's happening in this
7 document?

8 A. There was a request that was sent to
9 T&I, the multilingual office. Cong forwarded
10 it to me and I went back to the special
11 education liaison about whether or not the
12 74-page document needed to be translated and I
13 was just checking because, you know, sometimes
14 it's not needed. So I was just checking.

15 And, then, I went to -- I went to
16 John Madden, who, at the time, was the director
17 for Southwark, who was the school making the
18 request and I asked him to review this whole
19 thing and to let me know, basically, getting
20 his approval for going ahead with the request.

21 And, then, he came back with: If a
22 parent is requesting the entire document, I
23 don't know how we can deny, I'll defer to
24 Natalie in case we have other options, but

1 otherwise we have to refer out.

2 The Natalie piece, I believe,
3 continued in conversation. Now, know that -- I
4 don't know when it happened. I can't remember
5 when it happened, but John Madden was asked to
6 leave.

7 Q. Um-hum.

8 A. I don't know if it was around this
9 time, soon after. I don't know. I don't
10 recall the dates and I wasn't part of any of
11 that. And I just know that I was waiting for
12 his response, if it was Natalie's response, for
13 someone to give me direction and I didn't think
14 I had it and that's where this ended up.

15 Q. So did you ever -- so, first, on your
16 e-mail to John Madden, why did you mention that
17 that document would be costly to translate?

18 A. Because it was so long.

19 And at the time, though, I took this
20 on in March, I was still building my process.
21 A lot of pieces that kept being added to it
22 were new to me and I think I was trying to find
23 ways to ensure that we were thinking about
24 every resource we had in place already that we

1 could use versus outsourcing to translate.

2 Still trying to get all that
3 together, my communication may not have been as
4 I would have preferred it to be. Maybe I might
5 have said a little too much, but I know that we
6 did have a conversation about this, John and I.
7 And he said, you know, I'm going to discuss
8 with Natalie. We'll see what -- I don't know
9 whatever happened with this.

10 I would have to look back to see if
11 anything came to me after and what happened
12 with it. I -- honestly, I can't remember
13 everything that happened. I just remember that
14 it did happen.

15 Q. Okay. So do you recall any
16 conversations after the last e-mail from John
17 Madden with Natalie Hess as to whether this
18 would be translated or not?

19 A. Thinking today, I would have still
20 been waiting for direction.

21 Q. Do you know if this document was ever
22 translated?

23 A. I don't recall which one it was. I'd
24 have to look at my database.

1 Q. Can you -- can you check?

2 A. In fact -- yeah, I just don't -- I
3 don't remember.

4 Q. Okay. Can we look at, I believe,
5 it's Exhibit 4, which is the database, and see
6 if it is on there?

7 A. The database.

8 Q. Sorry to make you dig it back up.

9 A. Okay. This one is 2016/2017. I
10 don't see it on here. No, I don't see it on
11 the '16/'17 school year, yes.

12 Q. Okay.

13 A. I don't see it listed.

14 Q. If it's not on this database, is it
15 likely that the document wasn't translated?

16 A. It is likely that it was not.

17 Q. Would there be anything else as to
18 how you would be able to determine if it was
19 translated?

20 A. My database is my database. This
21 pretty much tells my story, you know, because
22 even if -- if I received -- if the documents
23 were included and they were because T&I sent
24 them to me and if I couldn't open them, I would

1 BY MR. MICHELEN:

2 Q. Okay.

3 A. That's all I have.

4 MR. MICHELEN: Okay. Let's
5 go to the next document.

6 - - -

7 (At this time, a document
8 was marked for identification as
9 Exhibit No. Velez-13.)

10 - - -

11 BY MR. MICHELEN:

12 Q. Have you had a chance to review this
13 document, Ms. Velez?

14 A. Yes.

15 Q. When -- what is going on in this
16 e-mail exchange?

17 A. The question came in -- excuse me --
18 for -- from Moffet to translation@philasd.org.
19 And if I recall correctly, this was still
20 through the translation office.

21 Q. Okay.

22 A. And I went right to Maria Capitolo,
23 who I was -- who was the special education
24 director, with my normal questions. And, then,

1 she asked me to -- she was going to check and
2 for me to hold off until she received a
3 response.

4 Q. Okay. What type of document was
5 being requested to be translated here?

6 A. According to attachment, there was an
7 IEP and evaluation.

8 Q. And do you see any evidence on your
9 database that this document was translated?

10 A. I'm looking for December 2016. I
11 don't see it here.

12 Q. Okay.

13 A. I don't see it here.

14 Q. Do you remember any conversations
15 about these documents outside of this e-mail
16 exchange?

17 A. I don't remember this one. I don't
18 remember this one.

19 Q. Do you have any idea what might have
20 happened to these documents?

21 A. I don't know.

22 Q. Do you --

23 A. I just don't remember.

24 Q. Do you think they -- they were

1 translated?

2 A. According to my database, it wasn't
3 even listed. I don't know if this came back to
4 me later. I don't know.

5 Q. Would you have logged this as a
6 request for translation somewhere?

7 A. Yes. I logged it as a request, I'm
8 sure. And I should have if it came in as a
9 request like that. I have the documents.

10 Q. So should this have been a request
11 that was logged as being --

12 A. It should have been --

13 Q. -- denied?

14 A. Yes, it should have been.

15 Q. As being denied?

16 A. Not denied. We were still waiting
17 for a response. So I would have had to have
18 waited for Maria to say go ahead because, here,
19 she's asking me to hold off until she checked
20 with them.

21 So did I put it aside? I would still
22 have all this, but did I put it aside waiting
23 for her? I don't -- I don't remember.

24 Q. Okay. So how would you have logged

1 ask to have a document translated?

2 A. I don't know. I've never heard that
3 it was.

4 MR. MICHELEN: Okay. We
5 can go to the next document.

6 - - -

7 (At this time, a document
8 was marked for identification as
9 Exhibit No. Velez-17.)

10 - - -

11 THE WITNESS: I'm sorry.
12 I'm ready.

13 BY MR. MICHELEN:

14 Q. So have you had a chance to review
15 the document, Ms. Velez?

16 A. Yes.

17 Q. And what is it?

18 A. Another request from Willard from our
19 new SEL, English to Spanish. And one of the
20 people in Cong's office forwarded the request
21 to me and, then, I went back to the director to
22 get her approval.

23 Q. So the director is?

24 A. Nyshawana. She was, she's no longer

1 with us.

2 Q. So Ms. Francis-Thompson was one of
3 the directors?

4 A. Um-hum.

5 Q. What was asked to be translated here?

6 A. It looks like it was a psych eval.

7 Q. Is that considered an IEP-related
8 document?

9 A. The psych eval is what the
10 psychologist prepares which automatically feeds
11 in the system -- feeds into the evaluation. It
12 knows where to go to put the pieces. The --
13 what the psychologist needs to add to the
14 evaluation, it goes via a psych eval.

15 Q. Okay.

16 A. So this would have come out in an
17 evaluation with -- the evaluation would have
18 had this and everybody else's piece. If it was
19 his therapist, that was -- that did an
20 evaluation or whatever, then, the whole
21 evaluation would have been produced.

22 Q. So this is something you would log --
23 if it was translated, is this something you'd
24 log on your database?

1 A. If I recall this situation -- and I
2 think I do -- they pulled this because they
3 wanted to wait for the evaluation, to have the
4 whole evaluation translated, if I recall
5 correctly.

6 There was some confusion -- some
7 confusion with Willard and Jason and
8 understanding and sometimes he would send
9 things and he'd say, oh, never mind or he'd
10 call me and say just disregard the e-mail I
11 sent.

12 We had a lot of back and forth and I
13 helped him try to understand the process we had
14 at the time.

15 Q. So was there a lot of -- it sounds
16 like -- so was there a lot of confusion from
17 SELs about what the exact process was?

18 A. Jason was new. So to him, this was
19 all new. This process was new. Nyshawana
20 wasn't a director for too long either. And
21 November 2016, I was still building and fixing
22 this process.

23 Q. Okay. So if you had sent this
24 document to be translated, would it be logged

1 on your database?

2 A. If I would have sent it, definitely.

3 Q. Okay. And you say you want

4 Natalie -- I'm guessing that's referring to

5 Natalie Hess?

6 A. Correct.

7 Q. Wants me to work with directors

8 instead on whether or not the document should

9 be sent out to be translated. My process

10 includes going back to the school to ensure

11 they have used their local resources, such as

12 school staff, BCAs, psychologists, et cetera,

13 before outsourcing. The translations are

14 costly and I try to minimize what is forwarded.

15 A. This -- I'm sorry.

16 Q. So in that blurb I just read, are you

17 describing conversations that you would have

18 with SELs?

19 A. Conversations with directors and this

20 was helping Nyshawana understand what my

21 process was, what Natalie needed from the teams

22 to get this process going and you'll notice --

23 and we have repeated the same sentence

24 throughout our meeting today -- because, at the

1 time, my instruction was, you know, let's make
2 sure that, you know, are we using our local
3 resources, have we exhausted absolutely
4 everything that we have to accommodate the
5 parent, do we still need to go on with the
6 translation.

7 This is in no way to say do
8 everything you can so we don't have to get the
9 document translated. That's not what this is
10 supposed to say, if that is what your
11 understanding or anybody's understanding.

12 Q. I --

13 A. No. I just don't -- it was more to
14 educate Nyshawana and Jason. She would have
15 been the one to talk to Jason.

16 Q. Okay. Is there any evidence that
17 this document was translated on your database?

18 A. I'd have to look it up. I don't
19 recall because I know they pulled some and they
20 said just void -- never mind, we didn't make
21 the request and I'm like, okay, whatever.

22 Is that ST001115 or 175? I have a
23 staple in the way.

24 Q. Yes, I read it as -- yes, sorry.

1 1115.

2 A. Willard, I don't see anything from
3 Willard in the November -- no. Why it wasn't
4 logged in, I don't recall.

5 Q. When -- when you say these are
6 requests on your database, do you mean they
7 were requests to Global or were they requests
8 to you?

9 A. This database --

10 Q. Yeah.

11 A. -- is kind of both. The requests
12 coming in and the requests going out.

13 Q. Okay. So that -- this is something
14 that probably should have been logged on the
15 database?

16 A. Looking at it like this, it should
17 have been logged in the database.

18 Q. Okay.

19 A. If a request is pulled, I just don't
20 even put it on there.

21 Q. Okay. So I'm sorry, can you just --
22 can you explain again why this wasn't -- wasn't
23 translated?

24 A. I don't recall. I really don't

1 remember --

2 Q. Okay.

3 A. -- why it's not appearing on the
4 database. I would have to go back to find out.

5 Q. In the e-mail, you say I try to
6 minimize what is forward. What did you mean by
7 that?

8 A. From what I heard, documents were
9 just forwarded to wherever -- I don't know --
10 Global. It was -- I didn't -- the only system
11 I saw -- any structured system I saw was that
12 copy of the Excel spreadsheet that was given to
13 me when I was given this task.

14 My understanding, from hearing
15 conversations -- and this is just what I heard,
16 because there was no set structure,
17 documents -- like, if I recall correctly,
18 directors would work with Chris and they would
19 forward to Global if -- I believe we had Global
20 for a few years.

21 So if that was happening, who was
22 tracking, who was -- I don't know. So my thing
23 was to bring it in, tighten it up a little bit
24 and go forward with it. And that's what all

1 this is.

2 Q. Did you want to make -- were you
3 trying to minimize what was sent to Global to
4 curb the costs?

5 A. No.

6 Q. Okay.

7

8 (At this time, a document
9 was marked for identification as
10 Exhibit No. Velez-18.)

11

12 BY MR. MICHELEN:

13 Q. So, Ms. Velez, what's being asked to
14 be translated in this e-mail exchange?

15 A. Let's see. An SEL from the McCall
16 sent something directly to Cong. It looks like
17 it was a parent input form, asking him to
18 translate into Chinese.

19 Q. Okay.

20 A. And he went back and said I'm
21 forwarding it and forwarded it to me.

22 Q. I'm sorry. Before we continue,
23 what's an input form?

24 A. When we send a permission to

1 evaluate, it's either the invitation to
2 participate or the permission to evaluate,
3 there's a section to get parent input.

4 Q. Okay.

5 A. And it's just a list of a few
6 questions, sort of, to get information from
7 parents on how the student is at home, outside
8 the school, things that we can't see or
9 monitor. And, then, most of the -- well, a lot
10 of the times, the parents do fill it out and
11 send it back with the -- it's either the PTE or
12 the invitation to participate.

13 Q. Okay.

14 A. That's what that is.

15 Q. If you just turn to the very first
16 page, were two documents being asked to be
17 translated here?

18 A. Well, let's see.

19 Q. I'm sorry.

20 A. The ST002781 -- because the parent
21 input form is number two. So I'm guessing that
22 the first document was an evaluation.

23 Q. Okay.

24 A. Because it's 20 pages and that seems

1 about right for an evaluation.

2 So Cong forwarded -- I think Cong
3 forwarded me the evaluation to have translated
4 and he handled the input form because that was
5 a very plain, easy, nothing complicated --
6 there was really no special ed language that
7 needed to be translated with that.

8 And, then, Marie came back as the
9 director to evaluate -- I mean, translate the
10 evaluation report. Okay. So that's what it
11 was. Okay. And I went back to her and I said
12 I'll forward the translation today and, then,
13 he said -- Cong said he was sending something
14 out to the contractor and I think it had
15 something to do with the PaTTN website because
16 about PaTTN offers a lot of documents in
17 different languages. You're translating the
18 input form, correct? And he said they were
19 handling the input form and, then, I did the
20 ER.

21 Q. Okay. So --

22 A. I thought I will send the ER out to
23 my contractor. If you still have money with
24 Global, I will call it off. Okay.

1 Q. Do you know what contractor Cong is
2 referring to there?

3 A. I do not.

4 Q. Was there a contractor that T&I used
5 to translate documents?

6 A. I don't know.

7 Q. Going back to Ms. Capitolo's e-mail,
8 how do you -- what do you make of what she's
9 saying?

10 A. To have the evaluation translated.

11 Q. Okay. And who is Christine in this
12 e-mail --

13 A. Christine Kenney --

14 Q. -- Christine Kenney?

15 A. -- was and I think still is one of
16 our SELs.

17 Q. Okay. So Ms. Capitolo says: I
18 understand, Cong, that the funds are drying up.
19 I have instructed Christine to specifically ask
20 parents before automatically requesting a
21 translation.

22 What do you take that to mean?

23 A. Don't assume that the parent needs a
24 document translated. Make sure that the parent

1 needs it.

2 Q. And did you ultimately have this
3 document translated?

4 A. I should have. According to this, I
5 was forwarding it on December 20.

6 Q. Is that logged on -- on your
7 database?

8 A. Oh, my God, I hope so.
9 What is the school?

10 Q. I believe it's McCall.

11 A. I don't see McCall on here. What's
12 getting me a little hmm where Cong says I
13 thought I would send the e-mail out to my
14 contractor.

15 I can't remember what happened. Did
16 he send it out or did I send it out? I can't
17 remember.

18 Q. So did Cong ever send special
19 education documents out to be translated,
20 rather than you?

21 A. I don't know.

22 Q. That would have been your role,
23 correct?

24 A. At the time, it would have been.

1 Q. Do you know why he would have been
2 the one handling this?

3 A. I do not.

4 Q. Based on the information we have here
5 today, do you think this document was ever
6 translated?

7 A. It was either done through Global or
8 done through the contractor that he was using.
9 I just can't remember what happened there.

10 Q. So you think the document was -- the
11 document was translated, it just might have
12 been left off of your database?

13 MS. OBOD: Objection --

14 A. Yes.

15 MS. OBOD: -- to form.

16 BY MR. MICHELEN:

17 Q. Okay.

18 MS. OBOD: You have to give
19 me a chance to object.

20 THE WITNESS: Okay.

21 MR. MICHELEN: I only have
22 two more documents and, then, we are
23 almost done.

24 Next exhibit, please.

EXHIBIT 28

| Date Request Received from T&I | Student Last Name | Student First Name | School | Contact | Phone | Email | Source Language | Target Language | Date Needed | Document | #pages | Notes (Rev T doc. I ok? Return to T&I? Global? Other?) | To Global | Completed | Date Sent to Requester | Cost |
|--------------------------------|-------------------|--------------------|-----------------------|-----------------|--------------|--------------------|-----------------|-----------------|-------------------|--|--------|---|-----------|-----------|------------------------|--------------|
| 3/11/2016 | ST003179 | ST003179 | Baldi | Deborah Huttick | 215-961-2003 | dhuttick | English | Russian | 4/1/2016 | Psycho Educational Re-Evaluation Report | 16 | 3/16/16 spoke with Deb. Legal Case. Entire doc to translate. BCA was at meeting. Looking for placement. | 3/17/2016 | Yes | 4/6/2016 | \$ 1,841.40 |
| 3/31/2016 | ST001676 | ST001676 | Phila Virtual Academy | Jennifer Lydon | 215-400-5640 | jenniferl@cciu.org | English | Spanish | 4/12/2016 | Re-Evaluation & specific sections of IEP | 42 | Request was specific. | 4/14/2016 | Yes | 5/3/2015 | \$ 952.16 |
| 4/12/2016 | ST000384 | ST000384 | Shawmont | Lynda LaRubio | 215-487-4466 | lsupplee | English | Chinese | ASAP | NOREP | 4 | 4/14/16 spoke with Lynda. NOREP needed for now. | 4/14/2016 | Yes | 4/20/2016 | \$ 262.80 |
| 5/11/2016 | ST000665 | ST000665 | Bartram | Lillian Wood | 215-492-6450 | lwood2 | English | Spanish | 5/11/16 or sooner | PTE | 6 | Request was specific. | 5/17/2016 | Yes | 5/23/2016 | \$ 215.20 |
| 5/17/2016 | ST002779 | ST002779 | Duckrey | Susan Miller | 215-684-5066 | smiller | English | Chinese | ASAP | Re-Evaluation | | Request was specific. | | Yes | | \$ 1,213.00 |
| 5/20/2016 | ST001240 | ST001240 | K-HS | Laura Clay | 267-294-5025 | lclay | English | Vietnamese | 6/1/2016 | IEP | | Request was specific. | 6/1/2016 | Yes | 7/27/2016 | \$ 2,082.60 |
| 6/2/2016 | ST001970 | ST001970 | Childs | Sarah Karpovich | 215-952-6213 | smleonard | English | Spanish | ASAP | Psych Eval | | Request was specific. | | Yes | 7/27/2016 | \$ 655.52 |
| 6/2/2016 | ST001970 | ST001970 | Childs | Sarah Karpovich | 215-952-6213 | smleonard | English | Spanish | ASAP | Evaluation | 18 | Request was specific. | 6/15/2016 | Yes | 7/27/2016 | \$ 915.68 |
| 6/9/2016 | ST003105 | ST003105 | Southwark | Christi Bohot | 215-952-8606 | cmtraenkle | English | Spanish | ASAP | Re-Evaluation | 20 | Request was specific. | 6/15/2016 | Yes | 7/27/2016 | \$ 1,253.76 |
| 6/15/2016 | ST002740 | ST002740 | Webster | Charles Heston | 215-537-2525 | cjheston | English | Spanish | ASAP | Psychoeducational | 14 | Request was specific. | 6/15/2016 | Yes | 7/27/2016 | \$ 1,361.76 |
| 6/15/2016 | ST002740 | ST002740 | Webster | Charles Heston | 215-537-2525 | cjheston | English | Spanish | ASAP | Re-Evaluation | 31 | Request was specific. | 6/15/2016 | Yes | 7/27/2016 | \$ 2,051.68 |
| 6/16/2016 | ST004305 | ST004305 | OGC | Marie Capitolo | 215-400-6371 | mperaza | English | Chinese | Rush | Summary | | Request was specific. | | Yes | | \$ 350.00 |
| 6/23/2016 | ST004305 | ST004305 | OGC | Marie Capitolo | 215-400-6371 | mperaza | English | Chinese | Rush | Draft IEP | | Request was specific. | | Yes | | \$ 4,554.20 |
| | | | | | | | | | | | | | | | | |
| | | | | | | | | | | 13 docs | | | | | | |
| | | | | | | | | | | | | | | | Total Cost To Date | \$ 17,709.76 |

| Date Request Received from T&I | Student Last Name | Student First Name | School | Contact | Phone | Email | Source Language | Target Language | Date Needed | Document | #pages | Notes (Rev T doc. I ok? Return to T&I? Global? Other?) | Director's Instructions | To Global | Completed | Date Sent to Requester | Cost |
|--------------------------------|-------------------|--------------------|-----------------|-----------------------------------|-----------------|--------------------------------------|-----------------|---------------------|-------------|---------------------|--------|--|---|------------|--------------------|------------------------|--------------|
| 7/25/2016 | ST004305 | ST004305 | OGC | Marie Capitolo | 215-400-6371 | mperaza | English | Chinese | ASAP | Re-Evaluation & IEP | | Request was specific. | Not part of procedures yet. | | 7/25/2016 | | \$ 523.20 |
| 10/17/2016 | ST001153 | ST001153 | MYA | Ivey Welshans | 215-581-5633 | iwelshans | English | Mandarin | ASAP | Psycho Ed ER | 8 | Request was specific. | Not part of procedures yet. | 10/26/2016 | 11/3/2016 | 11/4/2016 | \$ 1,014.00 |
| 10/7/2016 | ST000854 | ST000854 | Mastbaum | Janine Smith | 484-883-2477 | jlsmith | English | Spanish | ASAP | IEP (41-75) | 34 | Request was specific. | Not part of procedures yet. | 11/2/2016 | 11/10/2016 | 11/14/2016 | \$ 840.48 |
| 11/22/2016 | ST002743 | ST002743 | DeBurgos | Daniela Depaola | 215-291-4065 | ddepaola | English | Spanish | ASAP | ER | 15 | Request was specific. | 11/23/16 (Jennie) Submit for Translation | 11/28/2016 | 12/6/2016 | 12/7/2016 | \$ 860.64 |
| 11/28/2016 | ST002742 | ST002742 | Tilden | Margaret Salvante | 215-490-7495 | msalvante | English | Spanish | ASAP | ER | 9 | Request was specific. | 12/7/16 (Amy) Submit ER for Translation | 12/19/2016 | 12/29/2016 | 1/5/2017 | \$ 456.16 |
| 12/1/2016 | ST000154 | ST000154 | Southwark | Christi Bohot | 215-952-8606 | cmtraenkle | English | Spanish | ASAP | ER | 14 | Request was specific. | 12/7/16 (Amy) Submit ER for Translation | 12/19/2016 | 12/29/2016 | 1/5/2017 | \$ 890.40 |
| 11/16/2016 | ST001617 | ST001617 | Elkin | Amanda Boyce | 215-291-4701 | afairchild | English | Spanish | ASAP | IEP | 43 | Request was specific. | 1/9/17 (Jennie) Submit for Translation | 1/18/2017 | 2/2/2017 | 2/3/2017 | \$ 2,157.12 |
| 1/6/2017 | ST002753 | ST002753 | Kensington HS | Katy McClure | 215-219-5185 | kmccclure | English | Spanish | ASAP | Re-Eval | 37 | Request was specific. | 1/18/17 (Nyshawana) Submit for Translation | 1/18/2017 | 2/8/2017 | 2/13/2017 | \$ 2,995.84 |
| 2/1/2017 | ST002754 | ST002754 | Girard | Sheri Glantz | 215-681-5286 | sglantz | English | Spanish | ASAP | ER | 9 | Request was specific. | 2/2/17 (Amy) Submit for Translation | 2/2/2017 | 2/9/2017 | 2/13/2017 | \$ 439.36 |
| 1/20/2017 | ST002752 | ST002752 | Central HS | Leslie Abend | 267-207-9204 | labend | English | Chinese | ASAP | ER | 22 | Request was specific. | 2/3/17 (Sonya) Submit for Translation | 2/3/2017 | 2/15/2017 | 2/15/2017 | \$ 1,387.00 |
| 2/7/2017 | ST001418 | ST001418 | W Phila HS | Tammy Mojica | 215-471-2902 | tmhill | English | Khmer (Cambodia n) | ASAP | Re-Eval & IEP | 58 | Request was specific. | 2/9/17 (Tanya) Submit for Translation | 2/13/2017 | 3/8/2017 | 3/9/2017 | \$ 3,664.20 |
| 3/2/2017 | ST002751 | ST002751 | Sheridan | Elizabeth Murphy | 215-291-4724 | emurphy | English | Spanish | ASAP | IEP | 22 | Request was specific. | 3/3/2017 (Nyshawana) Submit for Translation | 3/9/2017 | 3/20/2017 | 3/29/2017 | \$ 1,370.40 |
| 3/8/2017 | ST002750 | ST002750 | Sheridan | Jeannette Pepe & Elizabeth Murphy | 215-291-4724 | jeannette.pepe@progressustherapy.com | English | Spanish | ASAP | Re-Eval | 7 | Request was specific. | 3/9/17 (Nyshawana) Submit for Translation | 3/17/2017 | 3/23/2017 | 3/29/2017 | \$ 411.84 |
| 3/9/2017 | ST000513 | ST000513 | Mastbaum | Susan Miller | 215-400-7220 | smiller | English | Spanish | ASAP | Re-Eval | 16 | Request was specific. | 3/29/17 (Jennie) Submit for Translation | 3/29/2017 | 4/7/2017 | 4/18/2017 | \$ 907.84 |
| 3/13/2017 | ST002773 | ST002773 | Washington, Gr | Jennifer Newman | 215-456-0422 | jwilk | English | Arabic | ASAP | ReEval & IEP | 85 | Request was specific. | 3/17/17 (Jen) Submit for Translation | 3/29/2017 | 4/25/2017 | 5/4/2017 | \$ 4,916.40 |
| 3/23/2017 | ST002778 | ST002778 | Kensington HS | Nyshawana Francis-Thompson | 215-400-5848 | nfrancis2 | English | Spanish | ASAP | IEP | 102 | Request was specific. | 3/23/17 (Nyshawana) Submit for Translation | 3/29/2017 | 5/4/2017 | 5/4/2017 | \$ 1,136.80 |
| 3/29/2017 | ST004131 | ST004131 | Vare-Washington | Jillian Apadula | 215-956-8620 | jmcmamus | English | Chinese (Mandarin) | ASAP | FBA, IEP & PBSP | 101 | Request was specific. | 4/18/17 (Marie) Submit for Translation | 4/18/2017 | 5/4/2017 | 5/4/2017 | \$ 3,154.76 |
| 4/5/2017 | ST004386 | ST004386 | Lawton | Christina Perrone | 215-400-3340 | cperrone | English | Arabic | ASAP | ER | 29 | Request was specific. | 5/2/17 (Jodi) Submit for Translation | 5/4/2017 | 5/16/2017 | 5/23/2017 | \$ 2,539.00 |
| 5/9/2017 | ST004565 | ST004565 | Bache-Martin | Christy Garcia | 703-587-4210 | christy.garcia@progressustherapy.com | English | Arabic | ASAP | Draft ER | 11 | Request was specific. | 5/12/17 (Marie) Submit for Translation | 5/12/2017 | 5/19/2017 | 5/23/2017 | \$ 751.00 |
| 4/26/2017 | ST004566 | ST004566 | Kearny | Margaret Bush | 215-351-7343 | mabush | English | Spanish | ASAP | ReEval | 13 | Request was specific. | 5/4/17 (Marie) Submit for Translation | 5/12/2017 | 5/19/2017 | 5/23/2017 | \$ 693.92 |
| 5/1/2017 | ST004567 | ST004567 | Harding | Victoria Hennessy | 215-400-3990x5 | vhennessy | English | Arabic | ASAP | ER | 19 | Request was specific. | 5/5/17 (Jodi) Submit for Translation | 5/12/2017 | 5/24/2017 | 5/31/2017 | \$ 1,536.60 |
| 4/25/2017 | ST001927 | ST001927 | Building 21 | Sonia Heath | 215-400-7450 | slheath | English | Spanish | ASAP | PBP, FBA, ReEval | 30 | Request was specific. | 5/5/17 (Jodi) Submit for Translation | 5/12/2017 | 5/25/2017 | 5/31/2017 | \$ 1,425.76 |
| 3/27/2017 | ST004425 | ST004425 | Munoz-Marin | Jessica Hurley | 215-291-8825 | jrward | English | Spanish | ASAP | ER | 11 | Request was specific. | 3/29/17 (Tanya) Submit for Translation | 5/23/2017 | 5/30/2017 | 5/31/2017 | \$ 597.44 |
| 5/10/2017 | ST004568 | ST004568 | Catharine | Stephanie Andreozzi | 215-727-2155 | sandreozzi | English | Spanish | ASAP | ReEval | 10 | Request was specific. | 5/15/17 (Amy) Submit for Translation | 5/23/2017 | 5/30/2017 | 5/31/2017 | \$ 477.12 |
| 5/11/2017 | ST004232 | ST004232 | Fox Chase | Bari Himes | 215-400-3170 x3 | bjhimes | English | Russian | ASAP | ReEval | 21 | Request was specific. | 6/7/17 (Tracy) Submit for Translation | 6/12/2017 | 6/20/2017 | 6/21/2017 | \$ 1,630.00 |
| 5/8/2017 | ST004151 | ST004151 | Tilden | Margaret Salvante | 215-400-7495 | msalvante | English | Tigrinya | ASAP | ER | 10 | Request was specific. | 6/12/17 (Amy) Submit for Translation | 6/12/2017 | 6/20/2017 | 6/21/2017 | \$ 885.37 |
| 5/8/2017 | ST004151 | ST004151 | Tilden | Margaret Salvante | 215-400-7495 | msalvante | English | Tigrinya | ASAP | IEP | 32 | Request was specific. | 6/12/17 (Amy) Submit for Translation | 6/12/2017 | 6/29/2017 | 7/17/2017 | \$ 2,524.45 |
| | | | | | | | | | | 33 docs | | | | | Total Cost To Date | | \$ 40,187.10 |

[illegible]

EXHIBIT 29

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)
7 OF PHILADELPHIA,)
 Defendant.) No.15-04782-MSG
8 - - - - - -)
9

10 Oral deposition of CHRISTOPHER
11 MARINO, held at the Law Offices of DRINKER,
12 BIDDLE & REATH, LLP, One Logan Square, Suite
13 2000, Philadelphia, Pennsylvania, on March 16,
14 2018, commencing at approximately 9:30 a.m.,
15 before Susan Endt, Court Reporter and Notary
16 Public.
17
18
19
20
21

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

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DEPOSITION SUPPORT INDEX

DIRECTIONS NOT TO ANSWER:

PAGES: None

REQUEST FOR DOCUMENTS OR INFORMATION:

PAGES: None

STIPULATIONS AND/OR STATEMENTS:

PAGES: 5

MARKED QUESTIONS:

PAGES: None

INDEX

WITNESS:

CHRISTOPHER MARINO

| QUESTIONED | PAGE |
|----------------------------|--------|
| Examination by Ms. Pelotte | 5, 156 |
| Examination by Ms. Obod | 148 |

EXHIBITS

| MARKED | DESCRIPTION | PAGE |
|-----------|------------------------|------|
| Marino-1 | Notice of Deposition | 8 |
| Marino-2 | Notice of Deposition | 20 |
| Marino-3 | E-mail, 2/14/18 | 20 |
| Marino-4 | E-mail, 10/9/18 | 78 |
| Marino-5 | E-mail, 1/7/16 | 86 |
| Marino-6 | E-mail, 1/7/16 | 90 |
| Marino-7 | E-mail, 12/1/15 | 97 |
| Marino-8 | E-mail, 11/21/17 | 100 |
| Marino-9 | Spreadsheet | 111 |
| Marino-10 | Amendment to Agreement | 117 |
| Marino-11 | Amendment to Agreement | 123 |
| Marino-12 | Limited Contract Form | 125 |
| Marino-13 | Agreement for Services | 130 |

1 spreadsheet, are they just OSS documents, like
2 documents that originate and are created by OSS
3 or are they any kind of document -- special ed
4 documents created by anyone, so say a document
5 that was created by -- at the building level?

6 A. I don't know.

7 Q. Are they translations that are just
8 done by OSS or -- or could it be translations
9 or -- does her sheet contain translations that
10 were done by the translation and interpretation
11 office?

12 A. It's hard for me to answer that
13 because I haven't looked at it in a bit and I
14 just don't recall.

15 Q. Do you know if there are any
16 documents that must be translated into a
17 language that a parent understands?

18 A. I would say documents that the IEP
19 team leadership determined would ensure
20 meaningful participation if translated.

21 Q. Who in OSS is responsible for keeping
22 track of whether or not the documents that are
23 required to be translated are actually
24 translated for parents?

1 A. Presently, Nancy Velez.

2 Q. And how does Nancy do that?

3 A. I don't know what her protocol is. I
4 would assume that she -- I can't assume. I'm
5 sorry.

6 Q. Does OSS have any policies that
7 outline how the department is to keep track of
8 that information?

9 A. We have policies, but I don't know if
10 it's about tracking the information. I'm not
11 sure.

12 Q. And is the information that's
13 contained within her spreadsheet used in
14 determining how much money the SRC has asked
15 for?

16 A. Say this again.

17 Q. Is the information in her -- in
18 Ms. Velez's spreadsheet used to determine how
19 much OSS will request from the SRC?

20 A. Yes.

21 Q. What's your understanding of how OSS
22 decides which special education documents are
23 translated?

24 MS. OBOD: Objection.

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, not interested in the outcome thereof.

WITNESS my hand and official seal this 28th day of March 2018.



Notary Public



Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)

| | |
|--|--|
| Student Name: D.R. | Current School Assignment: Kensington High School for Creative & Performing Arts (5520) |
| Student ID: 4900 | Regional Office: Learning Network -5 |
| PA SecureID: 6851 | County of Residence: Philadelphia |
| DOB: [REDACTED] | Grade: 11 Age: 16 |
| School Address: 1901 North Front Street Philadelphia, PA 19122 | School Phone: (215) 291-5010 |

Date Sent: 05/20/2019

For LEA Use Only:
Date of Receipt of Signed NOREP/PWN:

Name and Address of Parent/Guardian/Surrogate:
Jose Rivera/madeline Perez
[REDACTED]

Dear Jose Rivera/madeline Perez,

This is to notify you of the Local Education Agency's (LEA's) action regarding your child's educational program.

1. Type of action taken:

- ☐ Proposes initial provision of special education and related services (For this action, the school may not proceed without your written consent in Section 8 of this document)
- ☐ Refusal to initiate an evaluation (Must issue Procedural Safeguards Notice)
- ☐ Proposes to change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education (FAPE)
- ☐ Refusal to change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education (FAPE)
- ☐ Change of placement for disciplinary reasons (Must issue Procedural Safeguards Notice)
- ☐ Due process hearing, or an expedited due process hearing, initiated by LEA
- ☐ Graduation from high school
- ☐ Exiting special education
- ☐ Exiting high school due to exceeding the age eligibility for a free appropriate public education (FAPE)
- ☐ Extended School Year (ESY) services
- ☐ Response to request for an independent educational evaluation (IEE) at public expense
- ☒ NOREP is provided with creation of an annual IEP
- ☐ Other

2. A description of the action proposed or refused by the LEA:

The regular educational environment with supplementary aids and services was considered as an option.
LS and ELL instruction

3. An explanation of why the LEA proposed or refused to take the action:

This is the least restrictive environment to meet D.R. educational needs.

4. A description of other options that the IEP team considered and the reasons why those options were rejected. If the action proposed or refused is in regard to educational placement, options considered must begin with the regular educational environment with supplementary aids and services (information about supplementary aids and services is available on the PaTTAN website at www.pattan.net):

| Options Considered | Reason for Rejection |
|--------------------|----------------------|
|--------------------|----------------------|

Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)

| | |
|---|--|
| The regular educational environment with supplementary aids and services was considered as an option. | This is not the least restrictive environment to meet educational needs. D.R. [REDACTED] |
| Itinerant level support | This is not the least restrictive environment to meet educational needs. D.R. [REDACTED] |
| Continuation in speech therapy | D.R. [REDACTED] is being evaluated to see if speech is needed |

5. A description of each evaluation procedure, assessment, record or report used as a basis for the proposed action or action refused:

Group Reading Assessment and Diagnostic Evaluation

6. A description of other factors that were relevant to the LEA's proposal or refusal:

Classroom testing in the regular education curriculum in all academic areas. D.R. [REDACTED] needs a small group setting with a specially design instruction in order to meet her academic potential.

7. The educational placement recommended for D.R. [REDACTED] is (State the amount of and type of special educational supports, e.g., Itinerant Learning Support, Supplemental Autistic Support, Full-Time Emotional Support):

Placement Recommendation: Supplemental Learning Support

LEA Designee
School District Representative

Erin Smith
Signature

5/20/19
Date (mm/dd/yy)

You have rights and protections under the law described in the *Procedural Safeguards Notice*. If you need more information or want a copy of this notice, please contact:

Name: Melanie DuPree
Address: 1901 North Front St.
Philadelphia, PA 19125

Position: Special Education Teacher
Phone: 215-2152915010
Email: erinsmith@philasd.org

8. PARENTAL CONSENT:

Directions for Parent/Guardian/Surrogate: Please check one of the options, sign this form, and return it within 10 calendar days. In circumstances when this form is NOT completed and parental consent is NOT required, the school will proceed as proposed after 10 calendar days.

- ☐ I request an informal meeting with school personnel to discuss this recommendation.
☐ I approve this action/recommendation,
☐ I do not approve this action/recommendation.* My reason for disapproval is:

I request (Contact the Office for Dispute Resolution at 800-360-7282 for information on Mediation and Due Process Hearing):

- ☐ Mediation
☐ Due Process Hearing

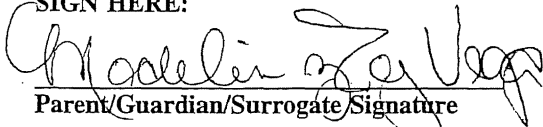
* Except for placement in an interim alternative educational setting due to drugs, weapons, or serious bodily injury (§300.530(g), §300.530(i), and §300.531), if you do not approve the action/recommendation, your child will remain in the current program/placement only if you request a due process hearing or mediation through the Office for Dispute Resolution. If you do not request Due Process or Mediation through the Office for Dispute Resolution, the LEA will implement the action/recommendation

DOB: [REDACTED]
 Student ID: [REDACTED] 4900
 PA Secure ID: [REDACTED] 6851

Region: Learning Network -5
 Grade: 11
 Date of Creation: 05/20/2019

Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)

SIGN HERE:


 Parent/Guardian/Surrogate Signature

 Date
 (mm/dd/yy)

 Daytime Phone

Please return this entire form to:

**Melanie DuPree
 Kensington High School for Creative & Performing Arts
 1901 North Front Street
 Philadelphia, PA 19122**

Attached are state and local resources you can consult to help you understand your rights and how the special education process works.

For help in understanding this form, an annotated *NOREP/Prior Written Notice* is available on the PaTTAN website at www.pattan.net. Type "Annotated Forms" in the Search feature on the website. If you do not have access to the Internet, you can request the annotated form by calling PaTTAN at 800-441-3215.

Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)

RESOURCES

THE ARC OF PENNSYLVANIA

101 South Second Street, Suite 8
Harrisburg, PA 17101
800-692-7258
www.thearcpa.org

800-692-7443 (Toll-Free Voice)
877-375-7139 (TDD) 717-346-0293 (TDD)
717-236-8110 (Voice)
717-236-0192
www.drnpa.org

PARENT EDUCATION NETWORK (PEN)

107 Industrial Highway
York, PA 17402-2223
717-600-0100 (Voice/TTY) 800-522-5827 (Voice/TTY)
800-441-5028 (Spanish in PA) 717-600-8101 (Fax)
www.parentednet.org

PENNSYLVANIA BAR ASSOCIATION

100 South Street
Harrisburg, PA 17101
800-932-0311
www.pabar.org

**PARENT EDUCATION AND ADVOCACY
LEADERSHIP CENTER (PEAL)**

1119 Penn Avenue, Suite 400
Pittsburgh, PA 15222
412-281-4404 (Voice) 866-950-1040 (Voice)
412-281-4409 (TTY) 412-281-4408 (Fax)
www.pealcenter.org

**BUREAU OF SPECIAL EDUCATION'S
CONSULTLINE, A PARENT HELPLINE**

800-879-2301
ConsultLine personnel are available to parents and advocates of children with disabilities or children thought to be disabled to explain federal and state laws relating to special education; describe the options that are available to parents; inform the parents of procedural safeguards; identify other agencies and support services; and describe available remedies and how the parents can proceed.

**HISPANICS UNITED FOR EXCEPTIONAL
CHILDREN (HUNE, INC.)**

202 West Cecil B. Moore Avenue
Philadelphia, PA 19122
215-425-6203 (Voice)
215-425-6204 (Fax)
www.huneinc.org

OFFICE FOR DISPUTE RESOLUTION

6340 Flank Drive
Harrisburg, PA 17112-2764
717-541-4960 (Phone)
800-222-3353 (Toll free in PA only)
800-654-4984 (TTY)
717-657-5983 (Fax)
<http://ODR.pattan.net>

The Office for Dispute Resolution administers the mediation and due process systems statewide, and provides training and services regarding alternative dispute resolution methods.

THE MENTOR PARENT PROGRAM, INC.

270 Mayfield Road
Clarion, PA 16214
814-226-4151 (Voice) 888-447-1431 (Voice in PA)
800-855-1155 (TTY) 814-226-4850 (Fax)
www.mentorparent.org

**THE PENNSYLVANIA TRAINING AND TECHNICAL
ASSISTANCE NETWORK (PaTTAN)**

Harrisburg 800-360-7282
King of Prussia 800-441-3215
Pittsburgh 800-446-5607
www.pattan.net

DISABILITIES RIGHTS NETWORK

1414 North Cameron Street, Suite C
Harrisburg, PA 17103
800-692-7443 (Toll-Free Voice)

PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

United Way Building
1709 Benjamin Franklin Parkway, Second Floor
Philadelphia, PA 19103
215-627-7100 (Phone)
215-627-3183 (Fax)
www.pilcop.org

STATE TASK FORCE ON THE RIGHT TO EDUCATION

3190 William Pitt Way
Pittsburg, PA 15238
1-800-446-5607 ext. 6830

EXHIBIT 31

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: C.D.
Date of Birth: [redacted]

Dates of Hearing: 7/7/2015, 7/8/2015, 9/21/2015, 9/22/2015

CLOSED HEARING

ODR File No. 15968-14-15 AS

Parties to the Hearing:

Parents

Local Education Agency
Mars Area School District
116 Browns Hill RoadValencia, PA
16059

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Parent Attorney
John P. Corcoran, Jr., Esquire
Jones, Gregg, Creehan & Gerace LLP
411 Seventh Avenue, Suite 1200
Pittsburgh, PA 15219

LEA Attorney
Thomas E. Breth, Esquire
Dillon McCandless King Coulter &
Graham, LLP
128 West Cunningham Street
Butler, PA 16001

October 19, 2015

October 31, 2015

Cathy A. Skidmore, M.Ed., J.D.

INTRODUCTION AND PROCEDURAL HISTORY

The student (hereafter Student)¹ is beyond high school-aged and formerly attended the Mars Area School District (hereafter District). Student is alleged to be a Protected Handicapped Student under Section 504 and Pennsylvania's Chapter 15² for part of Student's tenure in the District. Student's Parents filed a due process complaint against the District under Section 504 and its implementing federal and state regulations, claiming the District violated Student's rights based on Student's disability.

After preliminary rulings limiting the scope of the evidence to be produced to the Parents, the case proceeded to a due process hearing convening over four sessions, at which the parties presented evidence in support of their respective positions. The Parents sought to establish that the District failed to identify Student as having a disability and provide Student with a free, appropriate public education (FAPE) during the 2013-14 school year, and sought relief in the form of tuition reimbursement and a finding that the District discriminated against Student on the basis of Student's disability. The District maintained that Student did not qualify under Section 504/Chapter 15, that the educational program that it implemented was appropriate for Student, and that no remedy is warranted.

For the reasons set forth below, I find in favor of the Parents, but will not order all of the specific relief requested.

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision. References will be made to the record as follows: Notes of Testimony (N.T.); Parent Exhibits (P-); School District Exhibits (S-); and Hearing Officer Exhibits (HO-). References to exhibits that are duplicative will be to one or the other or occasionally both. Citations to the exhibits are not necessarily exhaustive; and it merits mention that the voluminous record contained roughly 1,000 pages of email messages, many of which included identical content.

² 29 U.S.C. § 794 and 22 Pa. Code §§ 15.1 – 15.11, respectively.

ISSUES

1. Whether the District failed to timely identify Student as a Protected Handicapped Student under Section 504 and Chapter 15?
2. Whether the District failed to provide appropriate accommodations to Student to address Student's disability?
3. If the District failed to timely identify Student and/or provide appropriate accommodations to Student on the basis of disability, are the Student and Parents entitled to compensatory education in the form of tuition reimbursement?

FINDINGS OF FACT

General Background

1. Student is a late teenaged student who was previously enrolled in the District. For a part of Student's tenure in the District, Student was considered to be a Protected Handicapped Child under Section 504 and Chapter 15. (Notes of Testimony (N.T.) 43-44)
2. The District is a recipient of federal funding for purposes of Section 504. (N.T. 44)
3. Student attended a private school for five years prior to enrolling in the District. Student was able to pursue a field of interest³ at the private school until the end of ninth grade. (N.T. 48, 288)
4. In February 2012, when Student was in ninth grade and in the private school, Student suffered a traumatic brain injury with a resulting concussion. Student had restrictions on some physical activities until August of that year because of the injury, but was "cleared" at that time (N.T. 58). (N.T. 55-58, 290-91, 295)
5. Children who suffer a concussion need to rest and allow the brain and body to repair. Executive functioning, including initiating and ceasing behaviors and actions, self-monitoring, focusing and concentrating, and controlling emotions, may be impacted. A reduction in physical and cognitive tasks can help those children recover. (N.T. 1104-06, 1108-12; P-68 p. 2)
6. A child who suffers from a second concussion, particularly those who have not yet fully recovered from the first concussion, may have a more significant or prolonged experience, including potentially more serious cognitive difficulties, than would a child who has had a single concussion. Children who suffer more than one concussion also

³ The field of interest is not identified in this decision in order to protect Student's privacy in this closed hearing, but among other evidence, Student's mother described that interest at N.T. 49-50.

have a higher risk of depression than those who never had such an injury. (N.T. 582-83, 602, 824-25, 893, 1090)

7. During the time period at issue, when Student was in tenth through twelfth grades, Student and the Parents resided in a different school district. The Parents and Student explored options for Student to continue taking classes in the field of interest, and learned that the District offered such courses. Student attended high school in the District beginning in tenth grade at the expense of the Parents, who paid tuition to the District. (N.T. 49-50, 288-90, 350; P-48)
8. Student's guidance counselor was made aware when Student first began attending tenth grade in the District that there had been a previous injury, but was unaware that Student had suffered a concussion in 2012. (N.T. 447, 449)
9. Student participated in activities related to the field of interest outside of school during tenth grade. (N.T. 52, 636-37, 679-80)
10. Student's grades for the 2012-13 school year (tenth grade) ranged from C (in a foreign language) to A+ (in classes related to the field of interest). Most grades were in the A to B range, and Student's then-current QPA was 3.3417 with a cumulative QPA of 3.0382. Student had one disciplinary infraction that school year for using a cell phone without permission, for which Student was assigned detention. (P-1 p. 1, P-50; S-15 p. 1)

District Discipline Policy

11. At the start of each school year, the District holds class meetings to highlight its discipline policies and procedures (N.T. 966)
12. Discipline for most offenses, pursuant to District policy, may consist of a warning, after-school detention (fifteen minutes), in-school suspension (ISS) (one day) typically two days after the incident; and out-of-school suspension (OSS). The policy provides guidelines for the discipline to be imposed for specific behavior. (N.T. 967, 968-69, 971-72, 982-83; P-49 pp. 1-8)
13. When students are assigned to ISS, they are required to notify their teachers with a form so that work may be assigned. Students are expected to complete all work for the period of ISS, and that work completion is the focus of ISS. (N.T. 177, 685-86, 693, 972, 984-87, 1217-18, 1273-74, 1309-10)

District Concussion Injury Policy in Fall 2013

14. The District had a policy in the fall of 2013 that addressed how to proceed when a student suffered from a concussion. Pursuant to that policy, notice of a student with such an injury was to follow this sequence:
 - a. Request medical documentation, secure release authorization from parents, and contact school psychologist and school nurse with documents

- b. Review of information by a team of counselor, school psychologist, and school nurse to determine how to implement recommendations made; and develop a plan for implementation with that team as well as an administrator and possibly teacher(s)
- c. Notification of recommendations from guidance counselor to teachers, administrators, and parents
- d. Guidance counselor to secure updated information and provide notice to school psychologist, school nurse, and administrator

Typically, the guidance counselors, and sometimes nursing office staff, were responsible for implementing these procedures, including notifying teachers of any necessary accommodations. The guidance counselor then periodically asked teachers how a particular student was progressing. (N.T. 455-56, 470-71, 476, 479-80, 710-12, 717, 851, 993; P-7)

- 15. District staff who might be involved when a student suffers a concussion could include the school nurse, a principal, the student's guidance counselor, teachers, the school psychologist, and the Director of Pupil Services (DPS). Those members are considered to be part of a team that also includes the parents and sometimes the student. The specific staff involved in a particular case depends on the severity of the injury and whether a medical doctor makes recommendations (compared to a psychologist); and the DPS is not always the administrator member of the team for every concussion injury from the outset. (N.T. 826-29, 831-32, 917-18, 926, 991, 1009-10)
- 16. The District's general practice is to follow any recommendations for accommodations sent by a medical doctor or psychologist for a student who suffers a concussion, particularly those provided by the UPMC Concussion Center (hereafter CC). (N.T. 541-42, 854, 855, 1058-59)
- 17. When a student in the District suffers a concussion and accommodations are necessary, the assigned guidance counselor asks those students to remind their teachers of those supports. These students are generally expected to ask for accommodations as they are necessary. (N.T. 461-62, 463-64, 484, 1066-67)
- 18. Typically, after a student would have a third evaluation for a concussion injury, District staff would consider whether a formal process, such as a Section 504 Plan, should be initiated. The DPS would also usually be involved at that point. (N.T. 514-15, 718-19, 725, 1010; S-2 p. 79)

Fall Semester 2013-14 School Year

- 19. Student began eleventh grade in the 2013-14 school year. Early in that year, Student was disciplined for behaviors such as using a cell phone and being disrespectful, but sometimes only a warning was imposed. (N.T. 795-96)
- 20. In approximately late September or early October 2013, Student suffered a second

traumatic brain injury during a recreational activity. Student reported the incident to Student's parents but claimed to be "fine" when asked how Student was feeling (N.T. 59-60). After discussions with the school nurse about changes to Student's demeanor at school, and noting differences in Student at home, the Parents took Student for evaluation and treatment at the CC on October 23, 2013. (N.T. 59-61, 221, 296-97, 299-301; P-5 p. 2; S-2 p. 42)

21. On October 16, 2013, Student's foreign language teacher referred Student to the Student Assistance Program (SAP) due to observed changes in Student's behavior (arriving late to or missing class, not feeling well, not completing work). This teacher had also had Student in her class the previous school year. (N.T. 128-29, 155, 161-62, 173-74, 191; P-4; S-2 p. 29)
22. The Parents declined SAP services for Student, believing that any concerns could be addressed by the therapist who treated Student following the 2012 injury. Student did see that therapist again beginning in October 2013. (N.T. 222-25; P-4; S-2 pp. 31, 38)
23. On October 23, 2013, after the CC appointment, the Parents informed Student's guidance counselor and all of Student's teachers of Student's most recent concussion, as well as the first injury in 2012. (N.T. 61, 62, 234, 443, 446, 448, 713; P-5 p. 2; S-2 p. 42, S-7 p. 13, S-9 p. 1)
24. The CC provided a form with accommodations for Student at school at the time of Student's evaluation in October 2013. The recommended accommodations were for testing (extra time test in quiet environment, and allowed across multiple settings); workload reduction (overall amount of make-up, class, and homework, recommended 50-75%); provision of class notes; opportunity for breaks; extra time for assignments; and avoidance of busy environments. That form was provided to the District. (N.T. 65, 104, 715-16; P-6 p. 6; S-1 p. 1)
25. On October 24, 2013, Student's guidance counselor sent email notification to all of Student's teachers, except the Social Studies teacher, that Student required accommodations due to the concussion, specifying the following "when requested by [Student]" (emphasis in original): extra time on tests; option to test in a quiet environment; workload reduction "(at teacher discretion – when appropriate)"; and copy of guided notes. The guidance counselor also provided those teachers with a copy of the CC form. The omission of the Social Studies teacher was inadvertent; the Parents, school nurse, and principal were copied on this email message. (N.T. 138-39, 451-52, 457, 719, 721-23, 732-33, 1134-35, 1203, 1258-59, 1295-96; P-9 p. 1; S-2 pp. 44, 75, S-7 pp. 31-32, S-9 p. 2)
26. Student's guidance counselor expected Student to self-advocate for accommodations, and informed Student and the Parents of this responsibility on Student's part. He also told the Parents that proceeding "in a more 'formal' manner" would be considered after the November 2013 CC evaluation (P-9 p. 3). (N.T. 227; P-9 p. 3; S-2 p. 45)
27. Student's grades at the end of the first quarter marking period were in the C range in five

classes, in the B range in two classes, and one A grade. (P-1 p. 2)

28. Student was seen at the CC again on November 19, 2013. The CC provided a new form with slightly revised accommodations, which the Parents provided to the District. The recommended accommodations were for testing (extra time test in quiet environment, allowed across multiple settings, reduced length); workload reduction (overall amount of make-up, class, and homework, recommended 50-75%); provision of class notes; opportunity for breaks; extra time for assignments; and no physical education class or sports participation. (N.T. 69; P-13; S-1 p. 5; S-2 p. 73)
29. Student's Parents advised Student's guidance counselor and teachers about the November 19, 2013 appointment. The guidance counselor then notified all of Student's teachers by email about the accommodations recommended in October 2013, and specifically advised them to provide: extended time on tests; option to test in a quiet environment; workload reduction "(at teacher discretion, when appropriate – i.e., possibly lightning the 'non-essentials')"; copy of guided notes; and the option of breaking up time-intensive tests into two sessions. The previous bold and italicized reference to Student requesting accommodations was omitted from this email message. The school psychologist, school nurse, and principal were copied on this message from the guidance counselor, in addition to the Parents. (N.T. 483-84, 719, 734-35, 1265-66, 1296; P-14; S-2 pp. 73-74, 84, S-8 p. 33, S-9 p. 8)
30. In the fall of 2013, the District did not conduct a formal Pupil Service meeting, or any meeting, to discuss Student's need for accommodations, or whether Student needed a Section 504 Plan. District staff believed that the accommodations provided were meeting Student's needs, and were awaiting the next (third) evaluation by CC before scheduling a meeting. (N.T. 465-71, 491-93, 516, 738-40, 925)
31. Student's grades at the end of the second quarter marking period were failing in one class, in the D range in two classes, in the C range in three classes, and in the A range in two classes. (P-1 p. 2)

Spring Semester 2013-14 School Year

32. In February 2014, Student's guidance counselor notified the Parents that Student had failing grades in nearly all classes. At that time, District staff were concerned with Student's behaviors that resulted in discipline and Student's failure to make the effort to complete work. (N.T. 487, 489-90, 493, 518, 743; P-20)
33. In early March 2014, Student's guidance counselor reminded Student's teachers by email to continue providing the accommodations specified in the November 20, 2013 communication to them. The guidance counselor also asked the teachers to allow late completion of assignments from the third quarter. The school psychologist, school nurse, and principal were copied on this message as were the Parents. (N.T. 484-85; P-22; S-2 pp. 150, 162)
34. The Parents also communicated with Student's guidance counselor in early March, expressing their concerns with Student making up work and expressing frustration over

imposition of ISS for Student as discipline. (S-2 pp. 156-57)

35. A meeting was held with District staff and the Parents on March 11, 2014 to discuss Student's grades and needs, and an upcoming evaluation. The Parents brought a letter from Student's pediatrician suggesting that Student needed an academic plan to support Student, and that ISS was a punishment for Student that prevented Student from making up missed work. A particular high school administrator (hereafter HSA) used a raised voice during the meeting, flung the physician's letter back to the Parents, and stated that he would determine what discipline to impose. The participants did agree that Student would have two teachers available after school to help Student in any areas of difficulty, and that some work could be made up and some grades corrected. (N.T. 258, 260-61, 305, 310-12, 315, 317-19, 321, 322, 331, 400-01, 494-98, 516-17, 744, 813, 935-36; P-6 p. 5)
36. On March 13, 2014, Student's guidance counselor sent email notification to all of Student's teachers of the discussions at the March 11 meeting, and repeated the need to continue providing the accommodations from November 2013. A plan to allow Student to meet with teachers after school was also mentioned, as was the need to permit Student to make up missing work. (P-23 p. 1, S-2 p. 163)
37. After the March 11, 2014 meeting, two teachers were made available to Student after school to assist with two subjects in which Student was struggling, Physics and Trigonometry, in the spring of 2014. Student did not meet with those teachers after school, and the Parents did not believe having Student do so was appropriate. (N.T. 752, 769, 805, 942, 977, 984, 987, 1210-12, 1242; P-66; S-2 pp. 162, 245)
38. Student was prescribed medication in late March 2014 to address Student's lack of focus. The physician who prescribed the medication agreed with the CC recommendations to continue for at least another month. Student did take this medication at school. (N.T. 85-86, 111, 113-14; P-8 p. 11, P-27 p. 3, S-4 pp. 1, 11, S-17 pp. 20-21)
39. Student was seen at the CC again on March 25, 2014. The CC provided a new form with slightly revised accommodations, which the Parents provided to the District. The recommended accommodations were for testing (extra time test in quiet environment, allowed across multiple settings, reduced length); workload reduction (overall amount of make-up, class, and homework, recommended 50-75%, and shortened tests and projects); provision of class notes; and opportunity for breaks. (N.T. 84-85; P-27;⁴ S-1 p. 6)
40. Student was also evaluated by a neuropsychologist in late March 2014 based on a recommendation by the treating physician at CC. This neuropsychologist is certified as a

⁴ The Parents' version of the March 2014 CC recommendations form includes a page that appears to also be from March 25, 2014 and states, "Please extend previous accommodations." (P-27 p. 2) This page is in addition to the immediately preceding page (P-27 p. 1) described in Finding of Fact (FF) 36 and included in the District's version of this CC recommendations form. (Cf. P-27 p. 2 with P-27 p. 1 and S-1 p. 6) It is unclear to whom, if anyone, the additional page at P-27 p. 2 was sent, or why there are two versions of the same form from March 25, 2014, but the discrepancy is immaterial to the issues presented.

school psychologist. (N.T. 66-67, 117-18, 402-03, 577, 586, 588-89; P-8; S-4)

41. The neuropsychologist understood that Student had been experiencing irritability, impulsivity, and difficulty with attention and concentration. Student was also exhibiting problematic behaviors, and grades had declined. (N.T. 579-80)
42. The neuropsychologist issued a report (NR) about her assessment of Student. Cognitively, Student scored in the high average range on the Wechsler Adult Intelligence Scale – Fourth Edition, with verbal abilities a relative strength. In assessments of attention and executive functioning, Student demonstrated generally average or better abilities, but the neuropsychologist noted weaknesses in self-monitoring and emotional control reported in rating scales. The neuropsychologist also described symptoms of depression from rating scales, which were reportedly more significant since the September/October 2013 injury; however, none of the scales reflected clinically significant concerns. She further noted symptoms of post-concussive syndrome. The neuropsychologist believed that Student's concussions had exacerbated the depressive symptoms. (N.T. 581-83, 600-02; P-8; S-4)
43. In the NR, the neuropsychologist made a number of recommendations for Student's educational programming, including a Section 504 Plan, as well as therapy to address Student's mental health needs. The neuropsychologist discussed a Section 504 Plan with the Parents, and suggested to them that Student be provided with such a Plan. (N.T. 83, 402-03, 587-88; S-4 pp. 4-6)
44. The Parents contacted Student's guidance counselor again in late March 2014, asking that Student not be subject to in-school suspension (ISS). They also continued to contact Student's teachers and guidance counselor that month after notification that Student was failing all classes. (N.T. 77-81; P-24, P-25)
45. By late March 2014, District administrators expressed frustration among themselves about continuing to accommodate Student and the requests to eliminate ISS for Student. They also decided to hold a meeting to discuss the potential need for a Section 504 Plan, and contacted the Parents about scheduling a meeting to discuss such a plan. (N.T. 788-90; P-26)
46. A second meeting was held on April 15, 2014, following issuance of the March 25, 2014 report from the neuropsychologist. This was the school psychologist's first meeting regarding Student; the school nurse, Student's guidance counselor, and HSA attended along with the Parents. The participants discussed recent discipline imposed on Student as well as the neuropsychologist's report. The HSA again used a raised voice during the meeting and, as in the prior meeting, flung the neuropsychological report back at the Parents. The Parents also raised their voices at this meeting. (N.T. 258-59, 334-35, 338, 395, 504-05, 775-76, 814-15, 846-47, 849, 866-70, 958-59; P-8, P-28 pp. 1-4)
47. In the spring of 2014, the District did at times waive Student's ISS for certain class periods where Student would have missed important material or activities. Some instances of ISS were postponed. However, Student was required to serve all ISS

imposed. (N.T. 751-52, 764-65, 766-67, 939-40, 976-77, 988; P-25 p. 1, P-56; S-2 pp. 176, 178)

48. District staff believed that Student was not motivated to bring work to ISS and to make up work missed, and Student frequently did not complete work during ISS. (N.T. 752-53, 770, 805-06, 1177-79)
49. After the April 2014 meeting, the school psychologist sought information from Student's teachers. Student's foreign language teacher completed an input form, noting concerns with Student's attendance, inattention and lack of focus, and refusing to complete work; she had also noticed that Student was engaging in inappropriate peer interactions as well as using the restroom frequently and without a hall pass. Another teacher reported lack of participation, incomplete assignments, and distractibility. A third teacher noted difficulty focusing and with peer relations and organizational skills. A fourth teacher reported lack of focus and self-discipline, failure to complete assignments, difficulty with organization, and inappropriate language and interactions with peers. (N.T. 151-52, 169-70, 175, 192-95, 857-59, 877, 893, 895; P-12; S-5 p. 17, S-7 p. 3, S-8 p. 53, S-9 p. 41)
50. The school psychologist asked to contact the neuropsychologist to discuss Student's depression symptomatology. In that conversation, the neuropsychologist suspected that Student had had some emotional difficulties even prior to the concussion injuries. (N.T. 868-71, 876-77, 879)
51. Student suffered injury to Student's back and leg in April 2014 during a recreational activity. Student was not able to bear weight on the leg, and pursuant to a medical note, Student was placed on homebound instruction (up to five hours per week) with accommodations and modifications to the curriculum. Student did not return to the high school through the end of that school year. (N.T. 87-89, 345-46, 877-78, 1039-41; P-29; S-2 p. 252, S-17 p. 4)
52. The District school psychologist considered, but did not pursue, a special education evaluation of Student because of the April 2014 injury that resulted in Student not returning to school. (N.T. 878-79, 889-91)
53. In late April 2014, the HSA instructed other staff not to include the DPS in communications regarding Student. Another administrator did advise the DPS about Student's April 2014 injury, and she then learned about Student's concussion injuries. The DPS was concerned that she was not involved sooner when she discovered that Student was exhibiting behavioral problems and the approaches used to that point seemed not to be working. (N.T. 783-86, 1014, 1016, 1022-23; P-30)
54. The HSA contacted the DPS and the District business office in early May 2014 about refusing Student's enrollment for the following school year. (N.T. 913-14; P-31 p. 1)

2013-14 School Year Overall

55. Student had a romantic relationship with a peer during the 2013-14 school year, and the two experienced difficulties with that relationship at times. There was at least one

meeting with the two students, their parents, and an administrator, and District staff attempted to enforce the request of the children's parents to keep the two separated at school. (N.T. 216-17, 218-20, 367-68, 745-49, 755, 799-801, 813, 978-80, 982; S-2 pp. 143-44, 231-32)

56. From late October 2013 to the end of the school year, Student's eleventh grade foreign language teacher provided Student with extra time to complete tests and assignments, testing in a quiet environment, and the opportunity to take tests over multiple sessions. Student was not required to take notes in that class, but was given opportunities to take breaks. Student was not required to ask that teacher for accommodations. Over the course of the school year, Student exhibited increased difficulty with focusing and paying attention and was frequently off task. (N.T. 164-67, 169-171, 173-74; S-2 pp. 67, 88)
57. From late October 2013 to the end of the school year, Student's Technology Education teacher provided Student with extra time on the single test given to the class, the ability to retake the test, the ability to take the test in any environment, and as much time as needed to take the test or to submit assignments. Student's workload was reduced to some extent by the teacher permitting Student to submit media related to the same content that was previously completed for full credit. All students were provided with guided notes and a study guide for tests. Student was not required to ask for accommodations in technology education class. (N.T. 1137-47, 1151-53, 1160-62, 1166-67, 1169-71)
58. From late October 2013 to the end of the school year, Student's Physics teacher provided all students with the opportunity to retake tests (not exams) but did not modify them for Student. She also provided testing in a quiet environment and permitted Student to only listen (not watch) video lectures without taking notes as a form of workload reduction, and offered a copy of notes but Student declined those. Student exhibited a lack of focus in Physics class. At the end of the school year while student was on homebound instruction, the Physics teacher did modify tests for Student and exempted Student from some assignments and gave credit for some that were turned in later. (N.T. 1200, 1203-08, 1216-17, 1228-29, 1230, 1231-32, 1234-35, 1248-49)
59. From late October 2013 to the end of the school year, Student's English teacher provided Student with extra time for tests and assignments and the ability to take tests in a quiet environment. There were no guided notes to provide but students in the class worked on study guides together. Student was provided extra time on assignments any time one was not turned in, without Student having to ask. Student did exhibit a lack of focus and motivation in English class as the school year went on, and was at times distracted by Student's cell phone. The English teacher exempted Student from a few assignments and the final project while Student was on homebound instruction, but did not believe the workload during the rest of the year was too intensive for Student. (N.T. 1259-64, 1266, 1273, 1277-78, 1282-84, 1288; S-2 pp. 90, 93)
60. From late November 2013 to the end of the school year, Student's Social Studies teacher provided extra time for tests for all students, and the classroom was a quiet environment for all tests. Student was provided the opportunity to take sections of tests at a time, but

typically elected to continue until completion. This teacher eliminated a portion of questions on homework and some tests for Student, and provided a copy of all teacher notes. There were occasions when Student was given some extra time to complete assignments and tests, but those opportunities were limited in duration. Student demonstrated varying levels of motivation in Social Studies during the school year. (N.T. 1297-1302, 1305, 1307, 1317-18, 1322-23, 1334; P-16 p. 1; S-7)

61. Throughout the 2013-14 school year, Student's Trigonometry teacher provided accommodations very similar to those of the Technology Education, Physics, English, and Social Studies teachers. (N.T. 1336-37; S-2 pp. 96-97, S-6)
62. Student's guidance counselor asked Student's teachers informally how Student was progressing in the fall and spring of the 2013-14 school year. (N.T. 518-19, 925)
63. Student's disciplinary record for the 2013-14 contained the following infractions with resulting discipline:

| Date | Infraction | Discipline |
|-------------|---|-------------------|
| 9/23/13 | Technology/Using Cell Phone | Detention |
| 10/2/13 | Unacceptable Action/Meeting Peer in Restroom | ISS (3 days) |
| 10/7/13 | Unacceptable Action/Blocking Traffic in Parking Lot | Warning |
| 10/15/13 | Technology/Texting During Class | ISS (1 day) |
| 10/15/13 | Unacceptable Action/Late to Class | Warning |
| 10/16/13 | Unacceptable Action/Late to Class | Warning |
| 10/30/13 | Unacceptable Action/Using Cell Phone | Warning |
| 1/24/14 | Swearing/Obscene Gestures | ISS (1 day) |
| 1/27/14 | Unacceptable Action/Leaving Lunchroom | ISS (1 day) |
| 2/6/14 | Technology/Texting in Class | ISS (1 day) |
| 3/5/14 | Tardiness 3 days | Detention |
| 3/7/14 | Unacceptable Action/Disrespect | ISS (2 days) |
| 3/13/14 | Technology/Disrespect/Using Cell Phone | ISS (1 day) |
| 3/17/14 | Technology/Texting | ISS (1 day) |
| 4/8/14 | Disrespect to Teachers | ISS (1 day) |
| 4/8/14 | Unacceptable Action/Cell Phone | ISS (1 day) |
| 4/11/14 | Harassment/Communication with Peer (with whom Student was not to communicate) | OSS (3 days) |

(P-69; S-3)

64. The DPS was in communication with the Parents about Student after the April 2014 injury. She also worked with the teachers to ensure that Student could make up work and be given credit for, or exempted from, some missed assignments. Student made up work through July 2014. (N.T. 1018, 1027-28, 1030, 1040-4; P-303)
65. In August 2014, the Parents communicated with the District regarding Student's grades for the 2013-14 school year. Some District staff did not believe it appropriate to change

Student's grades for much earlier in the school year. By the end of the year, the Acting Superintendent was involved and took steps to ensure that Student had grades for all classes. The DPS worked with the teachers to provide updated grades at the end of the summer that reflected all assignments, including those from the homebound instruction. (N.T. 510-11, 553, 556-57; P-35, P-36, P-37, P-39; S-2 pp. 315-17, S-10 pp. 64-65, 68)

66. Also in August 2014, the Acting Superintendent and DPS looked into the chronology of events following the October 2013 notification of injury, including accommodations provided to Student. (N.T. 529-30, 534-35, 551-54, 556-58, 1027-32, 1044-45; P-38, P-41, P-42)
67. On August 19, 2014, the Parents wrote a letter to the School Board detailing their concerns with the series of events over the course of the 2013-14 school year, beginning with the October 2013 notice of Student's injury through their not yet completed request for corrections to Student's grades. (N.T. 90-91; P-46 pp. 3-4)
68. Student's final grades for the 2013-14 school year ranged from C+ (Physics and World History) to A- (English and the field of interest). Student's final QPA was calculated to be 3.092. (S-15 pp. 5-6)

2014-15 School Year

69. The Parents had concerns about returning Student to school for Student's senior year (2014-15), but wanted Student to graduate from the District. After the Parents and District explored options, Student attended the District's cyber school program for that school year. (N.T. 346, 544-45, 59644-46, 648, 1038; P-2, P-48 p. 3)
70. In August 2014, the Acting Superintendent determined that the HSA should no longer communicate with Student and the Parents and that other administrators would address the concerns expressed in the Parents' letter to the school Board. The HSA was also told verbally not to interact with Student. (N.T. 541, 559-61, 563-64, 655-56, 952; P-46 p. 1)
71. Student attended Homecoming in September 2014. The administrator who was not to communicate with Student nonetheless greeted Student at the door. The Parents advised the Superintendent that the administrator who was not to communicate with the family had spoken to Student. (411-12, 420, 671-72; P-44)
72. Student graduated from the District in June 2015. (N.T. 44)

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. At the outset, it is important to recognize that the

burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden of persuasion in this case rests with the Parents who requested this hearing. Nevertheless, application of this principle determines which party prevails only in cases where the evidence is evenly balanced or in “equipoise.” The outcome is much more frequently determined by which party has presented preponderant evidence in support of its position.

Hearing officers, as fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *See J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); *see also T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). The testimony of the various witnesses was consistent and credible in many respects. Many of the teachers and other District professionals understandably lacked specific recollection of events that occurred two years ago; it must, however, be noted that the testimony of the HSA was accorded reduced weight because it appeared that he attempted to minimize the tenor of the March and April meetings in contrast to many other witnesses who described his demeanor and actions. It should also be noted that, despite their conflicting positions at the hearing, the Parents presented as passionate and devoted advocates for Student; and, the District personnel, in general, presented as dedicated professionals.

In reviewing the record, the testimony of every witness, and the content of each exhibit, were thoroughly considered in issuing this decision, as were the parties’ Closing Arguments. Nevertheless, it is important to recognize what this decision will not address; specifically, the alleged systemic flaws in the District’s administration of its public school obligations (Parents’

Closing at 16-17 and *passim*) and the character of the HSA (Parents' Closing at 38-43). This hearing officer has jurisdiction only over the issues identified above involving the Student, a minor child with a possible disability during the time period in question, and has disregarded any evidence and arguments that are not related to those claims.

Section 504 Principles

Section 504 specifically prohibits discrimination on the basis of a handicap or disability. 29 U.S.C. § 794. A person has a handicap if he or she “has a physical or mental impairment which substantially limits one or more major life activities,” or has a record of such impairment or is regarded as having such impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include learning. 34 C.F.R. § 104.3(j)(2)(ii).

Since § 504's definition of disability is identical to the ADA's definition, it is appropriate to look to the ADA for guidance in interpreting this definition.

* * *

When considering an individual's disability under the ADA, a court should consider the nature, severity, duration, and permanent or long-term impact of the impairment in assessing whether it substantially limits plaintiff in a major life activity. *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002). It is insufficient for individuals attempting to prove disability status under this test to merely submit evidence of a medical diagnosis of an impairment. The individual must also show that the impairment “substantially limits” a major life activity. The ADA does not define “substantially limits,” but “substantially” suggests “considerable” or “specified to a large degree.” While substantial limitations should be considerable, they also should not be equated with utter inabilities.

Centennial School District v. Phil L. ex rel. Matthew L., 799 F. Supp. 2d 473, 483 (E.D. Pa. 2011) (some citations and quotation marks omitted). “The question of whether an individual is substantially limited in a major life activity is a question of fact.” *Williams v. Philadelphia Housing Authority Police Department*, 380 F.3d 751, 763 (3d Cir. 2004).

In the context of education, Section 504 and its implementing regulations “require that school districts provide a free appropriate public education to each qualified handicapped person in its jurisdiction.” *Ridgewood Board of Education v. N.E.*, 172 F.3d 238, 253 (3d Cir. 1999) (citation and quotation marks omitted); *see also Lower Merion School District v. Doe*, 878 A.2d 925 (Pa. Commw. 2005); 34 C.F.R. § 104.33(a). Under Section 504, “an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of” the related subsections of that chapter, §§ 104.34, 104.35, and 104.36. 34 C.F.R. § 104.33(b).

This FAPE obligation includes the duty of Child Find under Section 504. 34 C.F.R. § 104.32; *Ridgewood* at 253. The applicable regulations implementing Section 504 further require that an evaluation shall be conducted “before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.” 34 C.F.R. § 104.35. An initial evaluation under Section 504 must assess all areas of educational need, be drawn from a variety of sources, and be considered by a team of professionals. *Id.* Districts are required to fulfill the child find obligation within a reasonable time. *W.B. v. Matula*, 67 F.3d 584 (3d Cir. 1995).

The Third Circuit has interpreted the phrase “free appropriate public education” to require “significant learning” and “meaningful benefit”. *Ridgewood* at 247.

In order to establish a violation of § 504 of the Rehabilitation Act, a plaintiff must prove that (1) he is “disabled” as defined by the Act; (2) he is “otherwise qualified” to participate in school activities; (3) the school or the board of education receives federal financial assistance; and (4) he was excluded from participation in, denied the benefits of, or subject to discrimination at, the school.

Ridgewood at 253. “In addition, the plaintiff must demonstrate that defendants know or should be reasonably expected to know of his disability.” *Id.* Significantly, “[t]here are no bright line rules to determine when a school district has provided an appropriate education required by § 504 and when it has not.” *Molly L. ex rel B.L. v. Lower Merion School District*, 194 F.Supp.2d 422, 427 (E.D. Pa. 2002).

Similar to Section 504, Pennsylvania’s Chapter 15 regulations require a substantial limitation with respect to education, defining a “protected handicapped student” as:

A student who meets the following conditions:

- (i) Is of an age at which public education is offered in that school district.
- (ii) Has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the student’s school program.
- (iii) Is not eligible as defined by Chapter 14 (relating to special education services and programs) or who is eligible but is raising a claim of discrimination under § 15.10 (relating to discrimination claims).

22 Pa. Code § 15.2.

Intentional discrimination requires a showing of deliberate indifference, which may be met by establishing “both (1) knowledge that a federally protected right is substantially likely to be violated ... and (2) failure to act despite that knowledge.” *S.H. v. Lower Merion School District*, 729 F.3d 248, 265 (3d Cir. 2013).

The Parents’ Claims

The first issue is whether the District failed to timely identify Student as a Protected Handicapped Student. The Parents argue on the one hand that Student’s declining grades “could only be caused by the concussion related symptoms” (Parents’ Closing at 12-13), while the District contended and presented evidence that Student’s rocky romantic relationship was a key

factor in Student's behaviors and declining performance.⁵ This hearing officer is not persuaded that this potentially contributing influence on Student's behavior during the 2013-14 school year alone accounts for the marked changes from the prior year, but also does not accept the Parents' conclusory interpretation of the record.

Certainly not every child who suffers the same type of injury as did Student, or experiences a notable decline in grades, should automatically be evaluated by a school district. However, here, Student suffered a second such injury, and witnesses for both parties agreed that children who have multiple concussions commonly exhibit pronounced difficulties with cognitive functioning, including focus and concentration, and are at a greater risk for symptoms of depression. The record reflects that in the early part of the 2013-14 school year, Student was exhibiting behaviors of concern at school that contrasted sharply with the prior year, including difficulty focusing in class, and was incurring discipline on multiple occasions, failing to complete assigned work, missing classes, and earning noticeably lower grades. While the SAP referral appears to have been wholly appropriate in mid-October, the subsequent notification from the Parents on October 23, 2013 that Student had suffered a second head injury some weeks earlier, coupled with the obvious changes in Student's demeanor and behavior and the recommendations for numerous accommodations at school by the CC, presented clear indication that Student's academic functioning was considerably limited as a result of that event.

Viewed as a whole from the perspective of what was known in late October 2013, the facts in this case provided more than ample reasons for the District to suspect that Student may have had a disability within the meaning of Section 504 and Chapter 15, and taken steps to make

⁵ The District also offered evidence that Student participated in various physical activities depicted in photographs and videos that Student posted on social media. As it conceded, however, it is unknown when those photographs and videos may have been created. (N.T. 1338-40; S-18) I found that evidence to be immaterial to the issues presented in this administrative hearing.

that determination. This hearing officer therefore concludes that, no later than the end of October 2013, the District was armed with enough information to convene a team to include the school psychologist to begin an evaluation to determine whether Student was a child with a disability, consistent with its policy. Had the District done so, completing an evaluation within a reasonable time would have provided sufficient information to assist the District in properly accommodating Student with individualized supports for the remainder of the school year. The failure to proceed with an evaluation amounted to a violation of the District's Child Find obligation.

Borrowing from the timeline for conducting special education evaluations under Chapter 14,⁶ an evaluation should have been issued by the end of December 2013. Such an evaluation would then have provided guidance and recommendations for Student's educational programming from early January 2014. And, because the District already had the CC recommendations as a starting point, there is no reason to believe a significant amount of time was then required to develop a Section 504 Plan. Thus, early January is the beginning of the time period for which Student should have been identified and accommodated under Section 504/Chapter 15.

The conclusion that Student did qualify as a Protected Handicapped Student at that time does not end the inquiry on the first issue, however. Although it did not proceed with an evaluation, had the District nonetheless appropriately provided accommodations for Student beginning on October 24, 2013 and continuing through the end of the school year, one might reasonably conclude that no denial of FAPE occurred. The record as a whole, however, compels the conclusion that the District also failed in this regard.

⁶ 22 Pa. Code § 14.123(b). Pennsylvania's Chapter 14 is set forth in 22 Pa. Code §§ 14.101 – 14.163 (implementing the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401 – 1482).

The District's practice is, apparently, to follow all recommended accommodations for students who suffer a concussion. Contrary to the Parents' arguments, though, an educational recommendation from a physician or other professional does not automatically demand absolute adherence as a matter of law. For example, the recommendation that Student be provided a reduced workload at a 50-75% level does not mean that any teacher's failure to calculate and provide that specific workload for Student was necessarily inappropriate. Similarly, it is not irreconcilable that the DPS only became involved in the spring of 2014, particularly since her testimony, in hindsight, was equivocal on when she should have been notified of Student's fall 2013 injury. (N.T. 1011-12, 1016-17, 1022-23, 1063) What is convincing is the evidence of what the District did and did not do, and how those actions affected Student's educational performance.⁷

The record does establish that many of Student's teachers implemented accommodations for Student, yet others did not do so on a consistent basis. The fact that Student's grades for the various marking periods in the 2013-14 school year were not finalized until sometime after the start of the next year, and only through efforts of a number of District administrators, speaks volumes about Student having an inadequate opportunity to fairly complete missed assignments and make up tests. Moreover, workload reduction did not appear to be a priority but was instead implemented only occasionally at teacher discretion. Fortunately, the directive of Student's guidance counselor to the teachers to require Student to ask for accommodations was largely ignored. However, Student exhibited a lack of focus and attention in many classes throughout the school year, despite some accommodations, and continued to engage in problematic

⁷ I decline to draw an adverse inference because the teachers did not maintain written documentation of the regular education accommodations they provided to Student. The Parents cite no authority for this purported lapse on the part of the District. (Parents' Closing at 30-31)

behaviors and perform poorly. The reasonable reaction to those concerns, even without a Section 504 evaluation, would have been to consider and explore whether Student's educational needs were appropriately being met. It was not until April 2014, just before Student was placed on homebound instruction, that the District finally recognized its obligation to begin an evaluation. That decision was made much too late.

The ongoing decisions to impose discipline on Student in a rigorous and non-wavering manner is at least equally, and arguably more, problematic. This hearing officer must agree with the witnesses who opined that the continued imposition of ISS in the spring of 2014 at the direction of the HSA was not only counterproductive in terms of accommodating Student's brain injury, including through a reduced workload where possible, but served to let Student get farther and farther behind. Student was undoubtedly overwhelmed with an impaired ability to cope with the demands of high school classes, and the insistence on discipline without an examination into whether Student's disability was manifested in the various problematic behaviors further corroborates the denial of FAPE to Student. Asking Student to seek assistance from teachers after school, thereby prolonging the school day rather than decreasing the workload, was similarly inappropriate. The characterization of Student as a "discipline problem" (N.T. 938) simply does not ring true on this record and is unsupported by the other record evidence as a whole. These disciplinary actions in the spring of 2014, furthermore, were not only ineffective, but substantiate the Parents' claim of deliberate indifference, since the HSA and other District staff were aware of Student's two head injuries and consequent need for accommodations, were at least constructively aware that Student may have had a disability, and intentionally failed to consider those factors in its disciplinary actions.

Remedy

The last issue is whether the Parents and Student should be granted the relief that they seek. It is well settled that compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the district fails to remedy the problem.

M.C. v. Central Regional School District, 81 F.3d 389 (3d Cir. 1996). Such an award compensates the child for the period of time of deprivation of special education services, excluding the time reasonably required for a school district to correct the deficiency. *Id.* Compare *B.C. v. Penn Manor School District*, 906 A.2d 642, 650-51 (Pa. Cmwlth. 2006) (rejecting the *M.C.* standard for compensatory education, holding that “where there is a finding that a student is denied a FAPE and ... an award of compensatory education is appropriate, the student is entitled to an amount of compensatory education reasonably calculated to bring him to the position that he would have occupied but for the school district’s failure to provide a FAPE.”); *Reid v. District of Columbia Public Schools*, 401 F.3d 516 (D.C. Cir. 2005). Compensatory education is an equitable remedy. *Lester H. v. Gilhool*, 916 F.2d 865 (3d Cir. 1990).

Giving the District reasonable time to complete a Section 504 evaluation and develop appropriate accommodations to address Student’s disability after the October 23, 2013 notice of Student’s second head injury, this hearing officer finds that the first day of school in January 2014 is the appropriate date on which to begin an award of compensatory education. The term of compensatory education will end on the last day of school that Student attended before Student’s April 2014 injury, at which time Student was placed on homebound instruction and provided appropriate accommodations.

The next question is the nature of the compensatory education. Although the Parents seek reimbursement for tuition that they paid to the District, this hearing officer cannot conclude that such a remedy is sufficiently related to the denial of FAPE to Student, and would do nothing to remedy that deprivation. Unlike a typical case of tuition reimbursement where parents receive recompense for their own costs in providing FAPE,⁸ the relief sought here would serve no purpose other than punish the District financially since the Parents assert, and I have found, that the District's program was not appropriate. Thus, the requested remedy will be denied.

Student shall, however, be awarded compensatory education services. The amount of those services is equitably calculated to be one hour per school day, the estimated amount of time that Student would have needed during the school day to complete assignments and tests that focused on essential content, with individualized support as necessary, for the relevant time period.

The hours of compensatory education are subject to the following conditions and limitations. Student's Parents may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's social/emotional/behavioral and/or academic needs. The hours of compensatory education may be used at any time from the present until Student turns age twenty-one (21), but may not be used for post-secondary tuition. There are financial limits on the parents' discretion in selecting the compensatory education; the costs to the District of providing the awarded hours of compensatory education must not exceed the full cost of the services that were denied. Full costs

⁸ Tuition reimbursement is an available remedy for parents to receive the costs associated with a child's placement in a private school where it is determined that the program offered by the public school did not provide FAPE, and the private placement is proper. *Florence County School District v. Carter*, 510 U.S. 10 (1993); *School Committee of Burlington v. Department of Education*, 471 U.S. 359 (1985); *see also* 20 U.S.C. § 1412(a)(10)(C).

are the average of the hourly salaries and fringe benefits that would have been paid to the District teaching professionals who provided educational services to Student during the 2013-14 school year.

CONCLUSION

For the foregoing reasons, the District did fail to timely identify Student as a Protected Handicapped Student, and to provide appropriate accommodations between January and April 2014. Student shall be awarded compensatory education.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District failed in its Child Find and FAPE obligations to Student during the 2013-14 school year, failing to identify Student as a Protected Handicapped Student and provide appropriate educational programming to address disability-related needs.
2. The District acted with deliberate indifference toward Student in imposing discipline in the spring of 2014.
3. The District shall provide Student with compensatory education in the amount of one hour for every school day that the District was in session for students from the first day of school in January 2014 through the last day of school that Student physically attended in April 2014, subject to the following conditions:
 - a. Student's Parents may decide how the hours of compensatory education are spent. The compensatory education may take the form of any appropriate developmental, remedial or enriching educational service, product or device that furthers Student's social/emotional/behavioral and/or academic needs. The hours of compensatory education may be used at any time from the present until Student turns age twenty-one (21), but may not be used for post-secondary tuition.
 - b. The costs to the District of providing the awarded hours of compensatory education must not exceed the full cost of the services that were denied. Full costs are the average of the hourly salaries and fringe benefits that would have

been paid to the District teaching professionals who provided educational services to Student during the 2013-14 school year.

4. Nothing in this Order precludes the parties from mutually agreeing to alter any of the directives regarding the form of compensatory education set forth in this decision and Order.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed.

Cathy A. Skidmore

Cathy A. Skidmore
HEARING OFFICER

Dated: October 31, 2015

EXHIBIT 32

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

FINAL DECISION AND ORDER

Student's Name: J.S.

Date of Birth: [redacted]

ODR No. 13350-1213KE

CLOSED HEARING

Parties to the Hearing:

Parents

Representative:

Pro Se

Northwestern Lehigh School District
6496 Rout 309
New Tripoli, PA 18066

Rebecca A. Young, Esquire
King Spry Herman Freund & Faul, LLC
One West Broad Street, Suite 700
Bethlehem, PA 18018

Date of Hearing: February 5, 2013

Record Closed: February 10, 2013

Date of Decision: February 26, 2013

Hearing Officer: Brian Jason Ford

Introduction

The Parents¹ requested this due process hearing on December 4, 2012. In their Complaint, the Parents allege that the District has not appropriately addressed the Student's needs, and has not offered an appropriate program or placement. The Parents demand placement in a specialized private school for students with learning disabilities.

After a brief continuance, a hearing convened on February 5, 2013. Oral closing statements were presented at the end of the hearing session, and the record closed upon my receipt of the transcript.

Issues²

1. Has the District offered an appropriate IEP to the Student?
2. Has the District implemented the Student's IEP?
3. Is the Student entitled to placement in a specialized private school for students with learning disabilities?

Findings of Fact

1. The Student started kindergarten in the 2011-12 school year in a different school district. S-1.
2. The Student's IEP Team from the other school district convened on September 15, 2011, and drafted an IEP that was to be implemented in the other school district until September 14, 2012. S-1.
3. The resulting IEP noted that the Student's "pre-academic skills are not well developed. [The Student] can not identify any letters or numbers at this time. [The Student] is able to identify the 10 basic colors." S-1 at 4. At the same time the student was not experiencing difficulty with expressive or receptive language, gross or fine motor skills, or negative behaviors. S-1 at 4, 5.
4. When the September 2011 IEP was developed, the Parents expressed concerns about the Student's expressive and receptive language. Based on testing conducted in May 2011, however, the IEP determined that "[The Student] is not demonstrating any significant problems with expressive or receptive language. [The Student's] function communications are rated to be in the average range by ... current teacher." S-1 at 4.

¹ Other than the cover page of this decision, identifying information about the Parents and Student are omitted to the extent possible.

² See NT at 20-21.

5. The IEP includes eleven (11) goals, most of which target the Student's ability to identify letters, associate letters with sounds, develop phonics skills, identify and sequence numbers, and associate numbers with quantity. S-1 at 12-16.
6. The IEP included program modifications and specially designed instruction, mostly targeting direct instruction, smaller class size, preferential seating and one-to-one assistance for "seatwork." S-1 at 17.
7. At the time the IEP was drafted, the team determined that the student was not eligible for extended school year (ESY) services. S-1 at 18.
8. The parents approved the program described in the IEP and placement in learning support at the itinerant level (20% of the school day or less) by approving a Notice of Recommended Educational Placement (NOREP) or not responding to that NOREP. S-2.³
9. The Student enrolled in the District in November 2011. The District issued a NOREP to the Parents on November 16, 2011. Through that NOREP, the district explained that the student "will continue to receive itinerant learning support services as per the existing IEP from [the former school district]. The existing IEP ... will be implemented with changes specific to the area of reading and math goals. The goals will be reduced from eleven to four. Two goals will address reading (Letter Naming Fluency, Letter-Sound Fluency) and two goals will address math (Oral Counting, Number Identification). [The Student] will receive support services at [the Student's] home school." S-3 at 1.
10. The parents approved the NOREP on November 30, 2011. S-3 at 3. It is not clear if a new IEP was issued that that time, edited in the way that the NOREP suggests. No such IEP was offered as evidence.
11. The student was not re-evaluated before the NOREP of November 30, 2011 was issued.
12. The District invited the Parents to an IEP team meeting in December of 2011. The invitation was sent on December 9, 2011 proposing a meeting on December 14, 2011. The Student's mother signed the invitation on December 14, 2011, indicating that she would attend, and returned the form to the District the same day. S-4.
13. The IEP team meeting convened on December 14, 2011. At that time, the Student was a [preschool-aged] Kindergartener.
14. According to the IEP drafted at that time, the Student could identify basic colors and shapes, but the Student's "basic reading and math skills [were] significantly below average for [the Student's] age and grade." S-5 at 6. More specifically the student

³ The copy of the NOREP that was submitted as evidence is not signed. It may be that the NOREP was signed that the presented copy is a later printout. Regardless, the corresponding IEP (S-1) is not in dispute and was implemented with the Parents' knowledge.

was able to identify only four of 26 upper case letters and could associate a sound with only one letter. Regarding math, the Student could “identify the numbers 0 and 1... count numbers 1 to 10 consistently [when prompted] and has demonstrated one-to-one correspondence using manipulatives. [The Student showed] underdeveloped skills in symbolic thinking, math calculations and math concepts. [The Student needed] concrete construction with the use of manipulatives.” S-5 at 6.

15. The IEP included four goals: letter naming fluency, letter sound fluency, oral counting fluency and number identification fluency. S-5 at 13-14. These are the same goals indicated by the NOREP of November 30, 2011. Testimony strongly suggests that the Student’s goals were changed when the NOREP was sent in November of 2011, and that the goals did not change again when the IEP of December 2011 was drafted. See NT at 129-130.
16. The IEP included program modifications and specially designed instruction. Specifically, the IEP provided for small group instruction, repeated practice, multi-sensory instruction, errorless learning, manipulatives, wait time for responses, chunking of large assignments, and strategic seating. S-5 at 15.
17. At the time of the IEP was drafted, the IEP team concluded that student was not eligible for ESY services. S-5 at 16.
18. Under the terms of the IEP, the student received an itinerant level of learning support. S-5 at 17. More specifically, testimony reveals that the Student was educated in the regular kindergarten classroom, but received 30 minutes per day of 1:1 instruction in a Learning Support classroom. NT at 128-129. This is consistent with calculations in the IEP itself, placing the Student in regular education for 85% of the school day.
19. During the 2011-12 school year, some 1:1 Learning Support sessions were missed when the Learning Support teacher had to proctor PSSA testing. Makeup sessions were offered and provided. P-4.
20. The parents approved the IEP of December 2011, via a NOREP, on December 20, 2011. S-6.
21. A meeting convened on March 28, 2012. It appears that this meeting was not formally an IEP team meeting, but the Student’s mother and several teachers and administrators were there. The District’s Director of Student Services was not at that meeting. S-7 at 4.
22. On March 28, 2012, presumably after the meeting, the District issued a NOREP refusing to change the ESY recommendation in the IEP of December of 2011 (i.e. refusing to provide ESY services in the summer of 2012). S-7. On the face of the NOREP, ESY services were denied based upon the conclusion that any regression that may occur over the summer break could easily be remediated upon return to school. S-7; see *also* P-3.

23. According to a letter from the Student's mother dated April 10, 2012, the meeting on March 28, 2012 was to discuss the Student's progress and need for ESY services. According to that letter, everybody who attended that meeting was in agreement that the Student required ESY services. No contrary evidence or testimony was presented by the District. S-4 at 4.
24. The Parent rejected the NOREP on April 10, 2012. According to a letter from the Student's mother dated April 10, 2012, and submitted with the NOREP, everybody who attended the meeting on March 28, 2012 was in agreement that the Student required ESY services. No contrary evidence or testimony was presented by the District. S-4 at 4.⁴
25. The Parent's letter of April 10, 2012 is consistent with testimony from the Student's Learning Support teacher. The Student's Learning Support teacher came to the conclusion that the Student would benefit from, and was likely in need of, ESY services. NT at 145-148. Following clearly established practices in the District (if not District policy) the teacher "applied" for the Student to receive ESY services by notifying the District's Director of Student Services of the Student's needs and recommending the provision of ESY services for the Student. *Id.* The Director of Student Services denied the teacher's recommendation. *Id.*
26. On April 26, 2012, the District issued a letter to the Parent again refusing to provide ESY services for the same reasons that those services were denied in the past. P-2 at 1.
27. The Parent wrote a letter in response on April 29, 2012, again asking for ESY services and expressing both confusion and consternation about the District's insistence that data suggests that the Student could easily recoup any regression that occurred during the summer. The Parent averred that no such data exists, and that the Student had made only minimal progress towards IEP goals. S-10. The letter is consistent with statements in prior correspondence in which the Parent acknowledged a small amount of progress towards IEP goals and was eager to continue services in the summer so that progress could be maintained.
28. The District included a Permission to Reevaluate - Consent form with the letter of April 28, 2012. S-9. Specifically, the District proposed a number of commonly used, standardized, normative evaluations that would assess the Student's intellectual abilities and achievement, social and behavioral skills, and language abilities. S-9 at 1. The Parents refused consent and returned the form on April 29, 2012. S-9 at 2.
29. While the foregoing events were unfolding, the Parents took the Student for an independent speech-language evaluation. The Student was evaluated on April 18, 2012 and an evaluation report was sent to the Parents on April 24, 2012. S-8. The evaluation included a Clinical Evaluation of Language Fundamentals, Pre-School, Second Edition (CLEF-P:2). As a result of that test and clinical observations, the

⁴ Upon rejecting the ESY NOREP, the Parents requested both a due process hearing and mediation. Ultimately, a facilitated IEP meeting convened instead of either of those dispute resolution methods.

evaluator concluded that the student expressed a mild expressive language disorder and inappropriate grammatical errors, but was otherwise age-appropriate in both receptive language and articulation. S-8 at 4. The evaluator recommended goals and objectives, and proposed direct speech language services one time per week for a minimum of 30 minutes per session. S-8 at 4.

30. The Parents provided the independent speech-language evaluation to the district, although it is not clear exactly when. NT at 93.
31. The District convened a facilitated IEP team meeting on May 9, 2012. S-11, S-12 at 1. During that meeting, the IEP of December 2011 was revised. S-12, S-13. No changes were made to the description of the Student's academic achievement and functional performance. Existing goals were clarified to explicitly state that the Student would achieve the goals independently. A number writing goal was added, as was a goal calling for the Student to retell the correct sequence of events in a story. *Id.*
32. The May 2012 IEP also called for an increase in program modifications and specially designed instruction beginning at the start of the 2012-13 school year (the IEP was still expected to carry through December of 2012). S-12, S-13. Time in the Learning Support classroom would increase by 30 minutes per session at the start of the 2012-13 school year, but the student would not receive 1:1 instruction for the entirety of that time.
33. Regarding ESY, the IEP team concluded the student was not eligible for ESY services. The District's stated reason for the denial is the same regression/recoupment analysis. S-12 at 18. However, through the IEP, the district offered one hour of tutoring per week for five weeks in the summer of 2012. S-12 at 17. These services were offered either as a program modification or as specially designed instruction, and the purpose was to "help continue to maintain a routine involving academics in order to facilitate [the Student's] transition back to school [after the summer recess]."
34. After denying the Parents' multiple requests and teacher's recommendations for ESY services, and then providing summer tutoring via an IEP without agreeing that the Student is eligible for ESY, the District sent a letter to the Parents on June 26, 2012 offering 1.5 hours of ESY services per week for five weeks during the summer of 2012. The services would consist of tutoring to address unspecified reading and math goals. P-5.
35. The letter offering ESY services was sent as a result of a clerical error, not as the result of a decision to provide ESY services, or increase summer tutoring from the one hour of tutoring per week provided by the IEP to 1.5 hours as set forth in the letter. NT at 245-246. However, the District offered to provide the tutoring offered in the IEP at the higher rate described in the letter.

36. By the end of the 2011-12 school year, the Student could identify 85% of upper and lower case letters, but was inconsistent with certain letters. S-15 at 3. By this time, the Student could also associate letters with sounds with 65% accuracy (as measured by sounds correct per total letters in the alphabet) – but was still “unfamiliar” with three vowel sounds. S-15 at 5. The Student could count orally from 0 to 31, identify numbers 0-10 with 100% accuracy and identify numbers 0-20 with 81% accuracy. S-15 at 8, 11.
37. Regarding the two IEP goals that were added in May of 2012, data was collected twice for the number writing goal and once for the story sequencing goal between the time those goals were added and the end of the 2011-12 school year. Even so, by the second probe, the Student could write the numbers 0-5 and 8-10, 11, 14, 16 and 17 independently and without a visual. S-15 at 12. The Student was able to sequence two of five stories at 100% accuracy on the first sequencing probe. S-15 at 13.
38. The Student received the tutoring hours from the District in the summer of 2012. NT at 117-118. The Student also participated in a six-week program in a New Jersey public school that targeted academics and social/emotional development. The New Jersey program was instructed by the Student’s grandmother, who is a special education teacher in that state. The Parents paid tuition for the Student to attend that program. S-14, NT at 63.
39. The Student’s grandmother wrote a descriptive, detailed “Summary of Performance” at the end of the summer program. According to that document, the Student could identify all of the letters of the alphabet and knew all but four corresponding sounds – but only if using strategies instructed in the curriculum used in the summer program. The Student demonstrated good listening comprehension, and could recall story events in order. Using curricular strategies, the Student had some ability to spell three letter words, but demonstrated “reversals” in handwriting. The Student could “count to 40 by 1s and to 100 by tens ... [but] has difficulty reading and writing numbers past nine and demonstrates many reversals writing two digit numbers.” S-14.
40. A small amount of testimony indicates that the Student’s performance in the New Jersey summer program may be the result of the Student’s close relationship with the grandmother. See NT at 74. The District did not, however, challenge the accuracy of the information reported at S-14.⁵
41. The Student started the 2012-13 school year under the IEP that was revised in May of 2012. See, e.g. NT at 225-226.
42. The Student’s current (2012-13) special education teacher implemented the IEP and monitored progress towards its goals. *Id.*, NT at 231; S-18. According to progress

⁵ To the extent that S-14 is hearsay, such evidence is admissible in these proceedings but cannot be used to form the basis of my decision. Regardless, the District did not challenge the accuracy of S-14, and the information therein is not inconsistent with some of the District’s own progress reporting.

reports, by the end of the first marking period (11/01/2012) the Student could identify all upper and lower case letters, associate sounds with letters at 81% accuracy, count to 31 independently with 100% accuracy, identify numerals 0-21 with 67% accuracy, and could write numbers 1-19 (the goal calls for 1-20) but many of those numbers were written backwards, S-18 at 1, 5, 8, 11; S-16 at 14-15. The Student also had good recall of facts from stories read aloud, but still required assistance to sequence those facts when retelling a story. S-18 at 15.

43. Sometime during the first half of the 2012-13 school year, the Student's special education teacher began to suspect that the Student has dyslexia, and shared that concern with the Parents. NT at 189. The teacher recommended that the Student should "see a doctor about it because [the teacher] is not someone who can tell whether a child has that or not." NT at 233.
44. The District convened an IEP team meeting on November 7, 2012 in anticipation of the expiration of the prior IEP. The District invited the Parent to the IEP team meeting on October 26, 2012. S-17. The meeting convened as scheduled.
45. The sequence of events, IEPs and NOREPs around the time of the November 2012 IEP team meeting are exceptionally confusing. Findings of fact concerning this period of time are based on the testimony of the Student's current special education teacher, which appears in the record at NT at 210-235.
46. The Student's special education teacher and the Parents were communicating with each other about the Student's progress and needs. As a result of those conversations, the teacher drafted an IEP and discussed that draft with the Parents. That IEP was submitted as evidence and made part of the record as S-21.
47. The teacher did not bring the IEP at S-21 to the IEP team meeting in November of 2012. Instead, the teacher brought a different IEP, which was submitted as evidence and made part of the record as S-19. It is not clear who authored the IEP as S-19. Team members signed into the IEP meeting on the IEP at S-19, and the Student's mother acknowledged receipt of procedural safeguards on that document.
48. The District also drafted a NOREP that was submitted as evidence and made part of the record as S-20. The teacher also brought the NOREP at S-20 to the IEP team meeting in November of 2012. See NT at 210-235.
49. The IEP at S-19 and the NOREP at S-20 do not square with each other. The IEP calls for the Student to receive an itinerant level (less than 20%) of Learning Support. The NOREP at S-20 would place the Student in the Learning Support classroom at the "supplemental" level (20% to 80% of the school day).⁶ The NOREP at S-20 explicitly rejects an itinerant level of Learning Support as insufficient to meet the Student's needs.

⁶ Neither the IEP at S-19 nor the NOREP at S-20 say exactly how much time the Student would actually spend in the Learning Support classroom. The Penn Data section of the IEP (where such information is often revealed) is completed incorrectly on S-19.

50. The IEP at S-21 matches the NOREP at S-20. The teacher mailed that IEP to the Parents sometime after the IEP meeting in November of 2012.
51. The IEP at S-19 includes a description of the Student's present levels of academic achievement and functional performance, complete with data from the early parts of the 2012-13 school year. The same section of the IEP at S-21 is blank.
52. The annual goals in the IEPs at S-19 and S-21 are identical, and are based both on the performance levels reported at S-19 and assessments of the Student's performance at the start of the 2012-13 school year (reported at S-16).
53. The program modifications and SDI are similar in S-19 and S-21, but with one significant difference. The IEP at S-21, via modifications and SDI, places the Student in Learning Support for Language Arts. It is the addition of this class outside of the regular education classroom that pushes both the IEP at S-21 and the NOREP at S-20 into the supplemental level.
54. Both IEPs defer ESY eligibility determinations until the spring of 2013.
55. The Penn Data reporting in the IEP at S-21 is accurate, based on the SDI. Accordingly, under the IEP at S-21, the Student would spend just short of two hours per day (1.92 hours) in the Learning Support classroom. This correlates to the Student spending 70% of the school day in a regular education classroom.
56. The Parents rejected the NOREP at S-20, and requested this due process hearing.
57. The District has implemented the last-approved IEP at all times during the 2012-13 school year (the IEP at S-12).

Discussion

1. General Legal Framework

I will make an effort to avoid legal terms or, when that is not possible, explain them in plain English. Except in the findings of fact, I have placed citations in footnotes, rather than in-line. I am doing this to make this decision accessible to people who, like the Parents, do not have a legal background or training.

The law that controls this case is the Individuals with Disabilities Education Act (IDEA). The IDEA establishes the educational rights of students with disabilities and their parents. The IDEA also establishes school districts' obligations to students with disabilities and their parents. At its core, the IDEA ensures that all students with disabilities receive a free appropriate public education (FAPE). This does not require schools to give students with disabilities the best possible education. Rather, school districts, working with parents, must develop and implement an Individualized Educational Program (IEP) that will provide a meaningful educational benefit to the student. Schools must also place students with disabilities in the least restrictive environment (LRE). In other words, of all of the possible placements in which a student

could receive a meaningful education, the school must select the placement that is most similar to the regular classrooms that non-disabled students go to.

If a school violates the IDEA and a student does not receive a FAPE, the student is owed compensatory education. Compensatory education usually takes the form of educational services that go above and beyond what a school would otherwise have to provide, and are aimed at helping the student recover from the denial of FAPE. In Pennsylvania, compensatory education is usually awarded in the form of hours of services. In most cases, Parents choose what services will be provided during the awarded hours, and the school districts pay the service providers.

Hearing Officers have authority to correct procedural violations of the IDEA. For example, if an IEP is not drafted in the correct way, a Hearing Officer can order the school district to comply with procedural rules. However, Hearing Officers cannot award compensatory education for a procedural violation – unless the procedural violation results in a denial of FAPE. Hearing Officers can also order school districts to provide the services that a student needs in order to receive a FAPE, and can order school districts to fund independent educational evaluations (IEEs). IEEs are assessments by experts who are not associated with the school district.

In addition to compensatory education, parents may be entitled to private school tuition reimbursement in certain cases. In order to obtain tuition reimbursement, parents must prove that the school district failed to offer a FAPE, that the private school is appropriate for the student, and that awarding tuition reimbursement is fair (i.e. that there are no equitable considerations that would prohibit tuition reimbursement). As the name suggests, however, tuition *reimbursement* is available when parents have actually placed their children into a private school. Seeking reimbursement can be financially risky for parents, and courts have recognized that risk while analyzing tuition reimbursement cases.

2. The Parents' Demand

It is important to highlight that the Parents are not seeking tuition reimbursement. As discussed in this decision, the Parents have not enrolled the Student in a private school. Rather, the Parents have investigated a private school and believe that school is a good fit for the Student. It is not clear how far the Parents have proceeded in the admission process, but it is clear that admission has not been formally offered to the Student.⁷ More importantly, the Parents have not incurred any debt to the private school. They do not owe tuition to the private school. Instead, the Parents ask me to place the Student into the private school prospectively.

My authority to order prospective private school placement is not clear cut. Some courts have upheld due process decisions that place students in private schools outside the context of tuition reimbursement.⁸ Such cases often involve chronic, severe denials of

⁷ NT at 19-20.

⁸ See *N. Kitsap Sch. Dist. v. K.W.*, 130 Wn. App. 347, 369 (Wash. Ct. App. 2005)

FAPE. Further, to whatever extent I have authority to award prospective private school placement, the standard cannot be the same as the standard for tuition reimbursement. Parents do not face the same financial risk, and the placement decision must be made in light of the LRE requirement.⁹ As a result, parents seeking prospective private school placement must prove that the student cannot receive a FAPE in less restrictive public school settings. In light of the vast array of modifications and accommodations that can be provided in public schools (and that the IDEA often requires), the burden on parents seeking prospective private school placement outside the context of tuition reimbursement is quite high.

Regarding the other issues in this case, I very clearly have authority to determine both the appropriateness of the Students IEP and whether the IEP has been implemented. The Parents have not asked for compensatory education but, in light of the issues, I can order the District to take whatever action is necessary to correct procedural violations and ensure the substantive provision of FAPE to the student.

3. The Burden of Proof

The Parents are the party seeking relief. Under special education case law, the Parents must convince me that they are entitled to what they demand. In legal terms, the Parents must bear the burden of persuasion and cannot prevail if the evidence rests in equipoise.¹⁰

4. IEP Implementation

The Parents claim that the Student's IEP was not properly implemented during the 2011-12 school year when the special education teacher proctored the PSSAs. The District concedes this point, but argues that any missed sessions were made up, and that any educational loss suffered as a result of the missed sessions was remediated. The evidence supports the District's position. The terms of the Student's IEP were violated in the most technical sense over a short period of time (about one week). But, in light of the District's voluntary remediation, the Student was not denied a FAPE as a result of that violation.

5. Appropriateness of the IEP

The Parents allege that the last IEP offered by the District is not appropriate. As

described above, it is not easy to tell what the last-offered IEP is. This confusion is indicative of an IDEA violation in and of itself.

⁹ See *Woods v. Northport Pub. Sch.*, 2012 U.S. App. LEXIS 13819, 29 (6th Cir. Mich. 2012)(applying an LRE analysis to prospective programming within a public school).

¹⁰ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3d Cir. 2010), citing *Shore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004).

The IDEA makes parents full members of their children's IEP teams. Predetermination of a student's program or placement violates parent's rights to participate in IEP development. In this case, the District claims that it is offering an IEP (S-21) with a NOREP (S-20). But the offered IEP was never discussed during an IEP team meeting. Instead, a different IEP was discussed (S-19). The IEP that was "offered" and the IEP discussed at the meeting are different in important ways. The offered IEP increases the Student's time in a Learning Support classroom by placing the Student in that classroom for a core academic subject. The IEP discussed at the meeting makes no mention of this. The Parent was denied the opportunity to meaningfully participate in the development of the offered IEP (S-20).¹¹

This situation is analogous to the District's ESY procedures. As a matter of routine practice, the District's Director of Student Services has veto power over ESY eligibility determinations (even when parents and District members of IEP teams believe that ESY is appropriate). This is an absolute violation of the IDEA and its regulations, and is antithetical to the collaborative process required by law.¹² The Parents do not allege a denial of FAPE during the summer of 2012, but it is certainly within my power to ensure that the District complies with IDEA regulations as the Student's ESY eligibility is determined this year.¹³

The offered IEP also makes no mention of dyslexia. To be clear, dyslexia is not a separate disability category under the IDEA. Students with dyslexia who are in need of special education fall into the "specific learning disability" category. The Student has qualified under this category since the initial IEP. A diagnosis of dyslexia, therefore, would not change the Student's eligibility category. The symptoms of dyslexia, however, do not follow from a single condition. The many forms of dyslexia may have similar presentations, but are not all remediated in the same way. Therefore, without careful evaluation, it is impossible for an IEP team to select programming for a suspected-dyslexic student.

In this case, the District was obligated – minimally – to propose an evaluation when the current special education teacher suspected that the Student has dyslexia. The IDEA requires school districts to evaluate all areas of a student's suspected disability, and must initiate an evaluation even before the tri-annual cycle when a new or different

¹¹ The Parents are also under the impression that the Student will spend more time in the Learning Support classroom that what is actually proposed at S-21 and S-20. The Parents' confusion is the direct result of the District's failure to include them in the IEP development process. The District cannot be surprised that the Parents are confused after one IEP is brought to the meeting with an inconsistent NOREP for a different IEP that was not discussed.

¹² Worse, some testimony suggests that the District routinely brings NOREPs, not IEPs, to IEP team meetings; and then presents the IEP only after the NOREP is signed. If so, this would be the most serious denial of parental participation that this Hearing Officer has ever encountered. In this particular case, however, there is not enough evidence to draw that conclusion, even though delivery of the last IEP was unambiguously botched.

¹³ Unfortunately, I do not have the power to order systemic policy changes in a school district. Rather, I can only correct IDEA violations on a student-by-student, case-by-case basis.

disability is suspected.¹⁴ The District's lack of effort in this regard is concerning, as is the recommendation to seek an evaluation from a doctor. It is the *District's* obligation to evaluate the Student; it is not the Parents' obligation to obtain an evaluation when the *District* suspects that the Student may have a previously undiagnosed disability.

Despite all of these problems, all evidence and testimony clearly indicates that the Student has made progress. The Student's baseline levels upon kindergarten enrollment were alarmingly low. The Student has made progress towards IEP goals, as documented in every probe the District has administered. This progress is a function of the hard and serious work that the special education teachers are doing with the Student (both the teacher from the 2011-12 and 2012-13 school years). Those teachers clearly care about the Student and, in the classroom, are driving the Student's success. In light of this work, it is so unfortunate that the District has violated the IDEA by failing to provide necessary evaluations and by excluding the Parent from the IEP development process.¹⁵

In sum, the Parents have proven that the last-offered IEP (S-21) is not appropriate. That IEP was offered before the Student's suspected disability was assessed. To remedy this violation, and in light of the *District's* suggestion that the Parent turn to doctors outside of the District for an evaluation, I will order the District to fund an independent educational evaluation (IEE) of the Student. The last-offered IEP was also issued without meaningful parental participation. To remedy this, I will order the District to reconvene the Student's IEP team after the IEE is completed and to develop an IEP for the Student at the IEP team meeting.

6. Private School Placement

The Parents have not satisfied the very high burden that would require prospective placement at a private school at the District's expense. Said simply, the Parents have not proven that the Student must be placed in a private school in order to receive a FAPE. To the contrary, evidence shows that the Student can make progress in the District. This Hearing Officer is optimistic that the Student will make even greater strides after the Student's needs are fully evaluated, and after the Parents are included as full members of the Student's IEP team.

ORDER

¹⁴ 20 U.S.C. § 1414.

¹⁵ By many accounts, communication between the Parents and teachers has been good. The Parents and teachers appear to have a good relationship (particularly the teacher from the 2011-12 school year). Even so, good parent-teacher communication and parental involvement in IEP decision-making are not the same thing. It is the latter in which the District has failed.

And now, February 26, 2013, it is hereby ordered as follows:

1. The District shall fund an independent educational evaluation (IEE) of the Student. To secure said IEE, the following procedures shall be used:
 - a. The evaluator shall have no affiliation with the District,
 - b. Within five (5) business days of this decision, the District shall propose five (5) such evaluators,
 - c. The Parents may select from the District's list of evaluators or may select a different evaluator, provided that the evaluator is qualified to assess all areas of the Student's suspected disability.
 - d. The parties may come to their own agreement as to whether the District will reimburse the Parents for the evaluation or pay the evaluator directly. If the parties cannot come to their own agreement, the District shall pay the evaluator directly.
 - e. The evaluator must agree to transmit any evaluation report to both parties. Both parties shall sign any releases to enable such transmission.
2. After the parties receipt of the IEE report, the District shall convene an IEP Team Meeting, with the Parents, to review the results of that report and either draft a new IEP for the Student, or amend the Student's IEP as needed. The parties may select a mutually agreeable time, place and location for this meeting.
3. An ESY determination shall be made for the Student during the IEP team meeting. The ESY determination shall be made by the Student's IEP team, and shall not be subject to veto by District administrators.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED**.

/s/ Brian Jason Ford
HEARING OFFICER