

**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' MOTION FOR CLASS CERTIFICATION

Plaintiffs L.R., D.R. and J.R. and their mother, Madeline Perez, and R.H. and his mother, Manqing Lin (collectively, “Plaintiffs”), on behalf of themselves and others similarly situated, respectfully move this Court, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), for an Order certifying the two Classes defined below, appointing Plaintiffs as Class Representatives, and appointing Plaintiffs’ counsel—The Public Interest Law Center, Education Law Center, and Drinker Biddle & Reath LLP—as Class Counsel.

In support of this Motion, and as more fully set forth in the accompanying Memorandum of Law, Plaintiffs state as follows:

1. Certification of the following two Classes is appropriate pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2):

- All parents as defined by 34 C.F.R. § 300.30(a) with limited English proficiency and whose children now or in the future are enrolled in the School District of Philadelphia and identified or eligible to be identified as children with a disability within the meaning of the Individuals with Disabilities Education Act (“IDEA”) and/or Section 504 of the Rehabilitation Act (“Section 504”) and related state laws (the “Parent Class”); and
- All students who now or in the future are enrolled in the School District of Philadelphia in grades kindergarten through the age of legal entitlement who are

identified or eligible to be identified as children with a disability within the meaning of the IDEA and/or Section 504 and related state laws, whether or not they are classified as English language learners and whose parents as defined by 34 C.F.R. § 300.30(a) are persons with limited English proficiency (the “Student Class”).

2. The proposed Classes meet each of the requirements of Federal Rule of Civil Procedure 23(a). First, the two Classes are so numerous that joinder of all members is impracticable. Second, there are multiple questions of fact and law common to the two Classes. Third, Madeline Perez’s and Manqing Lin’s claims are typical of those of the Parent Class, and the claims of L.R., D.R., J.R. and R.H. are typical of those of the Student Class. Finally, Plaintiffs and their counsel will fairly and adequately represent and protect the interests of the two Classes.

3. The proposed Classes also meet the requirements of Federal Rule of Civil Procedure 23(b)(2) because the School District of Philadelphia has acted or refused to act on grounds that apply generally to the Parent Class and the Student Class, and as a result, final injunctive relief or corresponding declaratory relief is appropriate respecting each of the Classes as a whole.

WHEREFORE, Plaintiffs respectfully request that the Court certify the two proposed Classes, appoint Plaintiffs L.R., D.R., and J.R. and their mother, Madeline Perez, and R.H. and his mother, Manqing Lin, as Class Representatives, and appoint The Public Interest Law Center, Education Law Center, and Drinker Biddle & Reath LLP as Class Counsel.

Dated: August 3, 2018

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**PLAINTIFFS' MEMORANDUM OF LAW
IN SUPPORT OF CLASS CERTIFICATION**

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Plaintiffs L.R., D.R. and J.R. and their mother, Madeline Perez, and R.H. and his mother, Manqing Lin (collectively, “Plaintiffs”), on behalf of themselves and others similarly situated, submit this memorandum of law in support of their motion for class certification, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

I. INTRODUCTION

Plaintiffs are parents with limited English proficiency (“LEP”) and their children who are eligible for special education services in the Defendant School District of Philadelphia (the “District”). The original Parent Plaintiffs in this putative class action, Barbara Galarza and Margarita Peralta, filed two administrative proceedings in June 2014 against the District, which 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, including developing and revising Individualized Education Programs (“IEPs”) for children with disabilities, in violation of federal law. While finding in both administrative cases that 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 Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, the Hearing Officer concluded that he lacked authority to order systemic relief.

The two other Parent Plaintiffs, Madeline Perez and Manqing Lin, joined this action as part of the First Amended Class Action Complaint in March 2017 and similarly allege that they have been denied their right to participate meaningfully in the IEP process for their children.¹ To remedy the on-going violation of their rights, including under the IDEA, Plaintiffs seek

¹ Since the commencement of this action, the claims of A.G. and his guardian, Ms. Peralta, as well as T.R. and her guardian, Ms. Galarza, have become moot. A.G. and Ms. Peralta were dismissed from the action (Dkt. No. 74), and the parties have today submitted a stipulation for the dismissal of T.R. and Ms. Galarza on similar terms.

systemic relief. In particular, on behalf of themselves and a “Parent Class” and a “Student Class” (defined below), Plaintiffs seek an order requiring the District to provide qualified, trained interpreters at all special education meetings, to translate IEPs and evaluations, and to develop and implement new District-wide policies for the provision of interpretation and translation services, among other injunctive and declaratory relief.

This action seeking injunctive and declaratory relief against the District is well suited for class treatment. The Parent Class and Student Class satisfy each of the requirements of Federal Rule of Civil Procedure 23(a). There are more than a thousand members of both putative classes, thus making joinder of their claims impracticable. There are questions of law and fact common to both classes, and the Plaintiffs’ claims are typical of the other putative class members’, whose interests will be adequately represented by Plaintiffs and their counsel. Plaintiffs’ action also satisfies the requirements of Rule 23(b)(2), because the District has acted and refused to act on grounds generally applicable to each class, “so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). As the Third Circuit has observed, the requirements of Rule 23(b)(2) are “almost automatically satisfied in actions primarily seeking injunctive relief.” *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994).

Accordingly, for the reasons discussed more fully below, Plaintiffs seek class certification of a Parent Class and a Student Class pursuant to Rules 23(a) and 23(b)(2), and the appointment of the undersigned attorneys as class counsel.

II. PROPOSED CLASSES

Plaintiffs seek to certify two classes, a Parent Class and a Student Class, which respectively consist of:

1. All parents as defined by 34 C.F.R. § 300.30(a) with limited English proficiency and whose children now or in the future are enrolled in the School District of Philadelphia and identified or eligible to be identified as children with a disability within the meaning of the IDEA and/or Section 504 and related state laws (the “Parent Class”); and
2. All students who now or in the future are enrolled in the School District of Philadelphia in grades kindergarten through the age of legal entitlement who are identified or eligible to be identified as children with a disability within the meaning of the IDEA and/or Section 504 and related state laws, whether or not they are classified as English language learners and whose parents as defined by 34 C.F.R. § 300.30(a) are persons with limited English proficiency (the “Student Class”).

These definitions objectively define classes “in a way that enables the court to determine whether a particular individual is a class member.” *Stanford v. Foamex L.P.*, 263 F.R.D. 156, 175 (E.D. Pa. 2009); *see also Chester Upland Sch. Dist. v. Pennsylvania*, No. 12-132, 2012 WL 1450415 (E.D. Pa. Apr. 25, 2012).

III. PROCEDURAL HISTORY

A. Administrative Process

Prior to commencing this action, in June 2014, T.R.’s parent, Barbara Galarza, and A.G.’s guardian, Margarita Peralta, filed on behalf of themselves and their children two separate administrative actions against the District. While the particular special educational needs and programs of T.R. were different from those of A.G., their guardians both alleged that the District systemically failed to translate IEP documents and to provide adequate interpretation services.

In the case of Ms. Galarza and her child, T.R., the District failed to provide adequate translation and interpretation services following the District’s determination that T.R. qualified for special education services. *See* First Am. Compl. ¶¶ 72–79. In the fall of 2013, Ms. Galarza

sought to enroll T.R. in the District for high school.² At the time, the District was aware that T.R. qualified for special education services and that T.R. and Ms. Galarza were LEP. *Id.* ¶ 72; Deposition of Barbara Galarza at 47:4–14, attached hereto as Exhibit 1. Nevertheless, despite its awareness of her language needs, when T.R. sought to enroll in high school, the District conducted an evaluation of T.R. using an English-speaking psychologist and an English-speaking speech therapist. First Am. Compl. ¶ 73; Deposition of T.R. at 188:3–10, 192:12–20, attached hereto as Exhibit 2. A meeting was scheduled for March 2014, and Ms. Galarza requested that the District’s Reevaluation Report and Psycho Educational Evaluation be provided in Spanish. The District ignored this request, and it did not provide Spanish versions of the documents to Ms. Galarza before the meeting.³ Ex. 1 at 62:6–18.

The District also failed to translate IEPs for Ms. Galarza and T.R. For example, in June 2014, the District failed to provide Ms. Galarza with a Spanish version of a 52-page IEP prior to an IEP meeting. Ex. 1 at 15:21–16:5, 45:1–13, 61:11–16, 61:24–62:18, 110:2–18, 172:22–173:5. More generally, throughout T.R.’s time at the District, it routinely failed to timely translate other IEP-related documents. *Id.*; First Am. Compl. ¶¶ 74–77. Furthermore, interpretation services were not an adequate substitute for translated IEP-related documents. When interpreters were present at the IEP meetings for T.R., they did not fully sight translate the IEP documents (i.e., translate the English text on the spot into Spanish). Ex. 1 at 63:18–22, 113:6–16, 176:2–9. Based on these deficiencies in the District’s language services, Ms. Galarza was not able to participate meaningfully in IEP meetings for T.R. Ex. 1 at 110:9–18; First Am. Compl., Exhibit A at 9–10 (May 26, 2015 Decision).

² The school, Stetson, was a District school when T.R. began attending; while she was attending, it became a charter school operated by Aspira of PA.

³ The District did not provide Spanish revisions of the reports until June 27, 2014.

A.G. and his guardian, Margarita Peralta, were similarly deprived of adequate language services by the District during the IEP planning process. In March 2014, Ms. Peralta provided an order from a Philadelphia Family Court judge and a letter to the District requesting that A.G. be evaluated for special education services and informing the District that the family's native language was Spanish. *See* First Am. Compl. ¶ 82 and Exhibit B thereto at 3 (May 26, 2015 Decision). Nevertheless, the District failed to provide timely and complete translations of IEP process documents for A.G., and communications about evaluating him for special education services were conducted primarily in English. First Am. Compl. ¶ 85 and Exhibit B thereto at 4. Even after the administrative complaint was filed against it on June 23, 2014, the District continued to issue IEP documents to Ms. Peralta primarily in English. For example, during a December 2, 2014 IEP meeting for A.G., the District provided an IEP with only the headings translated into Spanish; the majority of the document was in English. Moreover, the District employee who attended the meeting was only able because of time constraints to sight translate three of the 44 pages of the IEP for Ms. Peralta. First Am. Compl. ¶ 85 and Exhibit B thereto at 6.

The combined due process hearing processes lasted almost nine (9) months, with the Hearing Officer issuing a decision on May 26, 2015 on both administrative complaints. In each decision, he found that the guardian was denied meaningful participation under the IDEA due to the District's failure to provide timely and complete translations of IEP-related documents. *See* First Am. Compl., Exhibit A at 14; *see also* First Am. Compl., Exhibit B at 13. In the case of A.G. and his guardian, Margarita Peralta, the Hearing Officer wrote:

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 Students' needs, and what program and placement will satisfy those needs. Reading a mostly-English document in [Spanish] 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. ...

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. The Parent was placed at an obvious disadvantage by effectively not having access to these documents.

First Am. Compl., Exhibit B at 11; *see also* First Am. Compl., Exhibit A at 9–10.

The Hearing Officer awarded T.R. and A.G. compensatory education based on the District's IDEA violations. Critically, however, the decisions did not provide for systemic relief. This was based on a pre-hearing order in which the Hearing Officer explicitly held that he did not have the authority to order system-wide changes in the District's policies or practices. *See* First Am. Compl., Exhibit C at 5–6 (October 22, 2014 Consolidated Pre-Hearing Order).

B. Filing of Plaintiffs' Original Complaint

On August 21, 2015, Plaintiffs filed their original Complaint in this action on behalf of T.R. and A.G. and their parents, appealing the decision of the Hearing Officer to deny their request for systemic relief and asserting seven counts on behalf of themselves and similarly situated parents and students: (1) violation of the IDEA for failure to provide meaningful parental and student participation in IEP meetings (on behalf of the Parent Class and Student Class); (2) violation of the IDEA for failure to conduct evaluations of students in their native language (on behalf of the Parent Class and Student Class members who are LEP); (3) violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, Americans with Disabilities Act as Amended (on behalf of the Student Class); (4) violation of the Equal Education Opportunity Act (on behalf of the Student Class); (5) violation of Title VI of the Civil Rights Act of 1964 (on behalf of the Parent Class and Student Class members who are LEP); (6) violation of

22 Pennsylvania Code Chapter 14 (on behalf of the Parent Class and Student Class); and (7) violation of 22 Pennsylvania Code Chapter 15 (on behalf of the Parent Class and Student Class).

As remedies for the various violations alleged in the Complaint, Plaintiffs requested injunctive and declaratory relief, including an order that the District adopt and implement a plan and policy to provide legally-mandated translation and interpretation services to the members of the Parent Class and Student Class.

The District responded to the Complaint on November 20, 2015 by filing a Motion to Dismiss. In its Motion, the District argued that: (1) the Court did not have subject matter jurisdiction over Plaintiffs' claims because Plaintiffs failed to exhaust their administrative remedies; (2) Plaintiffs failed to allege plausible systemic claims for relief; and (3) Plaintiffs failed to state claims under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act as Amended, the Equal Education Opportunity Act, Title VI of the Civil Rights Act of 1964, and 22 Pennsylvania Code Chapter 15.

On November 30, 2016, the Court issued an Order denying the District's Motion to Dismiss in its entirety. First, the Court held that it had subject matter jurisdiction over Plaintiffs' claims because Plaintiffs adequately alleged systemic legal deficiencies with regard to the District's language services. Furthermore, the Court held that subject matter jurisdiction was proper because system-wide relief could not be provided through the administrative proceedings, as the Hearing Officer had previously ruled. Nov. 30, 2016 Mem. Op. at 8–11. Second, the Court 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. *Id.* at 11–14. Finally, the Court held that Plaintiffs sufficiently pled claims under Section 504 of the Rehabilitation Act, the Americans

with Disabilities Act as Amended, the Equal Education Opportunity Act, Title VI of the Civil Rights Act of 1964, and 22 Pennsylvania Code Chapter 15. *Id.* at 14–20.

C. Filing of the First Amended Complaint

On April 10, 2017, Plaintiffs filed their First Amended Complaint, adding six class representatives—L.R., D.R., and J.R. and their mother, Ms. Perez, and R.H. and his mother, Ms. Lin.

1. Madeline Perez and her children, L.R., D.R. and J.R.

Ms. Perez is LEP. First Am. Compl. ¶ 27. Her native language is Spanish, and she reads and writes Spanish. Deposition of Madeline Perez at 13:15–24, attached hereto as Exhibit 3. Three of her children, D.R., J.R. and L.R., are special education students. *See id.* at 16:16–17:8, 17:9–11, 20:10–19, 21:5–9. D.R. and J.R. are LEP. First Am. Compl. ¶¶ 25–26.

L.R. is fourteen years old. After the family moved from Puerto Rico to Philadelphia in 2012, he was evaluated at the Center for Autism and diagnosed with autism. First Am. Compl. ¶ 88; Ex. 3 at 17:9–18:11 (testifying that L.R. has ODD, ADHD and autism). This evaluation was provided to Ms. Perez in Spanish. First Am. Compl. ¶ 88. However, the District subsequently performed its own evaluation of L.R. and did not provide the evaluation report to Ms. Perez in Spanish, despite her request for translations. *Id.*; Ex. 3 at 13:2–8 (“When I came here to Philadelphia . . . I requested that all documents be translated.”).

Between 2012 and 2016, the District refused to fully translate L.R.’s IEP process documents and would only translate the documents’ section headings. First Am. Compl. ¶ 4; *see also* Ex. 3 at 43:15–44:24. Due to her lack of English proficiency, Ms. Perez was deprived of the opportunity to meaningfully participate in the planning process for L.R.’s IEP. First Am. Compl. ¶ 90. With the assistance of an attorney, in February 2017, Ms. Perez signed a settlement

agreement related to L.R.,⁴ so that L.R. could move to a private school. Ex. 3 at 23:13–20, 26:13–27:11. While the agreement released the District of liability for legal claims through the date it was signed, 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.

The District has also failed to timely translate D.R. and J.R.’s IEP process documents. First Am. Compl. ¶ 5. During a January 2017 IEP meeting, for example, the District ignored Ms. Perez’s request for translation of J.R.’s IEP process documents and only offered to translate the headings. *Id.* ¶ 93.⁵ The District has taken similar actions in regards to D.R. *Id.* ¶ 94; *see also* Ex. 3 at 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). Without such translations, Ms. Perez is unable to fully and meaningfully participate in her children’s education. Ex. 3 at 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.”).

The District also failed to provide adequate language services to Ms. Perez at IEP meetings. First Am. Compl. ¶ 96. In several meetings, the District did not provide an interpreter

⁴ 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.

⁵ After the First Amended Complaint was filed, Ms. Perez received a fully translated evaluation and functional behavior assessment for J.R.; however, those documents were provided in June 2017, months after the meetings at which they were discussed and were given to her along with other documents that were only partially translated. *See* Ex. 3 at 9:23–12:7, 52:14–53:7.

or, when interpreters were present, they did not fully sight translate the IEPs. *See, e.g.*, Ex. 3 at 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. Manqing Lin and her son, R.H.

Ms. Lin is also LEP. First Am. Compl. ¶ 29; Deposition of Manqing Lin at 8:21–23, 34:10–19, attached hereto as Exhibit 4. Her native language is Mandarin, and she reads in traditional Chinese. First Am. Compl. ¶ 29. Her son, R.H., who is now in first grade, has been diagnosed with Autism Spectrum Disorder and has also been found to be mentally gifted. *Id.* ¶¶ 98–99; Ex. 4 at 54:7–10. The District has similarly denied Ms. Lin the language services needed to participate meaningfully in the IEP planning process. 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. First Am. Compl. ¶ 100; Ex. 4 at 169:15–16. R.H.’s father understands little English and does not read or write English. First Am. Compl. ¶ 100.

Beginning with R.H.’s transition to kindergarten in 2016, the District failed to provide Ms. Lin with translations of forms, evaluations and IEP documents and adequate oral interpretation services. *Id.* For example, 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 and also failed to provide an interpreter. Ex. 4 at 112:17–117:8. 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. First Am. Compl. ¶ 101. 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. 4 at 180:6–22.

After the District conducted its evaluation of R.H., it sent Ms. Lin an Evaluation Report which was not translated into Chinese. *Id.* at 144:15–147:3. This report concluded that R.H. qualified for speech services, but it omitted his needs for occupational therapy and physical therapy, a functional behavior assessment or a behavior plan, and gifted programming in math. First Am. Compl. ¶ 103. 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. 4 at 136:2–137:20. On or about August 18, 2016, the District entered into a Mediation Agreement, attached hereto as Exhibit 5, 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. The District also agreed to provide translated versions of "final" IEPs and evaluations. *Id.* However, the District refused and continues to refuse to provide translated versions of any proposed or draft IEPs or evaluations. Ex. 4 at 190:5–13. 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. *Id.* at 172:5–21. 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. *Id.* at 142:6–24, 190:5–13. In addition, the District has failed to translate other IEP-related documents such as R.H.'s Functional Behavior Assessment, Positive Behavior Support Plan, and Progress Monitor Report. *Id.* at 68:1–69:3.

IV. ARGUMENT

A. Standard of Review

Class certification is appropriate when the four requirements of Federal Rule of Civil Procedure 23(a)—numerosity, commonality, typicality and adequacy of representation—as well as those of at least one subpart of Rule 23(b) are met. Fed. R. Civ. P. 23; *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997). In addition to satisfying the requirements of Rule 23(a) the two classes Plaintiffs seek to certify here also satisfy Rule 23(b)(2), because the District has acted and refused to act in a manner generally applicable to each class, “so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). As the Third Circuit has explained, Rule 23(b)(2) is “almost automatically satisfied in actions primarily seeking injunctive relief.” *Baby Neal*, 43 F.3d at 58.

B. The Proposed Classes Meet the Requirements of Rule 23(a)

1. Numerosity

First, Rule 23(a)(1) requires classes to be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). There is no minimum number needed to meet this requirement, but generally if the potential number of plaintiffs exceeds forty (40) then the numerosity prerequisite is satisfied. *S.R. ex rel. Rosenbauer v. Pennsylvania Dep’t of Human Servs.*, 325 F.R.D. 103, 107 (M.D. Pa. 2018); *In re Nat’l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 426 (3d Cir. 2016). Like other Rule 23 determinations, it is the plaintiff’s burden to demonstrate that the element of numerosity has been met. *Mielo v. Steak ‘N Shake Operations, Inc.*, No. 17-2678, 2018 WL 3581450, at *10 (3d Cir. July 26, 2018). However, the exact number of the class does not need to be precisely certain at the class certification stage. *T.B. v. Sch. Dist.*, No. 97-5453, 1997 U.S. Dist. LEXIS 19300, at *8 (E.D.

Pa. Nov. 21, 1997). Here, both the Parent Class and Student Class are so numerous that joinder of all members is clearly impracticable. Discovery revealed that during the 2015–2016 and 2016–2017 school years, respectively, there were 3,507 and 3,783 special education students who lived in a household with a home language other than English. *See* Nov. 21, 2017 Ltr. from M. Obod to P. Saint-Antoine at 1, attached hereto as Exhibit 6.⁶ The District admitted that it does not separately track how many special education students have parents who are LEP;⁷ however, based upon the information received from the home language survey, it is evident that the number of members of both the Student Class and the Parent Class is in the thousands. *See* Ex. 6 at 1.⁸ Thus, the record supports a finding that the number of putative class members in this case well exceeds the minimum typically employed by courts in this Circuit. *See, e.g., T.B.*, 1997 U.S. Dist. LEXIS 19300, at *8, *10 (finding the requirement satisfied where the proposed class was “composed of hundreds of students, but. . . also include[d] past members. . . as well as future unknown members”).

Furthermore, courts also consider “judicial economy, the geographic diversity of class members, the financial resources of class members, the relative ease or difficulty in identifying members of the class for joinder, and the ability of class members to institute individual lawsuits” in evaluating impracticability. *Anderson v. Pennsylvania Dep’t of Pub. Welfare*, 1 F.

⁶ *See also* Deposition of Natalie Hess at 31:22–24, attached hereto as Exhibit 7 (“We have English language learners across the district in . . . all of our schools.”); Deposition of Allison Still at 79:23–80:13, attached hereto as Exhibit 8 (testifying that currently there are approximately 14,000 students in the District that are English language learners (“ELLs” or “ELs”) and that this number has increased by about 2,000–3,000 students since 2012); First Am. Compl. ¶ 61 (“As of November 2013, the District reported that there were approximately 25,990 families whose primary home language was not English.”); *id.* ¶ 62 (“As of November 2013, there were 1,887 students with IEPs whose records indicated that their home language was not English . . .”).

⁷ Ex. 7 at 80:14–16 (“We don’t keep track of the parents that are what you are describing as limited English proficient.”); *see also id.* at 42:19–43:3 (testifying that while there are approximately 2,000 students with disabilities in Network 7, she did not know the percentage that had LEP parents); Deposition of Kimberly Caputo at 75:2–6, attached hereto as Exhibit 9 (testifying that she does not know how the District identifies LEP parents).

⁸ *See also* Ex. 7 at 98:18–99:9 (discussing the increasing number).

Supp. 2d 456, 461 (E.D. Pa. 1998); *see also In re: Modafinil AntiTrust Litig.*, 837 F.3d 238, 246–60 (3d Cir. 2016). Here, all of these factors favor class certification. It would be particularly impracticable to join all class members here because by definition the Parent Class is made up of those who are limited English proficient and would be greatly challenged in bringing their own individual lawsuits. Likewise, the Student Class is made up of individuals who would rely on the Parent Class to bring suits on their behalf. The classes are also largely made up of individuals with limited financial resources, such as the named Plaintiffs, who are represented in this matter on a *pro bono* basis.

2. Commonality

Second, Rule 23(a)(2) requires there to be “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Commonality is satisfied if the “named plaintiffs share at least one question of fact or law with the grievances of the prospective class.” *Baby Neal*, 43 F.3d at 56; *see also S.R.*, 325 F.R.D. at 108 (“Because the [commonality] requirement may be satisfied by a single common issue, it is easily met.” (citation and internal quotation marks omitted)). The Third Circuit has stated that “[m]eeting this requirement is easy enough: ‘[W]e have acknowledged commonality to be present even when not all members of the plaintiff class suffered an actual injury, when class members did not have identical claims, and, most dramatically, when some members’ claims were arguably not even viable.’” *In re Nat’l Football League*, 821 F.3d at 426–27 (quoting *In re Cmty. Bank of N. Virginia Mortg. Lending Practices Litig.*, 795 F.3d 380, 397 (3d Cir. 2015)).

Furthermore, different factual circumstances involving individual class members do not bar a finding of commonality for the purposes of class certification. In *Baby Neal*, which involved challenges to the policies and practices impacting foster children in the care and

custody of Philadelphia’s Department of Human Services (“DHS”), defendants argued that the element of commonality was not satisfied because of the individual circumstances of the foster children and the absence of a single, common injury. 43 F.3d at 56–57. On appeal from the denial of class certification, the Third Circuit rejected that argument. It held that individualized circumstances do not negate a finding of commonality under Rule 23(a); it was enough that the foster children were harmed or threatened with harm based on DHS’s common policies and practices, such as excessive caseworker-to-family ratios. Indeed, the Third Circuit went on to observe that “(b)(2) classes have been certified in a legion of civil rights cases where commonality findings were based primarily on the fact that defendant’s conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct.” *Id.* at 57; *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 310 (3d Cir. 1998); *P.V. ex rel. Valentin v. Sch. Dist.*, 289 F.R.D. 227, 233–34 (E.D. Pa. 2013) (finding commonality where “Plaintiffs’ Complaint allege[d] a systemic failure [by a school district], not a failure of [a] policy as applied to each [class] member individually”); *S.R.*, 325 F.R.D. at 111–12.⁹

Here, there are multiple questions of fact and law common to the proposed classes, including:

- Whether the District fails on a systemic basis to provide members of the Parent Class adequate interpretation and translation services to allow them to participate

⁹ The Third Circuit recently reversed a finding by the district court of commonality in *Mielo*, in which the two plaintiffs, who allegedly faced difficulty handling the slopes in defendant’s parking facilities, sought certification of a class consisting of all persons with mobility disabilities who encountered any of the full range of physical barriers inside or outside of the restaurant. It was not enough for plaintiffs in *Mielo* to invoke the same provision of the ADA to remedy each of the various discriminatory facilities. *Mielo*, 2018 WL 3581450, at *14–17. Here, in contrast, the members of the putative classes are all subject to the same policies and practices with respect to translation and interpretation services, to the District’s systemic deficiencies in such language services, and to a denial of meaningful participation in the IEP planning process arising from those language service deficiencies.

meaningfully in the special education planning process for their children;¹⁰

- Whether the current policies, procedures, and practices of the District governing the translation of various special education process documents, and provision of interpretation services (including when and how interpretation and translations services are requested by parents/guardians, and what criteria the District relies on to determine whether or not to translate these documents) are sufficient to ensure meaningful participation in the special education process;¹¹
- Whether the District fails to comply with its policies and procedures with respect to the translation or interpretation of IEP process documents;¹²
- Whether the District fails to effectively notify parents of their right to request translation and/or interpretation of IEP process documents;¹³

¹⁰ See, e.g., Deposition of Ludy Soderman at 169:6–170:7, attached hereto as Exhibit 10 (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”); *id.* at 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”); Ex. 7 at 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. 8 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”); Declaration of Anna Perng ¶¶ 17–29, attached hereto as Exhibit 19 (describing her experiences with the District’s inadequate translation and interpretation service); Declaration of Bonita McCabe ¶¶ 10–19, attached hereto as Exhibit 20 (“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.”).

¹¹ See, e.g., Deposition of Christopher Marino at 33:21–34:11, attached hereto as Exhibit 11 (testifying that he is unsure whether there are policies for tracking whether required translations are completed); Ex. 10 at 51:3–23 (testifying BCAs duties and assignments are decided by their principals); *id.* at 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”); Ex. 7 at 110:13–112:13, 114:20–116:21 (discussing the new written policy regarding interpretations and translations of documents); *id.* at 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”); Ex. 8 at 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. 20 ¶¶ 20–26 (affirming that the District routinely fails to translate documents for non-English speaking parents despite knowing their status as LEP).

¹² See, e.g., Ex. 11 at 89:7–17 (testifying that he was unaware how OSS fulfilled its role in ensuring that translations of IEP documents were completed); Ex. 7 at 140:11–141:22 (testifying that she did not know whether BCAs receive copies of necessary IEP documents in accordance with the District’s written policy); Deposition of Youana Bustamante at 113:12–21, 117:18–24, 126:15–22, 133:13–20, attached hereto as Exhibit 12 (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 ¶¶ 20–26 (affirming that the District routinely fails to translate documents for non-English speaking parents despite knowing their status as LEP); Ex. 19 ¶ 28 (stating that she is not aware of any new District policy being implemented); *see also* Footnote 13 *infra*.

¹³ See, e.g., Ex. 9 at 91:18–93:3 (discussing policies and procedures regarding notifying parents of their right to request translations of IEP documents and the tracking of those requests); *id.* at 106:1–112:16, 114:19–115:17 (discussing the new one page procedural safeguards document now provided to parents); Ex. 11 at 31:6–33:14 (discussing his lack of knowledge with regard to the tracking of requests for translations); Ex. 10 at 80:1–19 (testifying that schools and community-based organizations should communicate the availability of interpreters); Ex. 7 at 296:5–18 (discussing the new procedural safeguards document now provided to parents to notify them of their rights); Deposition of Marie Capitolo at 209:13–20, attached hereto as Exhibit 13 (“Q. Is it the practice of the district to tell parents with respect to IEPs or evaluations that the translation[s] of those documents is available?

- Whether there are a sufficient number of qualified and trained interpreters available to provide effective language services to members of the Parent Class at IEP meetings;¹⁴ and
- Whether the policies, procedures, and practices of the District with respect to language services (translations and interpretations) provided to members of the Parent Class and Student Class violates the IDEA, ADA, Section 504, the EEOA, Title VI, and provisions of Chapter 14, Chapter 15, and Chapter 4 of the Pennsylvania School Code.

Significantly, Ms. Lin and Ms. Perez are not seeking individualized damages or remedies of any kind based on the particular placement of their children within the District or the absence or duration of any individualized special education service. Rather, the Parent Plaintiffs seek injunctive relief requiring systemic changes to the District's provision of language services,

[Objection omitted.] A. We wait for the parent to request the documents in translated form.”); Deposition of Donna L. Sharer at 102:8–12, attached hereto as Exhibit 14 (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”); Ex. 20 ¶¶ 20–21 (“Parents are not informed of any right to ask for translated documents and therefore they do not request translated documents.”); Ex. 12 at 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. 19 ¶¶ 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).¹⁴ See, e.g., Ex. 9 at 125:19–23, 126:21–127:10, 127:21–131:7 (discussing her lack of knowledge with regard to the adequacy and tracking the usage of Language Line services, the number of BCAs attending IEP meetings and their training and the quality of interpretations provided); Ex. 11 at 65:24–66:23 (confirming the lack of “contracts for the provision of interpretation services for LEP parents of students with disabilities”); Ex. 10 at 54:10–13; 56:24–57:4 (testifying that in 2011 the District employed 102 BCAs, but this number was reduced to 57 by 2013); 64:18–65:2 (testifying that she does not know the background of Language Line interpreters); *id.* at 118:11–20 (“If all the BCAs are deployed, and someone asks for an IEP, we ask can it be moved.”); *id.* at 142:4–18, 149:14–150:15 (discussing documents recording that an interpreter was not available for IEP meetings); Ex. 7 at 47:9–48:1 (testifying that “bilingual teachers, principals and staff” were used “in IEP meetings” on an “as needed” basis but they would not receive any interpretation training from the Office of Specialized Services); *id.* at 122:1–10 (testifying that she was unaware of the percentage of IEP meetings that were staffed with BCAs versus Language Line interpreters); Ex. 12 at 121:1–3, 126:23–128:3, 132:4–18 (testifying that BCAs routinely do not fully translate IEPs, 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); see also Expert Report of Nelson L. Flores, Ph.D., dated April 13, 2018 at 13, attached hereto as Exhibit 15 (addressing the need for highly qualified interpreters with training in special education); Rebuttal Expert Report of Nelson L. Flores Ph.D., dated June 1, 2018 at 5, attached hereto as Exhibit 16 (raising questions about the use of Language Line); Ex. 20 ¶¶ 8–10 (“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.”); Ex. 19 ¶ 18 (“The District doesn’t consistently ensure high quality interpretation at IEP meetings.”).

which will enable Ms. Lin, Ms. Perez and the other members of the putative Parent Class to participate meaningfully in the development of their children's respective IEP plans.

Plaintiffs anticipate that the District will argue that, since the commencement of this action, it has adopted new protocols that address all of the prior deficiencies in language services for LEP parents. That possible argument does not, however, defeat the element of commonality. First, the District's own witnesses have described the new protocols as simply memorializing prior policies and practices. *See, e.g.*, Ex. 7 at 130:5–6 (“It was the same practice. Now, it is put in writing. That’s the difference.”); Ex. 8 at 103:3–18 (testifying that the protocols have not substantively changed but have simply become more formalized).¹⁵ Second, the new protocols do not secure the right of LEP parents to receive translated versions of IEP documents, even when requested by them; instead, the District has continued to reserve for itself the discretion based on subjective criteria to deny a parent's translation request. *See, e.g.*, Ex. 13 at 146:7–151:13; *see also* Sept. 27, 2017 Ltr. with enclosure from M. Obod to P. Saint-Antoine, attached hereto as Exhibit 17; Dec. 4, 2017 Email with attachment from D. Goebel to P. Saint-Antoine, attached hereto as Exhibit 18.

As a practical matter, there continue to be few translations of IEP process documents, *see* Ex. 6 at 2, and untrained and unqualified school staff continue to be relied upon to provide interpretation services.¹⁶ The Declarations of Anna Perng and Bonita McCabe consistently

¹⁵ There is a real question whether District personnel are uniformly implementing the new protocols. *See, e.g.*, Ex. 14 at 111:3–17 (testifying that as the Curriculum Specialist in the Office of Multilingual Curriculum and Programs, she was not familiar with a “quick reference guide [for] translation and interpretation services”); *see also* Ex. 19 ¶ 28 (“I am not aware of a new policy regarding the interpretation and translation services. If a new policy exists, it is not being implemented to my knowledge.”); *see generally* Ex. 20 (describing practices inconsistent with the protocols).

¹⁶ *See* Ex. 7 at 47:9–48:1 (testifying that “bilingual teachers, principals and staff” were used “in IEP meetings” on an “as needed” basis); *see also* Ex. 10 at 40:18–41:9 (decisions whether use an in-person interpreter or Language Line are left to individuals and not tracked in any way); *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.”); *id.* at 64:18–65:2 (testifying that she does not know the background of Language Line interpreters); *id.* at 105:18–22 (no protocols “in place with regard to how BCAs

reflect that LEP parents have not been given notice of the availability of translated documents or of intensive interpretation services by BCAs of IEP documents prior to meetings as called for by the protocols and have been and continue to be deprived of translated proposed IEP process documents and quality interpretation services, thus denying them meaningful parent participation in the special education process. Ex. 19 ¶¶ 17–31; Ex. 20 ¶¶ 20–26.

At best, the impact of the new protocols on the provision of language services is a disputed issue of fact that is common to the claims of the putative class members.

3. Typicality

Third, Federal Rule of Civil Procedure 23(a)(3) requires that the claims and defenses of the named plaintiffs to be “typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Like commonality, this requirement also “serve[s] as [a] guidepost[] for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Montgomery County, Pa. ex rel. Becker v. MERSCORP, Inc.*, 298 F.R.D. 202, 211 (E.D. Pa. 2014) (citations omitted). The “independent legal significance” of the typicality inquiry “derives . . . from its ability to ‘screen out class actions in which the legal or factual position of the representatives is markedly different from that of other members of the class even though common issues of law or fact are present.’” *Blandina v. Midland Funding, LLC*, 303 F.R.D. 245, 251 (E.D. Pa. 2014) (citations omitted). In particular, “[t]he Third Circuit has offered ‘three distinct, though related, concerns’ to consider in assessing typicality: ‘(1) the claims of the class representative must be

provide interpretation services in the special education context”); Ex. 16 at 10 (describing need for translated versions of IEP documents with technical language).

generally the same as those of the class in terms of both (a) the legal theory advanced and (b) the factual circumstances underlying that theory; (2) the class representative must not be subject to a defense that is both inapplicable to many members of the class and likely to become a major focus of the litigation; and (3) the interests and incentives of the representative must be sufficiently aligned with those of the class.” *S.R.*, 325 F.R.D. at 110 (quoting *In re Schering Plough Co. ERISA Litig.*, 589 F.3d 585, 599 (3d Cir. 2009)).

Furthermore, factual circumstances experienced by the named Plaintiffs and the rest of the class do not need to be identical, and “[e]ven relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories’ or where the claim arises from the same practice or course of conduct.” *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d at 311 (citation omitted); *see also Baby Neal*, 43 F.3d at 63 (“[A] claim framed as a violative practice can support a class action embracing a variety of injuries so long as those injuries can all be linked to the practice.”); *C.G. v. Pennsylvania Dep’t of Educ.*, No. 1:06-cv-1523, 2009 WL 3182599, at *6–7 (M.D. Pa. Sept. 29, 2009) (holding that typicality requirement was satisfied in case challenging special-education funding and finding that “to the extent only some or not all students are denied” the education due to them “under the various statutes,” that “is a commentary on the merits of the claim, rather than on whether the claims Plaintiffs assert are typical of those experienced by the entire class”).

Here, Plaintiffs’ claims that they were denied meaningful participation in the IEP process are typical of those of the putative class members. For example:

- Ms. Lin and Ms. Perez are both LEP parents of children with disabilities in special education programs in the District;

- Ms. Lin and Ms. Perez both requested to receive fully translated IEPs prior to IEP meetings but did not receive them before attending IEP meetings or during such meetings;¹⁷
- Ms. Lin and Ms. Perez both attended meetings with the District in which the interpreter who was used was not effective or was unqualified or untrained;¹⁸
- Ms. Perez was never told by the District that she needed to submit written requests for translation, and, as a result of not receiving fully translated documents, she was unaware of services that could have helped her children;¹⁹ and
- Ms. Lin was initially denied translated documents, and was subsequently told by the District that she was not entitled to translated draft documents to assist her at IEP meetings but was only receiving “final” documents as a result of a Mediation Agreement.²⁰

Plaintiffs and the other putative Class members would benefit from improved language services, including receiving translated draft IEPs, thus aligning their interests and exhibiting that the Plaintiffs will advance the interests of the classes.²¹ Finally, none of the Plaintiffs is subject to a unique defense that is likely to become a major focus of the litigation.²²

¹⁷ See, e.g., Ex. 4 at 190:5–13; Ex. 3 at 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 See, e.g., Ex. 4 at 171:5–172:4, 181:10–18; Ex. 3 at 59:15–60:2 (describing J.R.’s last IEP meeting in which a Spanish teacher acted as the interpreter); *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).

¹⁹ See, e.g., Ex. 3 at 45:14–18; *id.* at 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 benefitted from summer services).

²⁰ See Ex. 4 at 190:5–13; *see also* Ex. 15 at 16 (addressing need for translations of draft IEPs).

²¹ See, e.g., Ex. 3 at 46:18–49:5 (testifying as to the benefits fully translated documents would provide); *id.* at 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.”); *id.* at 103:3–12 (testifying that she “could be a more effective advocate” for her children if she had translated IEP documents before IEP meetings); *see also* Ex. 15 at 13 (observing that parents consistently identify the pressing need for language services as part of IEP meetings); *see generally* Ex. 19 (describing circumstances she has observed between the District and LEP parents in which those parents experienced difficulties due to the District’s inadequate translation and interpretation services).

²² There is evidence in the discovery record that the District favors LEP parents who are represented by counsel when deciding whether to provide translations of IEP documents. See, e.g., Ex. 7 at 259:8–12, 260:21–261:5, 278:23–279:4, 284:5–12, 290:2–8. However, no such favorable treatment nor any of the individual commitments made by the District to the Plaintiffs have mooted the claims of the Plaintiffs. Moreover, even if the District’s favorable

4. Adequacy

Finally, “Rule 23(a)(4) requires that plaintiffs must ‘fairly and adequately protect the interests of the class.’” *S.R.*, 325 F.R.D. at 111 (quoting Fed. R. Civ. P. 23(a)(4)). “Adequate representation depends on two factors: (a) the plaintiff’s attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class.” *S.R.*, 325 F.R.D. at 111 (citation omitted); *see also Baby Neal*, 43 F.3d at 55. “Defendants have the burden of establishing that the representative plaintiffs will not adequately represent the class.” *Kerrigan v. Phila. Bd. of Election*, 248 F.R.D. 470, 477 (E.D. Pa. 2008).

Here, Plaintiffs’ interests are not antagonistic to those of the classes because they have been adversely impacted by the District’s inadequate policies and practices related to language services for LEP parents who have children with disabilities, and they are all at risk of further failures in the District’s provision of language services. As such, Plaintiffs would benefit from the declaratory and injunctive relief sought for themselves and the other members of the two classes, and none seek individual relief in this action. *See Kerrigan*, 248 F.R.D. at 477.

Plaintiffs have also assisted counsel with this lawsuit and show a continued interest in prosecuting the case.

treatment did at least temporarily address the language needs of the Plaintiffs, the law would still allow them to serve as class representatives – either under the “picking off” doctrine or the “capable of repetition, yet evading review” exception. *See, e.g., Richardson v. Bledsoe*, 829 F.3d 273, 289–90 (3d Cir. 2016) (reaffirming the validity of the “picking off” exception to the mootness doctrine and holding that because the named plaintiff’s “individual claims for injunctive relief were live at the time he filed [his] complaint, the subsequent mootness of these claims does not prevent [him] from continuing to seek class certification or from serving as the class representative”); *Jarzyna v. Home Props., L.P.*, 201 F. Supp. 3d 650, 658–59 (E.D. Pa. 2016) (“picking off” exception bars defendants from dodging class suits by mooted the claims of named plaintiffs before they have a fair opportunity to move for class certification”); *see also P.V. ex rel. Valentin v. Sch. Dist.*, No. 2:11–cv–04027, 2011 WL 5127850, at *10 (E.D. Pa. Oct. 31, 2011) (finding that “[p]laintiffs’ claims fall squarely within the special ‘capable of repetition, yet evading review’ category of mootness cases” because there was “a ‘reasonable expectation’ that the plaintiffs here will be subject to the same allegedly deficient [policy] year after year, and the challenged [p]olicy will evade review due to the short amount of time between placements (one year)”).

When evaluating counsel, Federal Rule of Civil Procedure 23(g) requires courts to consider “(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A). Here, class counsel is qualified, experienced and able to conduct the litigation.

All three legal organizations—The Public Interest Law Center (“PILCOP”), Education Law Center (“ELC”), and Drinker Biddle & Reath LLP (“Drinker Biddle”)—have and will continue to zealously represent the classes’ interests. Counsel has also devoted considerable resources to this case, including conducting the discovery phase of this litigation which lasted over one year. Furthermore, class counsel have significant experience litigating class actions as well as educational issues. For example, PILCOP has litigated numerous federal class actions in circumstances similar to this one and is a well-respected and experienced student advocate. ELC has extensive experience dealing with education issues, including in the class action context. And Drinker Biddle is nationally-recognized and one of Philadelphia’s largest firms and has extensive experience litigating class actions, including for pro bono plaintiffs. *See, e.g., Baby Neal*, 43 F.3d at 52.

C. The Proposed Classes Meet the Requirements of Rule 23(b)(2)

In addition to satisfying the requirements of Rule 23(a), a putative class must also comply with one of the parts of subsection (b). *Baby Neal*, 43 F.3d at 55–56. In this action, Plaintiffs move for certification pursuant to Rule 23(b)(2), which requires a showing that “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that

final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *see also Amchem Prods., Inc.*, 521 U.S. at 614.

Here, as described above, the District has systematically failed to provide sufficient language services to permit LEP parents to participate meaningfully in the educational planning process and to ensure that their children receive a free and appropriate public education. In contrast to English-speaking parents, the members of the putative Parent Class are not routinely provided important IEP documents in a form that they can read, and the District has not hired a sufficient number of qualified interpreters to ensure that these same parents can participate orally in IEP meetings. In addition, the District has failed to adopt appropriate policies to ensure that LEP parents who request translations of IEP documents necessarily get them.

To remedy these systemic deficiencies, Plaintiffs seek on behalf of themselves and the two putative classes an order requiring the District to provide qualified interpreters at IEP meetings, to translate IEP plans and evaluations, and to develop and implement new District-wide policies for language services, among other injunctive and declaratory relief. *See* First Am. Compl. ¶¶ 38–40. The systemic relief Plaintiffs are seeking with respect to language services for LEP parents and students with disabilities will benefit the putative classes as a whole. *Baby Neal*, 43 F.3d at 59 (“What is important is that the relief sought by the named plaintiffs should benefit the entire class.”); *Hassine v. Jeffes*, 846 F.2d 169, 179 (3d Cir. 1988) (“[W]hen a suit seeks to define the relationship between the defendant(s) and the world at large, as in this case, (b)(2) certification is appropriate.”) (internal citations omitted)).

Class actions proceeding pursuant to Rule 23(b)(2) are meant to remedy just these types of systemic violations in civil rights and other institutional reform cases. *Baby Neal*, 43 F.3d at

58–59.²³ As the Court noted in *Baby Neal*, Rule 23(b)(2) was “designed specifically for civil rights cases seeking broad declaratory or injunctive relief for a numerous and often unascertainable or amorphous class of persons.” *Id.* (internal citations omitted). Indeed, since the *Baby Neal* decision, courts in this Circuit have certified Rule 23(b)(2) classes in a number of educational rights cases.²⁴

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for Class Certification, designate Plaintiffs as class representatives, and appoint Plaintiffs’ counsel as class counsel pursuant to Federal Rule of Civil Procedure 23(g).

Dated: August 3, 2018

Respectfully submitted,

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Attorneys for Plaintiffs

²³ Class certification pursuant to Rule 23(b)(2) is particularly warranted here because, as noted above, the Hearing Officer ruled that he lacked the authority to order systemic relief in individual due process proceedings. *See* First Am. Compl., Exhibit C.

²⁴ *See, e.g., P.V. ex rel. Valentin*, 289 F.R.D. 227 (IDEA, Rehabilitation Act, ADA); *Chester Upland Sch. Dist.*, 2012 WL 1450415 (IDEA, Rehabilitation Act); *M.A. ex rel. E.S. v. Newark Pub. Sch.*, No. 01-3389, 2009 U.S. Dist. LEXIS 114660 (D.N.J. Dec. 7, 2009) (IDEA); *C.G.*, 2009 WL 3182599 (Rehabilitation Act); *Gaskin v. Pennsylvania*, No. 94-4048, 1995 WL 355346 (E.D. Pa. June 12, 1995) (IDEA).

CERTIFICATE OF SERVICE

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

Marjorie M. Obod, Esquire
Dilworth Paxson LLP
1500 Market Street Suite 3500E
Philadelphia, PA 19102-2101
mobod@dilworthlaw.com

Dated: August 3, 2018

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,

v.

The School District of Philadelphia,

Defendant.

Civil Action No. 15-04782-MSG

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2018, upon consideration of Plaintiffs' Motion for Class Certification and accompanying Memorandum of Law, and any response thereto, it is hereby ORDERED that the Motion is GRANTED.

The following two Classes are certified:

1. All parents as defined by 34 C.F.R. § 300.30(a) with limited English proficiency and whose children now or in the future are enrolled in the School District of Philadelphia and identified or eligible to be identified as children with a disability within the meaning of the Individuals with Disabilities Education Act ("IDEA") and/or Section 504 of the Rehabilitation Act ("Section 504") and related state laws (the "Parent Class"); and
2. All students who now or in the future are enrolled in the School District of Philadelphia in grades kindergarten through the age of legal entitlement who are identified or eligible to be identified as children with a disability within the meaning of the IDEA and/or Section 504 and related state laws, whether or not they are classified as English language learners and whose parents as defined by 34 C.F.R. § 300.30(a) are persons with limited English proficiency (the "Student Class").

It is further ORDERED that Plaintiffs Madeline Perez and Manqing Lin are appointed representatives of the Parent Class, and L.R., D.R. and J.R., by and through their parent, Ms. Perez, and R.H., by and through his parent, Ms. Lin, are appointed

representatives of the Student Class, and their counsel, The Public Interest Law Center, Education Law Center and Drinker Biddle & Reath LLP, are appointed Class Counsel.

Based upon the Motion, the accompanying Memorandum of Law, and the evidence offered in support thereof, the Court FINDS that:

1. Each of the prerequisites for class certification under Fed. R. Civ. P. 23(a) is satisfied because:

- a. The Class is so numerous that joinder would be impracticable;
- b. There are questions of law or fact common to all members of the two Classes;
- c. The claims of Madeline Perez and Manqing Lin are typical of the claims of the Parent Class, and the claims of L.R., D.R., J.R. and R.H., by and through their parents, are typical of the claims of the Student Class; and
- d. Madeline Perez and Manqing Lin and their counsel will fairly and adequately protect the interests of the Parent Class, and L.R., D.R., J.R. and R.H., by and through their parents, and their counsel will fairly and adequately protect the interests of the Student Class.

2. Class treatment is appropriate under Fed. R. Civ. P. 23(b)(2) because the District has acted or refused to act on grounds that apply generally to the two Classes, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the two Classes as a whole.

3. Class Counsel satisfies the requirement of Fed. R. Civ. P. 23(g), considering:

- a. The work Class Counsel has done in identifying or investigating potential claims in the action;
- b. Class Counsel's experience in handling class actions, other complex litigation and the types of claims asserted in this action;
- c. Class Counsel's knowledge of the applicable law; and
- d. The resources that Class Counsel will commit to representing the two Classes.

BY THE COURT:

Mitchell S. Goldberg, U.S.D.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 SUPPORT OF CLASS CERTIFICATION**

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2	Excerpts from Deposition of T.R.
3	Excerpts from Deposition of Madeline Perez
4	Excerpts from Deposition of Manqing Lin
5	Aug. 18, 2016, Mediation Agreement
6	Nov. 21, 2017 Ltr. from M. Obod to P. Saint-Antoine
7	Excerpts from Deposition of Natalie Hess
8	Excerpts from Deposition of Allison Still
9	Excerpts from Deposition of Kimberly Caputo
10	Excerpts from Deposition of Ludy Soderman
11	Excerpts from Deposition of Christopher Marino
12	Excerpts from Deposition of Youana Bustamante
13	Excerpts from Deposition of Marie Capitolo
14	Excerpts from Deposition of Donna L. Sharer
15	Report of Nelson L. Flores, Ph.D., dated April 13, 2018
16	Rebuttal Report of Nelson L. Flores Ph.D., dated June 1, 2018
17	Sept. 27, 2017 Ltr. with enclosure from M. Obod to P. Saint-Antoine

EXHIBIT	DESCRIPTION
18	Dec. 4, 2017 Email with attachment from D. Goebel to P. Saint-Antoine
19	Declaration of Bonita J. McCabe
20	Declaration of Anna Perng

EXHIBIT 1

Barbara Galarza

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

- - -

T.R., et al., : CASE NO.
Plaintiffs, :

:

V. :

:

SCHOOL DISTRICT OF :

PHILADELPHIA :

Defendant. : 15-cv-4782

- - -

January 26, 2018

- - -

Oral deposition of BARBARA
GALARZA, held in the offices of Dilworth Paxson,
LLP, 1500 Market Street - Suite 3500E,
Philadelphia, Pennsylvania 19102, commencing at
or about 10:01 a.m. on the above date, before
Kathleen A. Zerman, a Professional Reporter and
Notary Public of the Commonwealth of
Pennsylvania.

- - -

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16 Counsel for the Defendant

17

18

19 A L S O P R E S E N T:

20

21 CORNEILLE PEASLEE, interpreter

22 T.R.

23

24

- - -

Barbara Galarza

I N D E X

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Barbara Galarza

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1 DEPOSITION SUPPORT INDEX

2

3 DIRECTIONS NOT TO ANSWER:

4 PAGES: None

5

6 REQUESTS FOR DOCUMENTS OR INFORMATION:

7 PAGES: None

8

9 STIPULATIONS AND/OR STATEMENTS:

10 PAGES: None

11

12 MARKED QUESTIONS:

13 PAGES: None

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Barbara Galarza

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CORNEILLE PEASLEE,

3

interpreter, after having been first duly

4

sworn, interpreted the testimony as

5

follows:

6

- - -

7

BARBARA GALARZA, after

8

having been first duly sworn, through the

9

interpreter, was examined and testified

10

as follows:

11

- - -

12

EXAMINATION

13

- - -

14

BY MS. OBOD:

15

Q. Ms. Galarza -- is that the

16

right pronunciation?

17

A. Yes.

18

Q. I met you before. My name's

19

Marjie Obod, and I represent the

20

defendants in the case brought in Federal

21

court by you and by other parties as a

22

class action, and I'm going to be asking

23

you questions today relating to that

24

case.

1 Q. Were you able to understand
2 everything that was being said at the
3 meeting?

4 A. Yes.

5 Q. Were you able to understand
6 what the school was going to do for T.R.
7 as part of her IEP plan at the meeting?

8 A. Yes.

9 Q. Were you asked for your
10 input at the meeting?

11 A. They didn't ask for my
12 input.

13 Q. Did you agree with the plan
14 that they told you was going to be put in
15 place for T.R.?

16 A. Yes.

17 Q. Did they ask if you
18 understood what the plan was?

19 A. Yes, I understand what the
20 plan was.

21 Q. The document that you
22 received that day -- did you say that you
23 received a document at that meeting?

24 A. Yes.

1 Q. Was that document in English
2 or Spanish?

3 A. It had some portions that
4 were in English and the rest was in
5 Spanish.

6 Q. Was any part of the document
7 that was in English interpreted for you
8 at the meeting?

9 A. Yes.

10 Q. Have you looked at the
11 document since the meeting?

12 A. No.

13 Q. Do you receive phone calls
14 from EOP since T.R. started there?

15 A. Are you speaking about this
16 semester?

17 Q. Well, start with last
18 semester.

19 A. Well, mainly the phone calls
20 that were received were just to say when
21 she was going to be starting and as of
22 last -- the last meeting we had, I
23 exchanged the phone numbers. I got the
24 phone number for them and I gave them my

1 Q. What was said to you when
2 you asked to have it translated?

3 A. I don't recall. I always
4 ask to have the documents translated in
5 Spanish, but they never come translated.

6 Q. And you never received any
7 documents in Spanish?

8 A. Not this one. I didn't get
9 this one, but usually when I attend IEP
10 meetings, it's usually that the IEP's not
11 translated in Spanish or half of it is in
12 English and half of it is in Spanish and
13 it may take up to two weeks.

14 Q. If I told you that Ms.
15 Gonzalez said you never asked for this
16 document to be translated, would she be
17 not remembering correctly?

18 A. So when -- I'm not sure if
19 you're talking about having the document
20 sent to me translated into Spanish. When
21 I see Ms. Gonzalez, she always interprets
22 what the documents are saying, but that
23 doesn't mean that I always get these
24 papers translated into Spanish.

1 answered. We'll go back and look
2 at the record. I asked, but she
3 did not answer.

4 THE WITNESS: I don't recall
5 if I asked for the documents to be
6 translated in Spanish in that
7 meeting because they already know
8 that I don't know English and I
9 don't understand English and that
10 it would be necessary for me to
11 have the documents translated into
12 Spanish. Otherwise, I won't
13 understand what they're talking
14 about.

15 BY MS. OBOD:

16 Q. So you don't recall that you
17 asked for it. You just thought that they
18 should have known that you needed to have
19 it; is that right?

20 MS. McINERNEY: Objection.
21 Mischaracterized her testimony.

22 THE INTERPRETER: I'm sorry,
23 what was the objection?

24 MS. McINERNEY:

1 A. No.

2 Q. Were you able to communicate
3 with anyone at Stetson Charter School
4 based on the language issue that you
5 have?

6 A. Yes. I had constant
7 communication with the person that kept
8 calling me to let me know that T.R. did
9 not go to school and everybody in the
10 office spoke Spanish.

11 Q. Were any documents ever
12 translated for you at Stetson Charter
13 School?

14 A. During that time frame all
15 the documents received from the school
16 were in English.

17 Q. From Stetson Charter School?

18 A. Yes.

19 Q. Do you remember that in May
20 of 2013 T.R. was evaluated by Stetson and
21 was identified as being eligible for
22 special ed?

23 A. Yes.

24 Q. Do you recall receiving an

1 IEP document from Stetson relating to
2 T.R.?

3 A. Yes.

4 Q. Was that in English?

5 A. Yes.

6 Q. Do you remember if there was
7 actually an evaluation report that was
8 also done by Stetson in 2013?

9 A. I remember that in order to
10 do the report for T.R., they did the
11 evaluation on her both in English and in
12 Spanish and that someone translated for
13 me in the office, not with an actual
14 interpreter, what the context said.

15 Q. With the interpreter?

16 A. No, just an office worker
17 that did a favor for me to just translate
18 what the document was saying.

19 Q. So someone other than an
20 official interpreter still interpreted
21 it; is that right?

22 A. Yes.

23 MS. OBOD: Can we take a
24 break?

1 (A short recess was taken.)

2 BY MS. OBOD:

3 Q. Ms. Galarza, right before we
4 broke, we were talking about Stetson
5 Charter School and T.R.'s experience
6 there, and you said that the IEP that you
7 received from Stetson was in English and
8 that it was interpreted for you; is that
9 correct?

10 A. They interpreted part of the
11 IEP. I don't know why, but it was a
12 shortened meeting. It was a small
13 meeting, but they cut it short because
14 the attorney wasn't present and they
15 decided to postpone it to another day.

16 Q. Was it your attorney that
17 wasn't present?

18 A. She wasn't there and the
19 person that was interpreting for me was
20 not interpreting everything or completely
21 and they decided to just postpone the
22 entire meeting.

23 Q. Do you remember if the
24 attorney -- your attorney then was Sonja

1 school relating to T.R.'s plan, IEP plan?

2 A. So this is really strange
3 for me that I'm finding that all these
4 documents are completely translated into
5 Spanish because when I come to the IEP
6 meetings, either the IEP would be in
7 English or some of the papers would be
8 translated into Spanish, but not all of
9 them. If I would have received these
10 documents translated into Spanish
11 beforehand, I would have been able to say
12 in the meetings I want this changed, I
13 actually think this would be more
14 convenient or not so convenient for my
15 daughter T.R., but I wouldn't have any
16 notice what's going to happen until I
17 would arrive at the meeting and receive
18 what they have for me.

19 Q. Do you have documents in
20 your house that are fully translated into
21 Spanish?

22 A. Some of them, yes.

23 I wanted to say, as a
24 mother, I would like to have the

1 less these meetings might have happened,
2 who might have been there and what might
3 we have talked about, but I can't
4 remember exactly on which date these
5 fall.

6 Q. Were you ever at an IEP
7 meeting with the school district where
8 the documents were translated in Spanish
9 while you were there that you saw at the
10 meeting?

11 A. Some sections were
12 translated in Spanish. Other sections
13 were not. That's why they always had
14 somebody to explain to me or interpret
15 for me what a specific paragraph was
16 saying if I didn't understand it.

17 Q. Even if you have it in
18 Spanish, would you think that you would
19 still want an interpreter to explain how
20 it was going to be implemented or to
21 answer any questions that you have so
22 that the school district would understand
23 more than what was in the document, they
24 would also understand issues you were

1 you brought to the district's attention,
2 that you wanted her to receive more hours
3 of instruction?

4 A. Yes.

5 Q. And you talked about the IEP
6 being -- having some of it in Spanish and
7 some in English. Was the information
8 that was specific to T.R., was that part
9 in English?

10 A. I don't recall.

11 Q. Okay. Did you have an
12 attorney with you at most of your IEP
13 meetings?

14 A. Yes.

15 Q. And did your attorneys raise
16 issues and concerns at those meetings?

17 A. Yes.

18 Q. And did your attorneys speak
19 English and were they able to read the
20 documents?

21 A. Yes.

22 Q. And did your attorneys ask
23 for documents to be translated into your
24 native language?

1 A. Yes.

2 Q. So this is not something
3 that the district offered. This is
4 something that your attorneys raised?

5 A. Yes.

6 Q. And did you assume that the
7 district always knew that you wanted the
8 documents translated, fully translated
9 into a language you could understand?

10 A. Can you repeat the question?

11 Q. Sure.

12 And since your attorneys
13 raised this at each meeting every three
14 months, did you assume that the district
15 knew that you wanted all of the documents
16 translated into your native language?

17 A. Yes.

18 Q. And at the IEP meeting that
19 you attended in the fall, if the district
20 had offered to translate the document
21 into your native language, would you have
22 said that you wanted that?

23 A. Yes.

24 Q. And do you know if anyone on

1 A. Yes.

2 Q. With regard to the role of
3 interpreters at IEP meetings, do they
4 interpret what people say at the
5 meeting?

6 A. Yes.

7 Q. And do they translate every
8 page of the IEP?

9 A. No.

10 Q. And with regard to this
11 case, do you understand that it is about
12 your individual due process case as well
13 as a class action?

14 A. Yes.

15 Q. And do you understand that
16 this case concerns ensuring that families
17 have interpretation services throughout
18 the IEP process?

19 A. Yes.

20 Q. Do you understand that it's
21 about ensuring that parents who don't
22 understand English but who read in their
23 native language have access to IEP
24 process documents that are in a language

C E R T I F I C A T E

I hereby certify that the
proceedings and evidence noted are
contained fully and accurately in the
notes taken by me on the deposition of
the above matter, and that this is a
correct transcript of the same.

KATHLEEN A. ZERMAN

(The foregoing certification of
this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

EXHIBIT 2

T.R.

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

- - -

T.R., et al., : CASE NO.
Plaintiffs, :

:

V. :

:

SCHOOL DISTRICT OF :
PHILADELPHIA :

Defendant. : 15-cv-4782

- - -

November 17, 2017

- - -

Oral deposition of T.R., held in
the offices of Dilworth Paxson, LLP, 1500 Market
Street - Suite 3500E, Philadelphia, Pennsylvania
19102, commencing at or about 9:39 a.m. on the
above date, before Kathleen A. Zerman, a
Professional Reporter and Notary Public of the
Commonwealth of Pennsylvania.

- - -

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9 Philadelphia, Pennsylvania 19102

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12 Counsel for the Defendant

13

14

15 A L S O P R E S E N T:

16

17 JAVIER AGUILAR, interpreter

18 BARBARA GALARZA

19 JOHN J. COYLE, ESQUIRE, School District

20 of Philadelphia

21 NATALIE HESS, School District of

22 Philadelphia

23

24

- - -

T.R.

1

- - -

2

I N D E X

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4

WITNESS

PAGE NO.

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T.R.

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By Ms. McInerney

179, 204

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NO.

DESCRIPTION

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Complaint

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DEPOSITION SUPPORT INDEX

DIRECTIONS NOT TO ANSWER:

PAGES: None

REQUESTS FOR DOCUMENTS OR INFORMATION:

PAGES: None

STIPULATIONS AND/OR STATEMENTS:

PAGES: 5

MARKED QUESTIONS:

PAGES: None

T.R.

1

- - -

2

T.R., after having been

3

first duly sworn, was examined and

4

testified as follows:

5

- - -

6

EXAMINATION

7

- - -

8

BY MS. OBOD:

9

Q. T.R., my name is Marjie Obod

10

and I am counsel for the school district

11

in a case that was brought on your behalf

12

and other individuals behalf as a class

13

action that's in the Eastern District of

14

Pennsylvania and I'm going to be asking

15

you questions relating to the allegations

16

in that complaint and just asking you to

17

be honest in your responses. Just talk

18

about what you are aware of, not trying

19

to guess at something. If you don't

20

understand a question, tell me you don't

21

understand.

22

A. Okay.

23

MS. McINERNEY: Before you

24

start with questioning, can we go

1 A. No.

2 Q. -- correct?

3 Okay. So it wasn't until
4 the end of your 8th grade year --

5 A. Yes.

6 Q. -- that you were -- and you
7 had an evaluation at that time?

8 A. Yeah.

9 Q. Do you remember that?

10 A. Yeah.

11 Q. Okay. And do you -- and you
12 also said that there was an IEP meeting
13 that took place at Stetson?

14 A. Uh-huh. Yeah.

15 Q. And do you know if there was
16 a plan developed, an IEP plan for your
17 education?

18 A. I don't know.

19 Q. You don't know.

20 Did you attend that IEP
21 meeting?

22 A. I don't --

23 Q. You don't remember?

24 A. I don't remember.

1 A. Uh-huh. Yeah.

2 Q. What is that?

3 A. Meaning Spanish and English.

4 Q. Okay. And then there was
5 another time when you were evaluated, but
6 it was only in English?

7 MS. OBOD: Objection.

8 You're -- she's -- you're
9 testifying, Maura.

10 MS. McINERNEY: I'm sorry.

11 BY MS. McINERNEY:

12 Q. Was there a time when you
13 were evaluated only in English?

14 A. Yeah.

15 Q. Okay. And do you think it
16 was -- that you received more information
17 when you were evaluated in both Spanish
18 and English, that it was more accurate in
19 any way?

20 A. Yeah.

21 Q. Okay. So after the -- you
22 mentioned that the teacher -- that
23 there's a teacher who came to your house
24 after your son was born. You needed --

C E R T I F I C A T E

I hereby certify that the
proceedings and evidence noted are
contained fully and accurately in the
notes taken by me on the deposition of
the above matter, and that this is a
correct transcript of the same.

KATHLEEN A. ZERMAN

(The foregoing certification of
this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

EXHIBIT 3

Madeline Perez

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

3 * * *

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

6 v. :

7 SCHOOL DISTRICT OF :
 PHILADELPHIA, :

8 Defendant. : NO.
 : 15-cv-4782

9
10 * * *

11 Monday, February 12, 2018

12 * * *

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

19
20
21
22 * * *

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

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Representing the Defendant

15 ALSO PRESENT:
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17 Spanish Interpreter
18
19
20
21
22
23
24

Madeline Perez

1

* * *

2

I N D E X

3

4

WITNESS:

5

MADELINE PEREZ

6

7

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10

11

12

* * *

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13

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Supplemental Responses to

22

Defendant School District of

23

Philadelphia's First Set of

24

Discovery Requests, 14 pages

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Madeline Perez

* * *

(JAVIER AGUILAR,
Interpreter, was duly sworn to
translate the following from
English to Spanish and Spanish to
English.)

* * *

MADELINE PEREZ, having been
first duly sworn through the
Interpreter, was examined and
testified as follows:

* * *

(It is hereby stipulated and
agreed by and between counsel that
reading, signing, sealing, filing
and certification are waived; and
that all objections, except as to
the form of the question, will be
reserved until the time of trial.)

* * *

EXAMINATION

* * *

BY MS. GOEBEL:

Q. Good morning, Mrs. Perez.

1 A. When he called me to let me
2 know that the IEPs were incomplete, I
3 made them available to him.

4 And this morning he also
5 talked to me. I let him know that my
6 child was sick and I was not going to
7 make it at the time that I was supposed
8 to today.

9 Q. Did you review any documents
10 when you met with Mr. Churchill?

11 MR. CHURCHILL: I'm going to
12 object that this is privileged;
13 what we talked about, what we
14 shared is privileged.

15 MS. GOEBEL: The substance
16 of what you looked at may be
17 privileged, but I'm just asking if
18 you looked at documents; I'm not
19 asking what documents.

20 MR. CHURCHILL: I'll allow
21 that. Nothing more.

22 BY MS. GOEBEL:

23 Q. The question is: Did you
24 review documents with Mr. Churchill?

1 A. Yes.

2 Q. Were those documents
3 translated into Spanish?

4 A. No. He just -- I just
5 became aware because he alerted me to
6 this, that two evaluations, two of the
7 evaluations were completely in English --
8 in Spanish. I realized this morning
9 because he showed them to me because they
10 were -- they were mixed with the IEPs
11 that are -- usually are in English and
12 that's why I didn't realize they were in
13 Spanish. Just those two evaluations.

14 Q. Which of your children were
15 those evaluations for?

16 A. [REDACTED] J.R. [REDACTED].

17 Q. And you weren't previously
18 aware that those had been translated by
19 the district?

20 A. No. The thing is, when they
21 give me the IEPs, they usually have the
22 title in Spanish and the summary in
23 English, so I didn't realize these were
24 in Spanish.

1 Q. Did you ask for it to be
2 translated?

3 A. Yes. But the thing is, when
4 I read the title in Spanish and the
5 summary was in English, I figured -- I
6 assumed that all the documents were like
7 that. I didn't realize those two
8 evaluations were in Spanish.

9 Q. So you didn't realize that
10 the documents were translated because you
11 didn't turn past the first page?

12 A. Correct.

13 Q. And who did you ask for
14 those to be translated?

15 A. I usually tell the school to
16 translate the IEPs and the evaluations.

17 Q. Who at the school?

18 A. Could be the special
19 education teacher. And these evaluations
20 were not given to me right after the
21 evaluations; they told me they were going
22 to make them available to me later.

23 Q. Who told you that?

24 A. The school.

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 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

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 [REDACTED] 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 [REDACTED] 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 [REDACTED] L.R. 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. No.

2 MS. GOEBEL: Let's take a
3 break.

4 * * *

5 (Whereupon, a short break
6 was taken.)

7 * * *

8 BY MS. GOEBEL:

9 Q. Ms. Perez, how did you get
10 involved in this lawsuit?

11 A. I had learned through this
12 through -- I got involved through
13 Philadelphia HUNE. I found this to be a
14 help for those parents who speak only
15 Spanish. I think it would be great to
16 have all the documents in Spanish, to be
17 able to read them and go over them.

18 In my case, I have three
19 children, and I can get specifics about
20 what kind of help they need. If I forget
21 any diagnosis, I can refer to it.

22 Q. Before you joined the case,
23 were you given an opportunity to read the
24 original Complaint?

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 that.

2 Q. Was this a meeting or a
3 workshop?

4 A. We were just at Philadelphia
5 HUNE.

6 Q. Did you ever read the formal
7 Complaint that was filed in court that
8 started the lawsuit?

9 A. I don't remember. I read so
10 many things.

11 Q. Did you read a --

12 A. I don't remember.

13 Q. -- Complaint that was filed
14 in court that talked about a student
15 named T.R.?

16 A. No.

17 Q. Has your attorney ever
18 translated any documents for you?

19 A. Yes, I received one document
20 in Spanish, but I could not read it. I
21 didn't sit down to read it, but I have it
22 in Spanish.

23 Q. What was it? What was the
24 document?

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. I didn't realize that there
2 were papers in Spanish.

3 Q. Just because you never
4 looked all the way through it?

5 A. Um-hum.

6 Q. Yes?

7 A. Yes.

8 Q. Do you understand that this
9 case is a class action?

10 A. What is that?

11 Q. So you don't know what a
12 class action is?

13 A. No.

14 Q. Do you understand that J.R.
15 D.R. and L.R. are also plaintiffs in
16 this case?

17 A. Yes, because it's about
18 them.

19 Q. Do J.R. D.R. and L.R.
20 know that they're part of this case?

21 A. No.

22 Q. Why didn't you tell them
23 about the case?

24 A. The thing is -- the thing is

1 A. I don't remember.

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

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

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

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

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

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

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

22 A. No, she was interpreting.

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

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

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

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

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

8 A. I don't remember.

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

12 A. No.

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

16 A. Yes. I remember that, yes.

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

20 A. Yes, I was in agreement.

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

23 A. I don't remember.

24 Q. Did anybody ask you what

1 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 [REDACTED] 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 [REDACTED] 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 [REDACTED] 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

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

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?

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

1 Q. Do you think that they would
2 be helped if they had summer school
3 services?

4 A. Yes. [REDACTED] would.

5 Q. And have you ever discussed
6 at IEP meetings getting summer services
7 for [REDACTED] D.R. [REDACTED]

8 A. No.

9 Q. Did you know that the IEPs
10 for [REDACTED] D.R. [REDACTED] and for [REDACTED] L.R. [REDACTED] and [REDACTED] J.R. [REDACTED] 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 [REDACTED] D.R. [REDACTED]
19 in the way of summer services?

20 A. No, because [REDACTED] D.R. [REDACTED] 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 --

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 [REDACTED] D.R. 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 [REDACTED] J.R.

10 A. Yes. And [REDACTED] L.R. 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, L.R. [REDACTED]
17 [REDACTED], Philadelphia, P.A. 122
18 (sic), Madeline Perez and Jose Rivera 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?

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:

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 [REDACTED] L.R.

16 A. No, I think it was for

17 [REDACTED] D.R. I think it was for [REDACTED] 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

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 [REDACTED] D.R.

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.

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CERTIFICATE

I HEREBY CERTIFY that the
witness was duly sworn by me and that the
deposition is a true record of the
testimony given by the witness.

BRANDY M. CHRISTOS, CCR
CCR NO. 30XI 00228200
Notary Public
My Commission Expires:
November 14, 2021

(The foregoing certification
of this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

EXHIBIT 4

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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24

15 ALSO PRESENT:

16 ELIZABETH DICH, THE INTERPRETER
17
18
19
20
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23
24

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6

7 - - - - -

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17 Re: Kindergarten Interview, Signed by
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18 Lin-6 Chinese Form for R.H. 62

19 Lin-7 Email from Maura McInerney to Anna 87
20 Perng and Mandy Lin

21 Lin-8 Mandarin Simplified Intake Form 88

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2 DIRECTIONS NOT TO ANSWER:
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3 REQUESTS FOR DOCUMENTS OR INFORMATION:
4 PAGES: 20, 83-84

5 STIPULATIONS AND/OR STATEMENTS:
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6 MARKED QUESTIONS:
7 PAGES: NONE

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Manquing Lin

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1 -----

2 (Whereupon, Lin-1 was marked for
3 identification as of this date and is
4 attached hereto.)

5 -----

6 (It is stipulated by and among
7 counsel that reading, signing, sealing,
8 certification and filing be waived; and
9 that all objections, except as to the
10 form of the question, be reserved until
11 the time of trial.)

12 -----

13 ELIZABETH DICH, after having been
14 duly sworn, interpreted as follows:

15 -----

16 MANQUING LIN, after having been duly
17 sworn through the interpreter, was
18 examined and testified as follows:

19 -----

20 BY MS. OBOD:

21 **Q. Ms. Lin, my name is Marjorie Obod. I am**
22 **counsel for the school district in the action that**
23 **is before us today, T.R. versus the School District**
24 **of Philadelphia.**

Manquing Lin

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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?

Manquing Lin

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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**

Manquing Lin

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1 **of the IEP meeting?**

2 A. My understanding of the IEP meeting is
3 that I express what I have concern regarding my
4 son's learning ability and what type of service
5 will the school or the early education intervention
6 can provide to my son.

7 **Q. When was R.H. first diagnosed with**
8 **special needs?**

9 A. He was being diagnosed for autism in
10 August of 2014.

11 **Q. He was born in [REDACTED] of 2011; is that**
12 **correct?**

13 A. Correct.

14 **Q. Can you look again at document I guess**
15 **it's Exhibit 2?**

16 A. Okay.

17 **Q. Other than the handwriting that you have**
18 **in English, is the form otherwise in simple**
19 **Chinese?**

20 A. Correct.

21 **Q. Did you receive that document in simple**
22 **Chinese from the school?**

23 A. Correct.

24 **Q. Do you receive a lot of documents in**

Manquing Lin

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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?

Manquing Lin

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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?**

Manquing Lin

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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

Manquing Lin

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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.

Manquing Lin

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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

Manquing Lin

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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**

Manquing Lin

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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

Manquing Lin

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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

Manquing Lin

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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.

Manquing Lin

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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

Manquing Lin

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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.

Manquing Lin

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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

Manquing Lin

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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.

Manquing Lin

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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,

Manquing Lin

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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

Manquing Lin

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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 [REDACTED] 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 [REDACTED] NOREP?

Manquing Lin

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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

Manquing Lin

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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**

Manquing Lin

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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?

Manquing Lin

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1 A. A lot of time when I receive the
2 document, I will copy it and scan it through my
3 iPad or my cell phone and it has several
4 translation apps that translate the meaning of the
5 document into Chinese.

6 **Q. Do you do this for short documents, for**
7 **emails?**

8 A. Usually, I applied it to the emails
9 communications.

10 **Q. You mentioned there are BCA's who cannot**
11 **translate certain words into Chinese. Is it that**
12 **those terms don't translate into Chinese or is it**
13 **that the BCA does not understand what the terms**
14 **mean in the special education process?**

15 A. Mainly because they did not understood
16 the term was being said for those translation term,
17 the vocabulary was being stated for the condition.

18 **Q. You mentioned with regard to ESY, is it**
19 **your understanding that the district offered you**
20 **the exact same program, the reading program that**
21 **they offer to other students in the School District**
22 **of Philadelphia when they made an offer of what**
23 **they considered to be a FAPE, a free appropriate**
24 **public education?**

Manquing Lin

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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

Manquing Lin

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CERTIFICATION

I hereby certify that the
proceedings and evidence are contained
fully and accurately in the stenographic
notes taken by me upon the foregoing
matter on January 30, 2018, and that this
is a correct transcript of same.

Stacy Joseph
RPR, CCR,
Notary Public

(The foregoing certification of this
transcript does not apply to any
reproduction of the same by any means
unless under the direct control and/or
supervision of the certifying reporter.)

EXHIBIT 5



File No. 18017-16-17-LS

Page 1 of 2**Mediation Agreement**

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

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

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

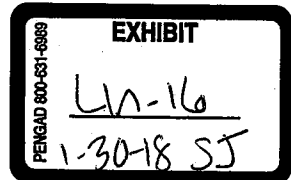
- ① The district agrees to fund an IEE for speech, OT, PT, ABA & FBA.
 - ② District will implement the early intervention IEP dated 6-1-2016 until such time that the IEE is completed and reviewed by the district.
 - ③ Parent & District agree to an independent evaluation for speech, OT, PT, ABA & FBA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

Mediator

Murray Canich 8/18/16

Parent/Guardian

Manan 8/18/16
ICAA/Manan Contractor 8/18/16



PSD026809

Parent/Guardian Manar 8/18/16 292
 LEA Representative Marie G. [Signature] 8/18/16
 Rev. 11/15 Mylene Cam 8/18/16

6340 Flank Drive, Harrisburg, PA 17112-2764

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

FAX 717-657-5983 • www.odr-pa.org

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

EXHIBIT 6



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.)

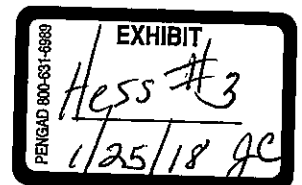
Dear Paul:

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").



Paul H. Saint-Antoine
 November 21, 2017
 Page 2

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.

Paul H. Saint-Antoine
November 21, 2017
Page 3

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.

Paul H. Saint-Antoine
November 21, 2017
Page 4

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 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 - - -
10 THURSDAY, JANUARY 25, 2018
11 - - -

12 Oral Deposition of NATALIE
13 HESS, taken pursuant to notice, at Drinker
14 Biddle, One Logan Square, 20th Floor,
15 Philadelphia, Pennsylvania, beginning at
16 approximately 10:00 a.m., before Jeanne
17 Christian, a Professional Court Reporter and
18 Notary Public.
19

20 * * *

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

A P P E A R A N C E S:

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Representing the School District of
Philadelphia

EDUCATION LAW CENTER

BY: MAURA I. McINERNEY, ESQUIRE

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Mmcinerney@elc-pa.org

I N D E X

- - -

EXAMINATION

NATALIE HESS

Page

BY MS. MCINERNEY 5, 318, 320

BY MS. OBOD 314, 320

E X H I B I T S

- - -

NUMBER	DESCRIPTION	PAGE MARKED
1	Notice.	8
2	Notice.	76
3	Letter.	95
4	Guide.	140
5	Translation Request Checklist.	154
6	Letter.	168
7	E-Mails.	200
8	Translation Request Form.	215
9	Report.	219
10	Limited Contract Form. . .	228
11	E-Mail.	230
12	E-Mail.	239
13	E-Mail.	241
14	E-Mail.	246
15	Translation Request. . . .	248
16	E-Mail.	253
17	E-Mail.	258

1	NUMBER	DESCRIPTION	PAGE MARKED
2	18	E-Mail	260
3	19	E-Mail	262
4	20	E-Mail	264
5	21	E-Mail	271
6	22	E-Mail	277
7	23	E-Mail	283
8	24	E-Mail	286
9	25	E-Mail	288
10	26	E-Mail	291
11	27	Contract	299
12	28	Responses	308

13

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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?

NATALIE HESS

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1 title means? What are your responsibilities
2 and duties in that position?

3 A. So as a special education director, I
4 supported Learning Network 7, which has
5 approximately 20 schools, and in that
6 capacity, I supported principals in their
7 program design and delivery of special
8 education in their buildings. I trained
9 staff to support students in special
10 education. I represented the district in
11 legal matters for those schools.

12 Q. And you mentioned, I think it was 7,
13 Network 7?

14 A. Learning Network 7.

15 Q. Could you explain what geographic area
16 that entails? What schools are included in
17 that?

18 A. The Northeast.

19 Q. And do any of those schools have a
20 significant percentage of English learners?
21 And if so, which schools would those be?

22 A. We have English language learners across
23 the district in the majority -- I mean, all of
24 our schools. So, certainly, there are

NATALIE HESS

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1 Q. Approximately how many IEP meetings did
2 you attend while you were the director of
3 special ed? Ballpark?

4 A. When I was the director of special ed
5 for Network 7?

6 Q. Yes.

7 A. Probably a hundred.

8 Q. Do you know approximately how many IEP
9 meetings would take place over the course of a
10 year in that particular network of 20
11 different schools?

12 A. Every student receives a manual IEP
13 meeting, but there are a number of students,
14 either the parent wants to meet or the School
15 District wants to meet, and they meet whenever
16 that need is, so I wouldn't have an estimate
17 of how many total IEP meetings would be held.
18 At minimum, 2,000 IEP meetings.

19 Q. So were there approximately 2000
20 students with disabilities in that Network 7?

21 A. So -- yes.

22 Q. Do you know what percentage of those
23 students were English learners?

24 A. No.

NATALIE HESS

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1 Q. Do you know what percentage had limited
2 English proficient parents?

3 A. No.

4 Q. And in your capacity as director, were
5 you alerted to all IEP meetings that happened
6 at the building level or --

7 A. No.

8 Q. How did you oversee what went on at IEP
9 meetings?

10 A. What occurred at the meetings
11 themselves?

12 Q. Yes.

13 A. Because I wasn't in every IEP meeting,
14 you would receive feedback from the team or
15 the parent.

16 Q. Would parents call you directly?

17 A. Yes.

18 Q. And how would they know to do that?

19 A. District website, special education
20 liaison, building principal.

21 Q. Approximately how many times did parents
22 call you during a school year?

23 A. During a whole school year?

24 Q. Yes. Or if it is easier to answer the

NATALIE HESS

Page 47

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

NATALIE HESS

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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?

NATALIE HESS

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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

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

NATALIE HESS

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1 Q. And could you tell us what it states for
2 the '15, '16 school year regarding --

3 A. For the '15, '16 school year, there were
4 3,507 special education students who lived in
5 a household with a home language other than
6 English.

7 Q. And is this information that you knew
8 prior to this data poll?

9 A. No.

10 Q. And do you know, prior to the 2015, 2016
11 school year, approximately how many limited
12 English proficient parents of students with
13 disabilities were in the School District?

14 MS. OBOD: Objection to form.
15 You can answer.

16 THE WITNESS: No.

17 BY MS. McINERNEY:

18 Q. Do you know if that number is going up
19 or going down between the 2012, '13 school
20 year to the 2017, 2018 school year, do you
21 know if the number of limited English
22 proficient parents of students with
23 disabilities is increasing?

24 MS. OBOD: Objection, lack of

NATALIE HESS

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1 foundation.

2 BY MS. McINERNEY:

3 Q. You can answer the question.

4 A. This document here says that for the
5 2016, '17 school year, there were 3,783
6 special education students who lived in a
7 household with a home language other than
8 English. That shows an increase between '15
9 and '16 to '16 and '17.

10 Q. Okay, thank you. Do you have any
11 knowledge about the number of students,
12 special education students, with limited
13 English proficient parents prior to the 2015,
14 '16 school year, other than the information
15 that appears on this --

16 MS. OBOD: Objection, lack of
17 foundation.

18 BY MS. McINERNEY:

19 Q. -- document?

20 A. No.

21 Q. So turning to the next page, Page 2 of
22 the document, with regard to Question Number
23 2, what does that refer to?

24 A. It says the annual number of IEP process

NATALIE HESS

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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.

NATALIE HESS

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1 changes are in the procedure. Prior to this
2 school year, what was your procedure for
3 determining whether documents would be
4 translated or not?

5 A. It was the same practice. Now, it is
6 put in writing. That's the difference.

7 Q. So the procedure with regard to
8 translation of documents has been the same?

9 A. Yes.

10 Q. Have there been any changes in the
11 factors that you consider with regard to
12 whether or not you translate a document?

13 A. Thank you. The questions have been
14 added. We memorialized the questions by
15 which we would review the request to determine
16 whether or not we would translate it.

17 Q. You mentioned limited resources. Could
18 you explain the limitations of the resources?

19 A. We are a large urban school district,
20 where Pennsylvania does not have fair funding.
21 I don't know if you want to go down that road,
22 but I can tell you that we do not have an
23 unlimited bank account for funding the
24 services and supports that are provided to

NATALIE HESS

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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?

NATALIE HESS

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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

NATALIE HESS

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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

NATALIE HESS

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1 You can answer.

2 THE WITNESS: About a year.

3 BY MS. MCINERNEY:

4 Q. Could you read what the body of that
5 e-mail says?

6 A. The top one?

7 Q. Yes.

8 A. "Good afternoon. Our contact is very
9 minimal and is only used in cases of legal and
10 due process hearings. We can talk about this,
11 as we do not have the funding for IEP
12 translation as of today. Wendy."

13 Q. Do you recall what happened with those
14 seven requests for IEP translations?

15 A. I believe they were translated.

16 Q. And do you know who translated those?

17 A. Global Arena. Whether they came out of
18 OSS or they came out of translation services,
19 I'm not sure.

20 Q. But do you know whether the seven were,
21 in fact, translated?

22 A. Yes, seven were translated.

23 - - -

24 (Whereupon the court reporter

NATALIE HESS

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1 marked document as Hess 18 for
2 identification.)

3 - - -

4 BY MS. McINERNEY:

5 Q. Now, I'm going to show you Exhibit 18.
6 What is the date of that e-mail?

7 A. December 1, 2015.

8 Q. And who is it from and to?

9 A. Deb Griffis to Wendy Shapiro and myself.

10 Q. And reading that e-mail, can you read
11 what it says out loud?

12 MS. OBOD: Objection to form.
13 You can answer.

14 THE WITNESS: "FYI, for my
15 ongoing concern."

16 BY MS. McINERNEY:

17 Q. And was that from Wendy Shapiro?

18 A. That was from Deb Griffis to Wendy
19 Shapiro and myself.

20 Q. And what is the e-mail right below it?

21 A. From Cong Wang to Deb Griffis. "Deb,
22 please note that we do not have fund to
23 provide translation for IEP reports. That is
24 why I always forward requests to you, knowing

NATALIE HESS

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1 that you have a contract in place. I
2 understand that you do not do translation for
3 everyone who makes requests, but I do not know
4 the criteria you use to accept or to reject
5 the request."

6 Q. And what is the next sentence there?

7 A. "I do not want to prematurely reject any
8 given request, because some of them may be
9 acceptable to you. That is why I forward
10 them to you to make a call. Sorry for the
11 confusion. Cong."

12 Q. So it appears that there is an ongoing
13 process in place whereby requests for
14 translation are provided to the Office of
15 Specialized Services. Do you know who was
16 making the decisions with regard to
17 translating documents?

18 A. Between Cong and Deb?

19 Q. No, I mean within the Office of
20 Specialized Services, who made the decision?

21 A. Deb would send them to Nancy to send
22 them to Global Arena.

23 Q. So who made the decision that Global
24 Arena funding from the Office of Specialized

NATALIE HESS

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1 that right?

2 A. December 7th, yes, 2015.

3 Q. And who is Katie McClure?

4 A. She was an SEL at Kensington Health
5 Sciences.

6 Q. So this is a communication between -- it
7 is from Mr. Wang to the SEL directly to Katie
8 McClure?

9 A. Yes.

10 Q. And are you familiar with this form that
11 Ms. McClure had provided to Mr. Wang?

12 A. Which form?

13 Q. The form that's attached here?

14 A. That's actually the information where
15 they import it into the website.

16 Q. Okay, so it is based on a request done
17 through the website?

18 A. Yes.

19 Q. So it would go directly to Mr. Wang?

20 A. Yes.

21 Q. And what is that first sentence that he
22 states there?

23 A. "School District only have the resources
24 to provide translation for IEP reports that

NATALIE HESS

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1 are involved in legal proceedings."

2 Q. And then what's the next sentence?

3 A. "If this IEP case is part of a legal
4 proceeding, please connect with Deb Griffis."

5 Q. And what is the sentence right after
6 that?

7 A. "The School District does provide live
8 interpretation services to IEP meetings. You
9 can make a request at the website."

10 Q. Would you consider this to be a denial
11 of a request that a document be translated?

12 A. No.

13 Q. Okay, and why?

14 A. Because he is telling her to reach out
15 to Deb Griffis.

16 Q. But he has communicate that if the IEP
17 case is part of a legal proceeding, that she
18 should contact Deb Griffis?

19 A. I can't understand why he wrote it that
20 way or what his -- this is back in the time
21 where they were going back and forth between
22 who does what, right, for the translation
23 services, but clearly, he sent it back to the
24 Office of Specialized Services.

NATALIE HESS

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1 A. December 24th, 2015.

2 Q. And drawing your attention to the e-mail
3 exchange from Mr. Wang to Ms. Shapiro?

4 A. Yes.

5 Q. Mr. Wang is referencing the small -- I
6 understand the small contract with your office
7 has with the local translation company, Global
8 Arena, only allows you to do a limited number
9 of translations of those reports that are part
10 of legal proceedings; correct? Is that what
11 it says?

12 A. That's what it says.

13 Q. In the context of this e-mail, he also
14 references that his own translation and
15 interpretation center, quote, we do not have
16 the resource to provide translation for IEP
17 reports. So do you think that that's an
18 accurate statement that the translation
19 interpretation center did not have enough
20 resources to cover translation of IEP's?

21 A. I think this is his ongoing effort to
22 ensure that they are only getting the smaller
23 documents to translate, that's what they have
24 the manpower to do, that larger documents need

NATALIE HESS

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1 Q. And could you read what that says?

2 A. "Hi, John. Please see translation
3 request below and document attached. Natalie
4 wants all translation requests to be reviewed
5 by the network directors. Has the school used
6 their local resources? Is there a legal case,
7 et cetera? Let me know if I should forward
8 for translation."

9 Q. There are many e-mails where we have
10 seen the same questions about has the school
11 used their local resources, is this a legal
12 case? And are those the two questions that
13 you were generally asking?

14 A. No.

15 Q. Okay.

16 A. There is also et cetera there. I mean,
17 it is trying to get a bigger picture of the
18 case, and ultimately, it is the director's
19 decision to determine if that is going to be
20 forwarded for translation.

21 Q. So it will be the -- it is the special
22 education director's decision?

23 A. Yes.

24 Q. Although many of these seem to be coming

NATALIE HESS

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1 there been any change in policies, procedures
2 or practices regarding notifying parents of
3 their right to request translation and
4 interpretation services?"

5 Do you believe that there has
6 been a change in what the District is doing
7 with respect to notifying parents of their
8 rights?

9 A. Yes.

10 Q. And when did that change take place?

11 A. When we started using the parent rights
12 review of the procedural safeguards.

13 Q. And would that be the beginning of this
14 school year?

15 A. Yes.

16 Q. And prior to that, there wasn't such a
17 notification to parents?

18 A. Correct.

19 Q. You were asked to testify regarding
20 number of translations of special education
21 documents. And would you agree that the
22 information provided with respect to 2015,
23 2016, and I think it is 2017, that we reviewed
24 today is accurate?

NATALIE HESS

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ACKNOWLEDGMENT OF DEPONENT

I, _____, do
 hereby certify that I have read the foregoing
 pages __ to ___ and that the same is a correct
 transcription of the answers given by me to
 the questions therein propounded, except for
 the corrections or changes in form or
 substance, if any, noted in the attached
 Errata Sheet.

 DATE

 SIGNATURE

Subscribed and sworn to before
 me this _____ day of _____,
 2018.

My commission expires:

Notary Public

EXHIBIT 8

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

T.R., et al., :
:
Plaintiff(s), :
:
vs. :
:
THE SCHOOL DISTRICT OF :
7 PHILADELPHIA, :
:
8 Defendant(s). : NO. 15-04782-MSG

- - -

Tuesday, January 23, 2018
Philadelphia, Pennsylvania

- - -

Oral Deposition of ALLISON STILL, held at
the law offices of DRINKER BIDDLE, One Logan Square
130 N. 18th Street, Philadelphia, Pennsylvania,
commencing at approximately 9:38 a.m., on the above
date, before Josephine Guerrieri, Professional Court
Reporter and Commissioner of Deeds.

- - -

VERITEXT LEGAL SOLUTIONS
MID-ATLANTIC REGION
1801 Market Street - Suite 1800
Philadelphia, Pennsylvania 19103

- - -

1 A P P E A R A N C E S:

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16 Counsel for Defendant(s)

DEPOSITION SUPPORT INDEX

DIRECTIONS NOT TO ANSWER:

PAGES: None

REQUESTS FOR DOCUMENTS OR INFORMATION

PAGES: None

STIPULATIONS AND/OR STATEMENTS:

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MARKED QUESTIONS:

PAGES: None

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I N D E X

WITNESS PAGE

ALLISON STILL

EXAMINATION BY

MR. SAINT-ANTOINE 5

MS. OBOD 154

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2 P R O C E E D I N G S

3 - - -

4 (It is agreed by and among
5 Counsel for the respective parties
6 that the reading, signing, sealing,
7 filing and certification are hereby
8 waived, and all objections, except as
9 to the form of the question, are
10 reserved until the time of trial.)

11 - - -

12 ALLISON STILL, having been
13 first duly sworn, was examined and
14 testified under oath as follows:

15 - - -

16 E X A M I N A T I O N

17 - - -

18 BY MR. SAINT-ANTOINE:

19 Q. Good morning, Ms. Still. Thank
20 you for being here.

21 My name is Paul Saint-Antoine
22 from the law firm of Drinker, Biddle & Reath,
23 and I represent the plaintiffs in this
24 litigation.

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 complied with?

2 A. No.

3 Q. Does the school district
4 currently have a PHLOTE list; is that how you
5 refer to it?

6 A. District wide or --

7 Q. Yes.

8 A. Yes.

9 Q. Is that a -- is that list
10 complete?

11 A. Yeah, I think it's pretty -- it's
12 definitely for students that have an English
13 language status.

14 Q. If you went on the district
15 computer now and ran a list, would it give you
16 an accurate number of the English learner
17 students?

18 A. And their languages? The
19 languages of the English language students?

20 Q. Yes.

21 A. Yeah, I would say it's not a
22 hundred percent, but it's pretty close.

23 Q. Do you know approximately how
24 many students are currently English learners in

1 the district?

2 A. It's about 14,000.

3 Q. And how does that compare to
4 prior years?

5 A. We have increased -- yeah, I'd
6 have to look. I think when I started we were
7 at 11,000, 12,000, now it's 14,000.

8 Q. When you started as an ESL
9 teacher?

10 A. No, I don't know what it was
11 then. In this role as a director.

12 Q. From about 2012?

13 A. Yes.

14 Q. So, of the approximately 14,000
15 students currently in the English learners, do
16 you have a sense of what portion would be
17 captured by the float list?

18 A. Yeah, most of then. I mean --
19 yeah.

20 Q. And how frequently is the list
21 updated or is it continuously updated?

22 A. It's continuously updated because
23 we continuously get new students coming in.
24 When the status is created for the student, we

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

- - -

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
transcript does not apply to any reproduction
of the same by any means, unless under the
direct control and/or supervision of the
certifying reporter.)

EXHIBIT 9

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 KIMBERLY CAPUTO,
held at the Law Offices of DRINKER, BIDDLE &
REATH, LLP, One Logan Square, Suite 2000,
Philadelphia, Pennsylvania, on March 15, 2018,
commencing at approximately 9:29 a.m., before
Susan Endt, Court Reporter and Notary Public.

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12
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DEPOSITION SUPPORT INDEX

DIRECTIONS NOT TO ANSWER:

PAGES: None

REQUEST FOR DOCUMENTS OR INFORMATION:

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PAGES: None

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KIMBERLY CAPUTO

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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 KIMBERLY CAPUTO, having
10 been first duly sworn, was examined
11 and testified as follows:

12 - - -
13 EXAMINATION
14 - - -

15 BY MS. MCINERNEY:

16 Q. You know who I am, Maura McInerney,
17 from Education Law Center, here on behalf of
18 the parents.

19 Would you please state your full name
20 for the record?

21 A. Kimberly Ann (ph) Caputo,
22 C-A-P-U-T-O.

23 Q. And what is your address?

24 A. My home address?

1 organizational chart.

2 Q. Okay. So how does the district
3 identify parents with limited English
4 proficiency?

5 A. I -- I don't know the answer to that
6 question. I don't know.

7 Q. And when you were deputy of the
8 Office of Specialized Services, were there any
9 specific policies or practices regarding
10 limited English proficient parents?

11 A. That IDEA documents consisting of the
12 consent documents, a notice of recommended
13 educational placement, a permission to evaluate
14 needed to be presented to a parent in their
15 native language and the parent needed to be
16 provided with the procedural safeguards in
17 their native language.

18 The -- at a local level, teams should
19 be taking steps to ensure that parents had the
20 opportunity to participate in whatever the IDEA
21 process was -- whatever the IDEA process
22 happened to be.

23 Q. So with regard to IDEA consent
24 documents, you referenced the NOREP, the notice

1 proficient parents in the special education
2 context?

3 A. I don't believe so.

4 Q. So there was no policy about when or
5 whether IEP documents would be translated?

6 A. If -- if -- thank you. When school
7 teams made a -- when school teams -- IEP
8 documents could be translated.

9 Q. And what were the circumstances under
10 which IEP documents would be translated?

11 A. A parent made the request and the
12 team determined it was necessary.

13 Q. So once a parent made a request, what
14 happened with that request? How was that
15 request made?

16 A. It would have to start at the school
17 level.

18 Q. And were parents apprised at every
19 IEP meeting of their right to request the
20 translation of an IEP document?

21 A. I don't know. I don't know the
22 answer to that.

23 Q. Was there any policy about that? Any
24 written procedure?

1 A. I don't recall. I don't recall. I
2 don't -- I don't recall. So the request at the
3 school level, and there would probably be
4 support from the director assigned to support
5 that school who would, then, either facilitate
6 or at least be apprised that a particular
7 document was either going to go to the
8 translation center for translation or out to
9 contract.

10 Q. And how were those decisions made and
11 who made them?

12 A. They were made at a local level and
13 may have involved a special education director.

14 Q. And who kept track of that?

15 A. Of what?

16 Q. Of how many times parents asked for
17 an IEP document to be translated and whether
18 that request was denied or accepted?

19 A. I don't know if individual directors
20 kept that, I don't know. They may have and I
21 also don't know if the Office of Translation
22 kept track of what they received. They, of
23 course, would not know what they didn't receive
24 because the request was denied and I don't know

1 -- well, Chris Marino probably kept track of
2 the number of documents going out to a
3 contractor.

4 Q. So in some instances, would the
5 decision be made by the special education
6 liaison at the local level, at the school
7 building level?

8 A. Possibly.

9 Q. So sometimes it might be the special
10 education liaison making the decision and,
11 other times, it might be the director making
12 the decision?

13 A. Certainly possible.

14 Q. Did any of these requests ever come
15 to the Office of Specialized Services during
16 the time that you were deputy?

17 A. Not directly to me. I would assume,
18 yes.

19 Q. And how would that occur?

20 A. I would assume by e-mail or fax or
21 something.

22 Q. Who would the request be coming from?

23 A. A school team.

24 Q. So it would not come from an

1 Q. Okay. And what is your understanding
2 as to the policy of the school district
3 regarding translation of documents today? You
4 explained what it was when you were deputy.

5 What is your understanding of whether
6 or not documents are translated upon request?
7 How are those requests handled?

8 A. So I think before the requests, there
9 -- what is happening now is preceding any
10 request, there's a specific conversation with
11 parents around summarizing the procedural
12 safeguards and whether the parent is seeking
13 the translation of certain IDEA documents. If
14 -- so that -- that conversation happens first.
15 And if that parent indicates that, yes, in
16 fact, they would like the documents translated,
17 I believe that it happens or additional
18 questions are asked.

19 I -- I don't know because I have not
20 experienced the second part of that. I have
21 only been in meetings where the conversation
22 has occurred and parents have indicated they
23 are ready to move forward with the bilingual
24 counselor present and they are not making a

1 request for further translation.

2 Q. Is it your understanding that this
3 inquiry is made at every IEP meeting?

4 A. Yes, that is -- that's my
5 understanding.

6 Q. So at every IEP meeting, there is an
7 opportunity for the parent to request a
8 translated document?

9 A. That is a statement that is part of
10 the conversation, yes.

11 Q. Are parents given anything in writing
12 about this?

13 A. There is something -- there is a
14 document -- it's a one pager -- that's -- in
15 the meetings where I have been in attendance, I
16 don't know if parents -- I'm certain that that
17 one pager would have been made available to
18 them.

19 The -- every meeting that I am in
20 attendance, there is a parent attorney in
21 attendance. And the meetings where I attend,
22 the parent attorney says we don't need any --
23 we don't need a piece of paper, we are ready to
24 proceed. So that's the limited universe that I

1 can speak from.

2 Q. So you referenced a one pager.

3 What's the one pager?

4 A. The one pager is the summary of the
5 procedural safeguards and the statement
6 regarding the ability to obtain translated
7 documents.

8 Q. And what is that statement?

9 A. You know, the director reads from the
10 -- from the one pager. It's -- it exists, so I
11 would refer you to that document. I would just
12 be summarizing it and probably not doing a very
13 good job.

14 Q. Is that a new document? Is this a
15 new procedure?

16 A. It is.

17 Q. And when did this procedure start?

18 A. I don't know when it started. I only
19 know that in meetings that I have recently been
20 in, that that process has happened.

21 Q. And is the one pager translated into
22 the person's native language?

23 A. Again, I am not -- I don't know. It
24 may very well be.

1 In the situations that I have been
2 involved in, they have not requested a copy.
3 Any attorney has said we are fine with the
4 verbal. I think that -- so I don't know.

5 Q. So preceding a request for
6 translation, a parent -- someone reads this one
7 pager --

8 A. Yes.

9 Q. -- to the parent?

10 A. Yes.

11 Q. And it goes through all of the
12 procedural safeguards and includes a reference
13 to translating IEP documents?

14 A. Yes.

15 Q. Okay. And what transpires after
16 that?

17 A. And we have our meeting.

18 Q. Okay. And so at that juncture, if a
19 parent were to say I would like a translated
20 document, what happens?

21 A. I couldn't say. I have not been in
22 meetings where that has happened.

23 Q. Okay. Have you been involved with
24 any meetings where there is a discussion of

1 whether a translated document is needed or any
2 discussions of that?

3 A. No.

4 Q. Okay. And how many IEP meetings have
5 you attended where this document has been
6 provided?

7 A. Where the document has been a part of
8 the meeting, I don't know that it is -- has
9 been provided because a parent hasn't asked for
10 it.

11 Q. I'm sorry. Maybe I'm not explaining
12 myself very well.

13 A. Okay.

14 Q. You said at every IEP meeting,
15 parents are provided with this one pager?

16 MS. OBOD: Objection to
17 form.

18 A. I don't believe that's what I said.

19 BY MS. MCINERNEY:

20 Q. Okay. Can you explain it to me
21 again?

22 When are --

23 THE WITNESS: Can she refer
24 to the record?

1 MS. OBOD: Do you want to
2 go back to when you answered it?

3 MS. McINERNEY: Sure.

4 A. I mean I'm happy to do it again. So
5 there is a one pager that summarizes the
6 procedural safeguards.

7 BY MS. McINERNEY:

8 Q. Is --

9 MS. OBOD: Let her answer,
10 please, without interrupting her.

11 A. In addition, it includes the
12 translation piece that we have been discussing.

13 In the meetings that I am in
14 attendance because parents -- I'm only there
15 because parent has counsel. In the meeting --
16 in those meetings, parent counsel has declined
17 to accept the document on behalf of their
18 client. They have indicated it is not
19 necessary. And, then, we move on from -- and
20 they have said we do not need documents
21 translated and so the meeting commences.

22 BY MS. McINERNEY:

23 Q. What I was asking is whether the one
24 pager is read aloud --

1 A. Yes, it is.

2 Q. -- at every IEP meeting?

3 A. It is.

4 MS. OBOD: Objection to
5 form.

6 A. In the meetings that I have been in
7 attendance, where the parent does not speak
8 English, yes.

9 BY MS. MCINERNEY:

10 Q. And does -- the document is read and
11 the BCA will provide an interpretation of
12 that --

13 A. Correct.

14 Q. -- to the limited English proficient
15 parent?

16 A. That's correct.

17 Q. I think the problem was I was
18 distinguishing between rejecting the translated
19 document versus -- you said they reject the
20 document.

21 Are -- you're referring to the fact
22 that they say I don't need documents
23 translated, correct?

24 A. They say I don't need documents

1 meaningful participation is assessed at a local
2 level, as reflected by the parents' engagement
3 with whatever the IDEA process is, whether
4 that's an IEP meeting, an evaluation meeting.

5 BY MS. McINERNEY:

6 Q. Okay. Are there any specific
7 trainings on what it means to meaningfully
8 participate in IEP meetings? Are there any
9 trainings on that?

10 A. Not that I am -- I'm not aware.

11 Q. Okay.

12 A. I don't know.

13 Q. Do you know what percentage of
14 documents are translated by the Office of
15 Specialized Services versus were translated by
16 the translation offices during the time that
17 you were deputy?

18 A. I do not.

19 Q. So, currently, parents are notified
20 of the ability to request translated documents
21 through this one pager?

22 A. (Nod.)

23 Q. And prior to that, how are they
24 notified?

1 A. I don't recall. I don't recall.

2 Q. Was -- is this the first time that
3 there has been a one pager like this that has
4 summarized the rights of parents?

5 A. Yes.

6 Q. Okay. Do you recall, again, when
7 this started to be used, when the policy
8 changed?

9 MS. OBOD: Objection.

10 Asked and answered.

11 You can answer.

12 A. I don't recall when it started.

13 BY MS. McINERNEY:

14 Q. Okay. Do you recall the first IEP
15 meeting you attended where this was used?

16 A. It was this school year. That is the
17 best I can do.

18 Q. Do you know if the district has a
19 language access policy?

20 A. I don't know. I don't know the
21 answer to that question.

22 Q. Do you know if there are any policies
23 that have been adopted by the SRC relating to
24 language access for limited English proficient

1 don't recall is was there such a letter that
2 came to me directly or did it go to Dr. Hite
3 and, then, come to me. That is possible.

4 Q. And when was that letter provided to
5 you?

6 MS. OBOD: Objection to
7 form.

8 You can answer.

9 A. Yes. I'm not sure when it was
10 provided to me, but I recollect the advocacy
11 community providing a letter outlining their
12 concerns about translation and interpretation.
13 Not interpretation, translation.

14 BY MS. McINERNEY:

15 Q. And what were those concerns?

16 A. That IDEA documents, all of them
17 should be translated. That was the overall
18 gestalt of the letter.

19 Q. Did you ever keep track of who was
20 covering interpretations at IEP meetings, as to
21 how often Language Line was used or how often
22 BCAs were utilized?

23 A. No.

24 Q. Did you ever discuss this issue at

1 staff meetings of the Office of Specialized
2 Services when you were deputy?

3 A. It's possible.

4 Q. Did you ever discuss translation
5 services in your meetings as deputy?

6 A. Possible.

7 Q. How often?

8 A. It's possible.

9 Q. How often did you have staff
10 meetings?

11 A. We met regularly at least once a
12 month, if not more frequently and -- well,
13 staff meetings, it depends on the composition
14 of staff.

15 So I would meet with directors at
16 least one a month, if not more frequently,
17 depending on the time of year. And I would
18 meet with various groups on a -- on a regular
19 basis, depending on what initiatives were going
20 on, what was --

21 Q. Did you ever ask if telephone
22 interpreters, Language Line, was an adequate
23 substitute for BCAs?

24 A. I don't think -- no, I don't think I

1 had a -- no.

2 Q. And what was your position with
3 regard to that, when you were the deputy or did
4 you have a position?

5 A. I did not have a position. I did not
6 have a position.

7 Q. Did you take any steps to ascertain
8 the quality of interpretation services being
9 provided?

10 A. Of interpretation, no.

11 MS. OBOD: Are we going to
12 take a break soon because I have to
13 make a call at 12:30?

14 MS. McINERNEY: We can take
15 a break now.

16 - - -

17 (At this time, a short
18 break was taken.)

19 - - -

20 BY MS. McINERNEY:

21 Q. We were talking earlier about the use
22 of interpreters at IEP meetings. Given the
23 number of internal staff at the time that you
24 were deputy, do you know how many IEP meetings

1 could be covered by the BCAs?

2 A. I do not.

3 Q. Okay. And do you know if there was a
4 budget for interpreters that attended IEP
5 meetings?

6 A. I -- I do not -- I do not know.

7 Q. Okay.

8 A. It was not part of the Office of
9 Specialized Services' budget.

10 Q. Were IEP meetings prioritized in any
11 way that you know of? Was there any policy or
12 procedure whereby BCAs were utilized for IEP
13 meetings?

14 A. Not that I know. No, not that I'm
15 aware of.

16 Q. Okay. And did all schools know that
17 BCAs were available for IEP meetings?

18 A. I would think that, yes. I would
19 think so.

20 Q. And you had previously testified that
21 you do not know how often telephonic
22 interpreters were used for IEP meetings?

23 A. That's correct.

24 Q. Okay. And there were no policies or

1 procedures concerning the use of Language Line
2 that you were familiar with, with regard to
3 when telephonic interpreters would be used?

4 A. If that is -- I'm not sure that that
5 is what I testified to. The use of Language
6 Line necessitated some knowledge in order to
7 access it. So that was provided to school
8 teams.

9 Q. Information concerning Language Line?

10 A. Correct.

11 Q. Were provided to school teams?

12 A. Yes.

13 Q. But there was no policy or procedure
14 regarding when to use them? It was rather one
15 of their options?

16 A. It was one of their options, yes.

17 Q. Okay. And would telephonic
18 interpreters have a copy of the child's IEP in
19 front of them?

20 A. I don't know the answer to that. I
21 don't -- I don't know the answer to that.

22 Q. And do you know anything about the
23 budget for Language Line for?

24 A. I do not.

1 Q. For the use of interpreters?

2 A. I do not.

3 Q. Did OSS have a separate Language Line
4 use -- when Language Line was used at IEP
5 meetings, is there any way where that would
6 show up in the OSS budget?

7 A. I don't -- I don't know. I don't
8 know.

9 Q. Alternatively, would it be at the
10 school level that they would have information
11 about how often Language Line was used at the
12 school building for any purpose?

13 A. I -- that would be the place I would
14 start, but I don't know.

15 Q. Would you know if the Language Line
16 invoices or information concerning Language
17 Line would specify how Language Line was used,
18 whether it was used at an IEP meeting or used
19 at a general parent/teacher conference or used
20 on another occasion?

21 A. I don't have that information.

22 Q. Okay. Did you ever ask for any kind
23 of a survey to determine how many IEP meetings
24 were not covered by BCAs?

1 A. I did not.

2 Q. And why not?

3 A. I -- I don't know. I don't know.

4 Q. What kind of training do BCAs have
5 with regard to special education services?

6 A. I'm not -- I'm not sure. I'm not
7 sure.

8 Q. Okay. And you have testified that
9 you don't recall what the Y.S. case was about
10 or when do you -- or when it first -- whether
11 it -- sorry. Withdrawn.

12 A. Okay.

13 Q. Has anyone ever talked to you
14 regarding the Y.S. case during the time that
15 you were deputy?

16 A. It is possible that an attorney in
17 the Office of General Counsel, to the extent
18 there was activity going on in the -- in the
19 context of Y.S., would have spoken with me
20 about it.

21 I do not have firsthand recollection
22 of that. I do have recollection of a meeting
23 involving -- in my role as lead special
24 education counsel where Y.S. was discussed.

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 27th day of March 2018.



Notary Public

EXHIBIT 10

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 - - -

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

18 ***

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

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I N D E X

- - -

EXAMINATION

LUDY SODERMAN

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BY MS. MCINERNEY 5, 199

BY MS. OBOD 195

E X H I B I T S

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1	NUMBER	DESCRIPTION	PAGE MARKED
2	19	Protocol.	166
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LUDY SODERMAN

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

4 MS. MCINERNEY: So I'm just
5 going to put the usual stipulations on the
6 record.

7 MS. OBOD: Note the same as we
8 had for T.R.

9 THE WITNESS: May I have some
10 paper? I sometimes like to write.

11 MS. OBOD: I'm going to ask
12 you not to. If it comes up, let me know when
13 it comes up, and we can talk about it in any
14 instance.

15 MS. MCINERNEY: So the parties
16 stipulate that they are reserving and not
17 waiving any objections until the time of
18 trial, except objections as to form, and we
19 agree that deposition was properly noticed,
20 that the court reporter is duly qualified.

21 - - -

22 EXAMINATION

23 - - -

24 BY MS. MCINERNEY:

LUDY SODERMAN

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

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

15 Q. And who can request a live interpreter?

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

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

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

LUDY SODERMAN

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

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

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

24 Q. How many BCAs are assigned solely to one

LUDY SODERMAN

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1 BY MS. MCINERNEY:

2 Q. During the testing days, are all of them
3 assigned to do accommodations for the testing?

4 A. No, not all of them. We will deploy
5 the ones that -- almost always, we deploy the
6 ones for languages other than Spanish, because
7 Spanish it is a language of great deficient,
8 so they will serve those schools, but they do
9 get the training.

10 Q. Approximately how many BCAs were
11 employed by the District, do you know, in
12 2013, 2014?

13 A. 2013, 57.

14 Q. And what about the next year, '14, '15?

15 A. 57.

16 Q. And the following year?

17 A. 57.

18 Q. And now, this year?

19 A. We have 75.

20 Q. And why did that number increase?

21 A. We had additional funding, so that's why
22 we have more.

23 Q. Did you ever request additional BCAs?

24 A. No.

LUDY SODERMAN

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1 Q. You said that there were three that are
2 assigned to independent contracts with
3 separate schools?

4 A. Not independent contracts. There are
5 three BCAs, and actually, they all speak
6 Spanish. The schools, they purchase them
7 from their own budget.

8 Q. And why did they do that?

9 A. They wanted to have a full-time BCA.

10 Q. What schools are those?

11 A. Those are Hartranft, Franklin Learning
12 Center, and -- God, how can I forget the name
13 of the school right now? Awilda is the
14 principal. I just forgot the name. It is on
15 Ontario. What is the name of the school?
16 Sheridan. I'm not as young as I look,
17 obviously.

18 Q. Was there any time when there was a
19 shortage of BCAs?

20 A. It is not a shortage, but we had less
21 BCAs at some point. I mean, 57 is the
22 smaller figure we have had, the smaller amount
23 of BCAs we have had.

24 Q. Prior to that, how many BCAs did you

LUDY SODERMAN

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1 have?

2 A. At one point, we had 102.

3 Q. Do you remember what year that was?

4 A. Yes, it was until 2011.

5 Q. And did the funding change in that year?

6 Was there less funding for the School District
7 after that?

8 A. I know there were many cuts. Even I
9 was cut. My position was -- I got a -- what
10 do you call that in English? I know so many
11 languages, but I forget the word in English.
12 Layoff, yeah, they were laid off.

13 Q. And that was due to budgetary reasons?

14 A. Yes.

15 Q. And is there any benefit to having
16 additional BCAs now?

17 A. Well, we have more communities, more
18 ethnic linguistic communities coming to
19 Philadelphia, and now, we have people who can
20 serve those arrivals. I mean, despite what
21 President Trump has done recently, we were
22 getting a lot of refugees with very distinct
23 needs and strengths. So we have more
24 languages now.

LUDY SODERMAN

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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

LUDY SODERMAN

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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.

LUDY SODERMAN

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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?

LUDY SODERMAN

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1 Q. And how are Limited-English Proficient
2 parents notified of the procedure for
3 requesting interpretation services or
4 translation services?

5 A. Families, they don't call us on -- I
6 cannot even say more than five, I don't even
7 know how many times a family asks us, or at
8 least me, for interpretation. Schools are
9 the ones who need to tell the families about
10 the services, interpretation services.

11 Q. So schools are responsible --

12 A. They are the ones who should,
13 absolutely.

14 Q. Who should do that, okay.

15 A. We also count on community-based
16 organizations, immigrant organizations to
17 communicate to the families that we are there
18 to serve them, that we have interpreters, to
19 let us know if they need anything.

20 Q. Do you know the number of recently
21 arrived refugee immigrant students who would
22 be in the District who might be recently
23 arrived immigrants through resettlement?

24 A. I don't know how many students. In our

LUDY SODERMAN

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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

LUDY SODERMAN

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1 in the morning.

2 Q. And what was the --

3 A. And it was a review of the reevaluation
4 report, and they were going to go over the
5 drafted IEP plan, but they were still working
6 on the documents.

7 Q. Is it typical that people are working on
8 a draft IEP when they are asking for an
9 interpreter?

10 A. Sometimes.

11 Q. And can you explain what the issue was
12 with the BCAs?

13 A. The BCAs were deployed for the state
14 standardized testing.

15 Q. Does that happen with regard to the PSSA
16 testing?

17 A. If all the BCAs are deployed, and
18 someone asks for an IEP, we ask can it be
19 moved, and if one of us can go, then, like I
20 was indicating, I would go, too.

21 Q. Right. And does this happen also when
22 there are Keystone exams or other standardized
23 tests?

24 A. If all the BCAs are deployed, yes.

LUDY SODERMAN

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1 maybe eight times.

2 THE WITNESS: No.

3 BY MS. MCINERNEY:

4 Q. Okay. And then last question on this
5 document, PSD 003874?

6 A. 74?

7 Q. 3874.

8 A. I see.

9 Q. It says X2 at the top. Do you see that?

10 A. Uh-huh, times two.

11 Q. What does that mean?

12 A. Two languages.

13 Q. Okay. And then under interpreter
14 assigned, it says N/A. What does that mean?

15 A. None available.

16 Q. And what was the purpose of that
17 meeting?

18 A. An IEP.

19 Q. And is there some note at the bottom?

20 A. Yes. It says, "IEP's and
21 end-of-the-year events."

22 Q. Okay. Let me just see if there is -- I
23 think that is the end of that document;
24 correct? That you have there? Or do you have

LUDY SODERMAN

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1 available during the meeting, and she wanted
2 to be informed as soon as possible.

3 Q. And that inquiry was coming on what
4 date?

5 A. It was coming on January 11th.

6 Q. And when was the IEP team meeting
7 scheduled for?

8 A. On either 1/13 or 1/15, January 13th or
9 January 15th.

10 Q. Okay, thank you. That's it on that.

11 Now, I'm going to show you
12 what will be Exhibit 15.

13 - - -

14 (Whereupon the court reporter
15 marked document as Exhibit 15 for
16 identification.)

17 - - -

18 BY MS. MCINERNEY:

19 Q. I just have one quick question on this.
20 Do you recall this request for interpretation?

21 A. I recognize it.

22 Q. And on the request number, it says 82?

23 A. Um-hum.

24 Q. What does that refer to?

LUDY SODERMAN

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1 A. Every time a request comes, I put a
2 number in it, just to know how many we are
3 getting.

4 Q. And what was this request for? What was
5 the purpose?

6 A. For an IEP.

7 Q. And under interpreter assigned, it says?

8 A. N/A, none available. I know the
9 language. It is Haitian Creole. We didn't
10 have anyone.

11 Q. So that was the basis?

12 A. Um-hum.

13 Q. Do you normally record why you didn't
14 assign?

15 A. I tend to, yeah.

16 Q. Okay, we will keep moving on.

17 - - -

18 (Whereupon the court reporter
19 marked document as Exhibit 16 for
20 identification.)

21 - - -

22 BY MS. MCINERNEY:

23 Q. This is 16. Do you recall this e-mail
24 exchange?

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 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 - - -

LUDY SODERMAN

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C E R T I F I C A T E

I, Jeanne Christian, a Notary Public, do hereby certify that the foregoing deposition of LUDY SODERMAN, 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 record of the testimony given by the witness; 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 19th day of December, 2017.



Jeanne Christian
Notary Public

EXHIBIT 11

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
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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

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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 CHRISTOPHER MARINO, having
10 been first duly sworn, was examined
11 and testified as follows:

12 - - -
13 EXAMINATION
14 - - -

15 BY MS. PELOTTE:

16 Q. Good morning, Mr. Marino. Thank you
17 for being here. My name is Yvelisse Pelotte.
18 I'm an attorney from the Education Law Center.
19 As you already know, the Education Law Center
20 represents the plaintiffs in this action.

21 Can you please state your full name
22 for the record?

23 A. Christopher George Marino.

24 Q. What is your home address?

1 probably track it through the Easy IEP system.

2 Q. Does OSS track the number of
3 translations that are provided with LEP parents
4 so -- strike. I can rephrase that.

5 A. Okay.

6 Q. Does OSS keep track of the number of
7 translated documents that it provides to LEP
8 parents of students with disabilities?

9 A. Yes.

10 Q. Okay. How is that tracked?

11 A. Through a spreadsheet and also
12 through invoices with our contractor, if we go
13 through a contractor, or through records
14 maintained by the Office of Translation and
15 Interpretation Services.

16 Q. Can you talk about this spreadsheet
17 that you referenced? What is the spreadsheet?

18 A. Nancy Velez maintains the
19 spreadsheet.

20 Q. And what's contained in her
21 spreadsheet?

22 A. I don't know for certain. I have
23 seen it. I looked at it, but I haven't looked
24 at it for a while. Usually, I look at it when

1 we prepare budgets and annual resolutions. So
2 I'm not certain what's in it. I think the
3 relevant information.

4 Q. Okay. And the spreadsheet that Nancy
5 -- that Ms. Velez keeps, are those translations
6 that have come to her -- like translation
7 requests that have come to her or is it just
8 any translation request that has come to anyone
9 in the district?

10 A. I'm not certain.

11 Q. Do you know if the data that is
12 contained on her spreadsheet are just the ones
13 that are approved or are they ones that may
14 have been denied as well?

15 A. I can tell you what I think, but I'm
16 not sure that it's going to be accurate.

17 MS. OBOD: I'm going to
18 instruct you not to speculate.

19 A. Okay. I don't know.

20 BY MS. PELOTTE:

21 Q. And are the data that's on her
22 spreadsheet, do you know if those are just the
23 ones that -- strike that.

24 The documents that are on Ms. Velez's

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.

1 MS. OBOD: Objection.

2 Lack of foundation.

3 A. I don't know.

4 BY MS. PELOTTE:

5 Q. If anything had been budgeted, would
6 you know?

7 A. Not necessarily.

8 Q. For -- okay. For '17/'18, are there
9 any OSS-specific contracts for interpretation
10 services?

11 A. No.

12 Q. For '16/'17, were there any OSS
13 specific contracts for the provision of
14 interpretation services for LEP parents of
15 students with disabilities?

16 A. I'm going to have to go back on
17 something a little bit. I would have to look
18 at the contract, but the contract that we had
19 with Global may have also covered translation
20 services. It may have translation and
21 interpretation, but I'm not positive. It was
22 primarily for translation of special education
23 documents.

24 Q. Okay. And so the 2017/'18, I just

1 want to make sure I clarify this.

2 A. This year?

3 Q. Yes, so this year.

4 Are there -- does OSS have any
5 contracts for the provision of interpretation
6 services for LEP parents of students with
7 disabilities?

8 A. No.

9 Q. So we're going to jump a little
10 forward.

11 '15/'16, did OSS have any contracts
12 for the provision of interpretation services
13 for LEP parents of students with disabilities?

14 A. Specifically for that, no.

15 Q. And for '14/'15, did OSS have any
16 contracts for the provision of interpretation
17 services for LEP parents of students with
18 disabilities?

19 A. No.

20 Q. '13/'14, did OSS have any contracts
21 for the provision of interpretation services
22 for LEP parents of students with disabilities?

23 A. No.

24 Q. The current school year, do you know

1 You mischaracterized the
2 document by stating that it was
3 made -- that the request was made by
4 an LEP parent.

5 A. I can't recall.

6 BY MS. OBOD:

7 Q. What role did OSS play in overseeing
8 the translation of these types of -- of
9 IEP-related documents of LEP students of
10 students with disabilities?

11 A. To make sure that they were
12 completed.

13 Q. And how did they -- how did OSS do
14 that?

15 A. I -- actually, I don't know because I
16 was involved in the contract piece, not in
17 the...

18 Q. Do you know how this type of
19 information was tracked?

20 MS. OBOD: Objection to
21 form.

22 You can answer, if you can.

23 A. Nancy has a spreadsheet -- a tracking
24 system and Cong had a tracking system.

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

EXHIBIT 12

YOUANA BUSTAMANTE

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

- - -

T.R., et al, :
:
Plaintiffs, :
vs. : CASE NO. 15-cv-4782
:
SCHOOL DISTRICT OF :
6 PHILADELPHIA, :
:
7 Defendants. :

- - -

THURSDAY, FEBRUARY 22, 2018

- - -

Computer-aided transcript of
deposition testimony of YOUANA BUSTAMANTE, taken
on the above date, in the above-entitled matter,
before DONNA ROSNER, a Certified Court Reporter,
and Notary Public, held at the offices of
Dilworth Paxson, LLP, 1500 Market Street,
Suite 3500E, Philadelphia, Pennsylvania,
commencing at 9:50 a.m.

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YOUANA BUSTAMANTE

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(EXHIBITS ANNEXED HERETO)

YOUANA BUSTAMANTE

1 (It is stipulated by and among
2 counsel for representative parties that the
3 sealing and certification are waived, and that
4 all objections of any nature except as to form of
5 the question are reserved until the time of
6 trial.)

7 - - -

8 YOUANA BUSTAMANTE, [REDACTED]
9 [REDACTED], Philadelphia, Pennsylvania, 19152,
10 having been first duly sworn, testified as
11 follows:

12 EXAMINATION BY MS. OBOD:

13 Q. Hi, Ms. Bustamante. Did I say that
14 properly?

15 A. (Witness nods.)

16 Q. My name is Marjorie Obod, and I'm
17 going to be asking you questions today, and
18 you'll be answering the questions.

19 A. (Witness nods.)

20 Q. The case that you're here for is the
21 T.R. versus The School District of Philadelphia
22 case.

23 A. (Witness nods.)

24 MS. OBOD: I'm going to have this
25 marked.

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

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 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 13

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

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

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

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

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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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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 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

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 6th day of March 2018.



Susan Endt
Notary Public

EXHIBIT 14

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

- - -

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DONNA L. SHARER, Ph.D, after
having been first duly sworn, was
examined and testified as follows:

- - -

THE REPORTER: Usual
stipulations?

MR. SAINT-ANTONINE: Yes. Let's
explain what they are. My understanding is
counsel in prior depositions agreed that all
objections except as to form are preserved.

MS. OBOD: Right.

- - -

(It is hereby stipulated
and agreed by and between counsel for
respective parties that reading, signing,
sealing, certification and filing are waived
and that all objections, except as to the form
of questions, be reserved until the time of
trial.)

- - -

EXAMINATION

- - -

BY MR. SAINT-ANTONINE:

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

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 15

**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

EXPERT REPORT OF NELSON L. FLORES, PH.D.

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.

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

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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, Manzies & 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.

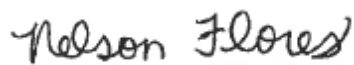
IV. Conclusion and Opinion

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.
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- 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.
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- 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.
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- 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.
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- Flores, N. (2016). A tale of two visions: Hegemonic whiteness and bilingual education. *Educational Policy*, 30, 13-38.
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- 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.
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- 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.
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- 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.
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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 translanguing 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.
- Flores, N. (April, 2016). Developing a heteroglossic vision of dual language education: Translanguaging texts and the Common Core. American Educational Research Association, Washington DC.
- Flores, N. (April, 2016). The specter of semilingualism. American Educational Research Association, Washington DC.
- Flores, N. (February, 2016). What counts as language policy in the school district of Philadelphia. Ethnography Forum, Philadelphia, PA.
- Flores, N. (April, 2015). A tale of two visions: Hegemonic whiteness and bilingual education. American Educational Research Association, Chicago, IL.
- Flores, N. (April, 2015). Markets of academic language: Producing governable subjects through systemic-functional linguistics. American Educational Research Association, Chicago, IL.
- Flores, N. (April, 2015). From language as resource to language as struggle: Developing a material antiracist vision of bilingual education. American Educational Research Association, Chicago, IL.
- Flores, N. (March, 2015). Superdiverse Erasures: Exposing the ideological underpinnings of sociolinguistics. GURT, Washington DC.
- Flores, N. (February, 2015). Race-radicalism or neoliberalism? Developing bilingual spaces in Philadelphia schools. Ethnography Forum, Philadelphia, PA.
- Flores, N. (December, 2014). From civil rights to neoliberalism. Developing bilingual spaces in Philadelphia schools. American Anthropological Association, Washington DC.
- Flores, N. (April, 2014). More than meets the eyes: Unpacking the dynamic bilingualism of a segregated charter school. American Educational Research Association, Philadelphia, PA.
- Flores, N. & Kleyn, T. (April, 2014). Challenging deficit perspectives of “long term English language learners.” American Educational Research Association, Philadelphia, PA.

- Flores, N. & Schissel, J. (March, 2014). A water-cycle based approach to bilingual assessment in the era of the Common Core. American Association for Applied Linguistics, Portland, OR.
- Schissel, J. & Flores, N. (March, 2014). Dynamic bilingualism as the norm: Envisioning a heteroglossic approach to standards-based reform. American Association of Applied Linguistics, Portland, OR.
- Flores, N. (June, 2013). The dynamic turn and plurilingualism: Social justice in a (white) neoliberal age. International Society for Language Studies, San Juan, Puerto Rico.
- Flores, N. (April, 2013). Plurilingualism: Language ideology for a neoliberal world. American Educational Research Association, San Francisco, CA.
- Flores, N. (March, 2013). The dynamic turn: Plurilingualism and neoliberal governmentality. American Association for Applied Linguistics, Dallas, TX.
- Flores, N. (May, 2012). A case study of policy and practices at the Cypress Hills Community School. International Linguistic Association, New York, NY.
- Flores, N. (May, 2012). Static monolingualism and “Long Term English Language Learners.” International Linguistic Association, New York, NY.
- Flores, N. (March 2012). Crossing boundaries: Facilitating high achievement for emergent bilinguals through transcaring. National Association for Bilingual Education, Dallas, TX.
- Flores, N. (February, 2012). From program to policy: Reframing the debate on bilingual education in a time of crisis. Inter-University Program for Latino Research, New York, NY.
- Flores, N. (April, 2011). Access and achievement: The impact of New York City’s small school movement on Latino students. American Education Research Association, New Orleans, LA.
- Flores, N. (April, 2011). False oppositions and shared language ideologies in the bilingual education policy debate. American Education Research Association, New Orleans, LA.
- Flores, N. (April, 2011). Challenging the bilingual/ESL dichotomy in small high schools. Association of Latin American Students Education Across America Conference, Teachers College, New York, NY.
- Flores, N. (March, 2011). How does size matter? The impact of the rise of small schools on Latinos and emergent bilinguals in New York City. New York State Association for Bilingual Education, New York, NY.
- Flores, N. (May, 2010). From deficiency to biliteracy: Meeting the needs of English language learner. American Education Research Association, Denver, CO.

Teacher Education Symposium (February, 2010). A necessary crisis: Addressing power, privilege, and normativity in teacher education courses. Democratic Education Symposium, Medgar Evers College, New York, NY.

Flores, N. (December, 2009). Languageing from the bottom up: Reconceptualizing teacher education. International Conference on Teacher Education and Social Justice, University of Illinois, Chicago, IL.

Flores, N. (April, 2008). *Mandar obedeciendo*: Toward an anti-oppressive theory of social change. Emerging Scholars Conference, CUNY Graduate Center, New York, NY.

AERA Symposium (April, 2008). Preparing teachers to facilitate changes in schools: Voices from classrooms engage with voices from universities. American Educational Research Association, New York, NY

Flores, N. (March, 2008). Policy paradox: How Bloomberg's small school movement undermines immigrant education and what can be done about it. Association of Latin American Students Education Across America Conference, Teachers College, New York, NY.

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 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
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**REBUTTAL EXPERT REPORT
OF
NELSON L. FLORES, Ph.D.**

JUNE 1, 2018

REBUTTAL REPORT OF NELSON L. FLORES, PH.D.

I. Information Considered

The primary text consulted for this rebuttal report was the expert report submitted by Dr. Katherine A. Winterbottom. I also reexamined several of the resources that were included in Exhibit A in my original expert report including several articles and the depositions of Ms. Galarza, Ms. Perez, and Ms. Lin. I also examined some additional materials, which are cited in Exhibit A hereto.

II. General Principles for Translation and Interpretation During the IEP Process

I would like to begin by reiterating the three principles that I described in my original expert report that summarized the research consensus on translation and interpretation support for LEP parents and caregivers as they navigate the IEP process:

1. High quality translations of documents must be provided 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 provided to LEP parents and caregivers after the IEP meeting with any changes made based on the conversation.

While Dr. Winterbottom references some evidence seeking to contradict the importance of offering high quality translations to all LEP parents and caregivers (#1 and #3), she does not attempt to offer any evidence to contradict the importance of having qualified and trained interpreters available to support LEP parents and caregivers in the IEP meeting (#2). I would like to, therefore, further elaborate on this area of agreement between us and address how, despite her claims to the contrary, the School District of Philadelphia has failed to consistently provide

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qualified and trained interpreters. I will then shift my focus to responding to her attempt to discount the importance of high quality translation services for LEP parents and caregivers.

III. Importance of Qualified and Trained Interpreters

In her expert report, Dr. Winterbottom acknowledges the importance of having qualified and trained interpreters available for LEP parents and caregivers as they navigate the IEP process. As she indicates, interpreters should serve as cultural brokers who have expertise in special education and knowledge of the cultural background of the LEP parents and caregivers they are working with. This parallels the argument I made in my expert report, reflecting our agreement as to what constitutes a qualified and trained interpreter. In short, both experts in this case have the same analysis of what the research indicates are the key characteristics of trained and qualified interpreters and the importance of ensuring that such trained and qualified interpreters are consistently made available to LEP parents and caregivers throughout the IEP process. Therefore, our point of disagreement is not the necessity of qualified and trained interpreters but whether the School District of Philadelphia is consistently providing this necessity to LEP parents and caregivers.

Dr. Winterbottom suggests that the School District of Philadelphia is, in fact, complying with the requirement for trained and qualified interpreters through its Bilingual Counseling Assistant (BCA) program. She takes at face value District officials' claims that BCAs fit the criteria for qualified and trained interpreters that both of us laid out in our reports. To do so, she has to overlook deposition testimony from the plaintiffs and District administrators that raise questions and concerns regarding the qualifications of BCAs. For example, Ms. Lin reported in her deposition that the BCA she worked with often had a hard time interpreting technical terms related to special education into Mandarin. Importantly, Ms. Lin noted this was not because no

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interpretation was provided, but because the BCA simply did not have the appropriate background knowledge to be able to interpret the terminology effectively. *See, e.g.*, Lin Dep. at 171:5–172:4, 181:10–18. This raises important questions about the nature of the training provided to the BCAs and whether it is truly preparing them for the interpretation required throughout the IEP process.

In addition to concerns about the training provided to BCAs related to offering interpretation during the IEP process is the fact that the BCAs are overtaxed and cannot handle all IEP meetings. As Ludy Soderman, who is in charge of the BCAs for the District testified, there are approximately 216 schools in the District with BCAs covering approximately 100 school buildings. Soderman Dep. at 173:24–174:13. Each BCA is assigned, on average, to three different schools. *Id.* at 173:24–174:9. Ms. Soderman testified that the duties of a BCA include covering not only IEP meetings but all school conferences and other meetings, as well as providing interpretation if necessary in the evaluation of students. They provide ongoing communications for all LEP students, LEP parents/caregivers and school staff, participate in both individual and group discussions with school counselors, and assist students and parents in creating and refining postsecondary educational, vocational and career plans. *Id.* at 184:14–185:23. BCAs also provide information to students about colleges and college scholarships and assist students in resolving academic credit issues, in addition to providing interpretation services at special education and regular education meetings. The many responsibilities of BCAs raise concerns about their availability to focus on ensuring that LEP parents and caregivers are able to fully participate in the IEP process. Of particular concern is that according to Natalie Hess, the director of the special education office known as the Office of Specialized Services (OSS) the District currently does not keep track of how often BCAs were provided to LEP parents and

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caregivers to support them through the IEP process. Hess Dep. at 46:1–3. Similarly, Ms. Hess testified that no data are maintained regarding the percentage of IEP meetings during which a BCA is present. *Id.* at 122:7–10. Ms. Hess further testified that she is not aware whether special education liaisons (“SELs”) maintain data on whether BCAs have been requested to attend IEP meetings. *Id.* at 52:1–53:8. In short, there are no records of how often BCAs are made available to LEP parents and caregivers during the IEP process.

Dr. Winterbottom acknowledges that BCAs are not always available to provide interpretation services during the IEP meeting. She reports that when this occurs the District will reschedule the IEP meeting, have a “bilingual teacher or staff member to interpret during the meeting, or us[e] Language Line” (p. 14). I raised concerns about Language Line in my expert report and continue to have the same concerns about whether someone with no background in special education or the specifics of an IEP will be able to effectively interpret for LEP parents and caregivers as they participate in the IEP process. It is also unclear to me how Language Line fits the criteria that Dr. Winterbottom herself laid out about qualified and trained interpreters serving as cultural brokers for LEP parents and caregivers. Ms. Hess acknowledged that she does not track the frequency with which Language Line telephonic interpretation services is used for IEP meetings. Hess Dep. at 45:5–24. This fact was confirmed by Ms. Soderman, who testified that she does not keep track of (and does not believe anyone at the District keeps track of) when the District uses live interpretation versus telephonic interpreters for IEP meetings. Rather, the decision to use either live interpretation or telephonic interpretation is made at the building level. Soderman Dep. at 40:18–41:14. Moreover, she also testified that while telephonic interpretation invoices include the name of the person who used the service, they do not reflect the purpose of the call or the reason the service was used. *Id.* at 180:16–182:24.

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I also have concerns about the vagueness of the “bilingual teacher or staff member” category of people who could be asked to provide interpretation services should BCAs not be available. Simply being a bilingual teacher or staff member certainly does not make one qualified to offer interpretation services during an IEP meeting. It is also necessary to have proper training in interpretation as well as background knowledge in special education along with the specifics of the case being discussed (Cho & Gannotti, 2005; Lo, 2008; Pang, 2011; Zhang & Bennett, 2003). Yet, it is clear that these principles, which Dr. Winterbottom herself agrees with, are not currently being followed by the District. For example, Ms. Soderman did not know if family members have been asked to act as interpreters in place of a BCA. Soderman Dep. at 106:14–16. She also testified that she was unaware of the frequency with which untrained bilingual school personnel were asked to provide interpretation services. She admitted, however, that she has encouraged schools to utilize these untrained bilingual employees by, for example, recommending that a school principal utilize her Spanish-speaking secretary. *Id.* at 137:14–138:4. This was consistent with statements made by Ms. Hess who testified that staff are used on an as-needed basis to provide interpretation in IEP meetings, despite the fact that they have received no training on effective interpretation strategies or background in special education. Hess Dep. at 46:16–48:12. Ms. Soderman even testified that in one instance, a school requested a Dutch interpreter, but because the District did not have one, she asked her neighbor, who was neither a District employee nor a trained interpreter, to provide interpretation services at a special education evaluation. Soderman Dep. at 143:6–144:15.

The varied experiences that plaintiffs reported with regard to the quality of interpretation may be attributed to the District improperly selecting someone to interpret who was not appropriately trained or qualified. Ms. Perez reported that during at least one meeting the

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principal, who was also engaged in the conversation as a participant, was supposed to be the interpreter but ended up only interpreting parts of what was being discussed. Perez Dep. at 108:1–109:4. This illustrates why it is inappropriate for an active participant in an IEP meeting to also be serving as an interpreter since the sole role of the interpreter should be to ensure that LEP parents and caregivers understand and are able to participate in the conversation. It also illustrates inconsistent policies and/or practices in the District that fail to ensure the availability of qualified and trained interpreters whose sole responsibility is to ensure the full participation of LEP parents and caregivers in the IEP process.

In summary, it appears that Dr. Winterbottom and I are in agreement about the important role that qualified and trained interpreters play in ensuring that LEP parents and caregivers can participate in the IEP process. We agree that these interpreters can serve as cultural brokers for LEP parents and caregivers if they have cultural competency as well as background knowledge in special education. We disagree, however, regarding whether the School District of Philadelphia is ensuring that qualified and trained interpreters are appropriately provided to LEP parents and caregivers as they participate in the IEP process. The testimony provided by the plaintiffs and District administrators in this case indicate that they are not. For one, the availability of interpreters has been inconsistent. Secondly, when interpreters have been made available, they have not always had the necessary expertise in special education to be able to interpret effectively. In addition, at least in one case the interpreter was an active participant in the meeting, undermining his ability to effectively interpret for the parent. All of this together suggests that the District is currently not ensuring that qualified and trained interpreters are consistently made available to LEP parents and caregivers of students with disabilities, thereby undermining their ability to fully participate in the IEP process.

REBUTTAL REPORT OF NELSON L. FLORES, PH.D.**IV. Importance of High Quality Translation of Documents**

While Dr. Winterbottom and I agree on the importance of offering qualified and trained interpreters, we appear to disagree on the importance of providing high quality translation of documents for LEP parents and caregivers. Dr. Winterbottom seems to be working under the assumption that offering interpretation services can serve as a substitute for offering high quality translation of documents. This assumption is not aligned with the research in the area that acknowledges the importance of both in ensuring the meaningful participation of LEP parents and caregivers in the IEP process (Hughes, Valle-Riestra & Arguelles, 2002; Rossetti, Sauer, Bui & Ou, 2017). It is also not aligned with the experiences of the plaintiffs in this case. For example, as reported in her deposition, Ms. Perez has three children with IEPs. This makes it difficult for her to remember the details of each of her children's educational plans. Having translated documents would allow her to revisit each of her children's plans to remind herself of the details of the services they are entitled to receive. *See Perez Dep.* at 30:3–8, 46:13–21, 52:2–13. This would also allow her to more effectively hold the District accountable for providing these services. In a similar vein, Ms. Lin testified in her deposition that having translated documents before IEP meetings would have allowed her to more effectively participate. *Lin Dep.* at 175:5–21. Ms. Lin's testimony is supported by research that indicates the importance of providing LEP parents and caregivers with translated documents prior to IEP meetings to allow them to effectively prepare for the meetings (Lo, 2012).

Dr. Winterbottom overlooks this testimony and research and instead provides some rationales for not translating documents. The first reason she offers is the 60-day timeline of the Child Study Team Evaluation. This rationale does not actually address the issue at the heart of this case, namely, whether LEP parents and caregivers are able to effectively participate in the

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IEP process. Research overwhelmingly illustrates the importance of translation of documents in ensuring LEP parents and caregivers understand and are able to participate in the IEP process (Lo, 2012; Pang, 2012; Rossetti, Sauer, Bui & Ou, 2017). This means that for the District to fulfill its obligation to ensure the meaningful participation of LEP parents and caregivers it must offer translated documents within the 60-day timeline.

A second reason Dr. Winterbottom devalues providing LEP parents and caregivers translated documents is the fact that some LEP parents and caregivers are not literate in their native languages. It is certainly true that LEP parents and caregivers who are not literate will not find translated documents to be helpful to them. Yet, the plaintiffs in this case are all literate in their native languages and were often still denied translated versions of documents prior to IEP meetings, even when they or their attorneys made official requests for translation and the District indicated that it would provide these translated documents. This illustrates the many barriers that continue to confront LEP parents and caregivers in accessing translated documents. These barriers are especially worrisome because of the fact that this is a population that is often extremely deferential to professionals (Harry, 1992; Kalyanpur, Harry & Skrtic, 2000) and would not, therefore, typically want to be seen as confrontational by insisting on translated documents in response to District inaction. Indeed, even Yovana Bustamante, who serves in the role of an advocate for LEP parents and caregivers, described in her deposition how intimidating the whole IEP process was for her when she participated it in with her own child and how difficult it initially was for her to raise critical questions because of her respect for the professionalism of the District staff. Bustamante Dep. at 39:6–12. These power differentials coupled with the research that compellingly speaks to the important role that translated documents can play in supporting LEP parents and caregivers throughout the IEP process

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(Rossetti, Sauer, Bui & Ou, 2017), suggest that the current District policy of translating documents on a case-by-case basis is not the most appropriate policy. A more appropriate policy would be for documents to be translated unless LEP parents and caregivers indicate that they are not able to read in their native languages. I can find no examples in the research literature or from my own personal experience of any other compelling reason for denying families translated documents.

A third reason that Dr. Winterbottom offers for not translating documents is the fact that IEPs are technical documents with terminology that may be too difficult for parents and caregivers to understand, with some words perhaps not even translatable to their native languages. But there is no research to support this rationale as a basis for denying parents translated documents. On the contrary, the complex nature of these documents indicates the importance of actually offering translated versions of technical documents so that these documents can serve as true resources for LEP parents and caregivers to familiarize themselves with the technical language associated with their children's disabilities and educational services and strategies critical to the IEP process. It is important for LEP parents and caregivers to familiarize themselves with this technical language prior to a meeting in order to effectively advocate for their children (Harry, 1992). In a similar vein, the process of translating the documents will alert the District to prepare in advance in order to best explain concepts, objectives and strategies that seem untranslatable to LEP parents and caregivers before the IEP meeting. This is important information for the interpreter who currently has to respond on the fly when working to interpret such information.

Finally, I would like to point to what I think is a misreading of the spirit of Zhang & Bennett (2003). Dr. Winterbottom is correct that the authors suggest that bombarding families

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with too much information could alienate them. Yet, they made that argument in the context of initial contact with LEP parents and caregivers at the beginning of the IEP process. They were also not referring in that section to written documents per se but rather information in general. So it is misleading to connect this quote, the way Dr. Winterbottom does, with Zhang and Bennett's call for reducing the volume of written information, since this was a different point made in a completely different section of the article. It is even more misleading to use this argument to make a case against providing LEP parents and caregivers with translated documents since Zhang and Bennett expressly recommend using "native language information and materials" when communicating with LEP parents and caregivers. Indeed, this is the overwhelming consensus of research in the area—that whenever possible schools should offer quality translated materials to LEP parents and caregivers.

Indeed, District officials themselves actually testified to the importance of providing translated documents to LEP parents and caregivers. Ludy Soderman testified that in order to meaningfully participate, parents must be able to understand their children's disabilities, whether their children are progressing, the services being offered to them, and their proposed placements. Soderman Dep. at 88:18–91:7. Yet, Ms. Soderman has attended IEP meetings in which only the headings of IEPs were translated, and none of the student-specific information is translated into parents' native languages. *Id.* at 169:6–18. Her opinion, however, is that this practice is insufficient to allow parents to meaningfully participate in their children's education. *Id.* at 169:1–170:4. Ms. Hess also testified that documents such as evaluation reports are important documents in the special education process that LEP parents and caregivers should understand. Hess Dep. at 118:4–14. Ms. Hess also testified that IEPs are important documents and that it is important for IEPs to be written, rather than verbally communicated, to ensure that the services

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are indeed being rendered. *Id.* at 269:24–270:19. She also testified that manifestation determination forms are significant due to the fact that a student cannot be disciplined if the student’s disability caused him or her to violate the school code of conduct. *Id.* at 150:1–22.

Despite the fact that District administrators acknowledge the importance of LEP parents and caregivers understanding written IEP documents provided to them and acknowledge the fact that IEP documents that only translate the headings are not effective in ensuring this understanding, this is currently the policy that the District implements. As Ms. Hess reported, only the headings of evaluation reports are translated into a parent’s native language, and student-specific information in IEPs is not translated. *Id.* at 94:6–15. In her experience, parents receive draft IEPs in English, and they are never fully translated for LEP parents and caregivers. *Id.* at 268:22–269:7. Furthermore, according to Ms. Hess, manifestation determination forms are also not translated. *Id.* at 151:12–20. In addition, Ms. Hess indicated that, even though an interpreter may be present at a meeting in which a special education document is discussed, the only portions of a document that would be orally interpreted for an LEP parent or caregiver are those that are read aloud in the meeting because someone is reading the document. *Id.* at 120:4–121:18. A special education document will only be read to a parent in an IEP meeting “[i]f the IEP facilitator is reading the document.” *Id.* at 121:15–16. The fact that fully translated IEPs are not provided to LEP parents and caregivers means that many will likely not understand what is in their child’s IEP.

Not only are the translations provided completely inadequate in ensuring the meaningful participation of LEP parents and caregivers, but these translations are also inconsistently provided. In fact, Ms. Hess testified that the Office of Specialized Services does not keep track of parents who are LEP. Hess Dep. at 79:24–80:16. Additionally, Ms. Hess testified that in order

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to ascertain the number of special education students in the District who live in a household with a home language other than English, the District's General Counsel's Office had to compile data maintained across several departments within the District. *Id.* at 97:18–24, 98:3–16. Ms. Hess also testified that before the current school year (2017–18), there was no detailed, step-by-step procedure identified for families with regard to requesting translation of documents. *Id.* at 116:14–21. Relatedly, Ms. Hess testified that the only translation requests that are tracked or monitored are those that happen to make it to her office. *Id.* at 109:14–22. Translation requests that are not brought to her office (*e.g.*, a verbal request made in an IEP team meeting) are not monitored or tracked. *Id.* at 110:2–7. Ms. Hess testified that she does not keep records regarding the documents that may or may not be translated by staff members at the school level. *Id.* at 320:8–14.

According to Ms. Hess' testimony, prior to the current school year, the District's policy or procedure for determining whether a translation request was approved was informal, consisting only of "a conversation between the employees who are doing the work to determine whether or not they have the ability to get it done based on the volume of work." Hess Dep. at 104:21–24. Her testimony also suggests that, prior to the current school year, the District had a policy pursuant to which translated documents were only provided to LEP parents or students who had filed legal cases against the District or in cases where a due process hearing officer had ordered translation of documents. *Id.* at 259:8–12, 260:21–261:5, 278:23–279:4, 284:5–12, 290:2–8. This suggests that most LEP parents or caregivers did not have translated documents made available to them.

In summary, the overwhelming consensus of the research indicates the importance of offering LEP parents and caregivers translated documents throughout the IEP process. It is clear

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from the testimony of the plaintiffs and District administrators that the District is currently not fulfilling its obligation here. For one, there is currently no system in place to identify which families would benefit from translated documents as they navigate the IEP process. Secondly, there are unnecessary barriers confronting LEP parents and caregivers in requesting and receiving translated documents. Thirdly, the quality of translated documents provided is currently inadequate. Indeed, District administrators even concede that translating the headings is not sufficient to ensure that LEP parents and caregivers can fully comprehend the documents being provided to them. The result is that LEP parents and caregivers are being denied their right to full participation in the IEP process.

V. Conclusion and Opinion

The most important components in ensuring the meaningful participation of LEP parents and caregivers in the IEP process are high quality translation of documents and the provision of trained and qualified interpreters to support LEP parents and caregivers in participating in the process. Plaintiffs' testimony, as well as the testimony of District administrators in this case, indicates that the School District of Philadelphia is not providing this support to all LEP parents and caregivers.

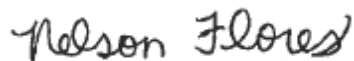
It is clear that the case-by-case approach to translating documents has not ensured that all LEP parents and caregivers who would benefit from these documents have access to them. An approach that defaults to offering translated documents unless specific LEP parents and caregivers indicate they are not able to read their native language would be a more appropriate policy that addresses Dr. Winterbottom's concern while also ensuring that District policies align with what the research indicates is necessary for the meaningful participation of LEP parents and caregivers in the IEP process.

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Yet, the inconsistent interpretation supports offered by the District are especially troubling considering the fact that the District's own expert witness reported on the pivotal role that trained and qualified interpreters play in the IEP process. The evidence suggests that the quality of interpretation services is inconsistent at best. These inconsistencies have impacted the ability of the plaintiffs in this case to participate in the IEP process and have undoubtedly also impacted the thousands of other LEP parents and caregivers in similar situations across the District.

My professional opinion remains unchanged since my original expert report. The research clearly speaks to the importance of providing high-quality translated documents before and after the IEP process, complemented by trained and qualified interpreters offering support during the IEP meeting itself as well as before and after the meeting as necessary and appropriate. My re-examination of the complaint and depositions in this matter indicates that the School District of Philadelphia is currently not consistently providing these supports and, therefore, is failing to ensure that LEP parents and caregivers are able to participate as equals in the IEP process. Should the District implement stronger and more consistent policies that ensure the consistent availability of translated documents and trained and qualified interpreters, I am confident that the participation of LEP parents and caregivers would be greatly enhanced.

Respectfully submitted,

A handwritten signature in cursive script that reads "Nelson Flores".

Nelson L. Flores, Ph.D.

(June 1, 2018)

Exhibit A: List of Additional Materials

Peer Review Journal Articles

Rossetti, Z., Sauer, J., Bui, O., and Ou, S, (2017). Developing collaborative partnerships with culturally and linguistically diverse families during the IEP process. *Teaching Exceptional Children*, 50, 172-182.

Legal Documents

- Deposition of Yovana Bustamante, February 22, 2018
- Deposition of Natalie Hess, January 25, 2018
- Deposition of Ludy Soderman, December 6, 2017
- Expert report of Katherine A. Winterbottom, Ed.S., May 11, 2018

EXHIBIT 17



DIRECT DIAL NUMBER:
(215) 575-7015

Marjorie M. Obod
mobod@dilworthlaw.com

September 27, 2017

VIA E-MAIL AND FIRST CLASS 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. 15-4782-MSG (E.D. Pa.)

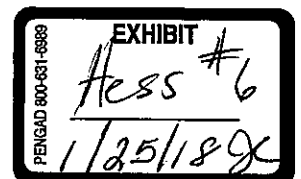
Dear Paul:

On Friday, September 15, 2017, I provided you with revised protocols that the School District of Philadelphia intended to implement in the 2017-2018 school year. As stated in that letter, the first training for Special Education staff is scheduled for Thursday, September 28, 2017. Because the protocol has been revised since September 15, 2017, I am attaching updated protocols that reflect the documents that will be used to educate and train the Special Education staff on September 28, 2017 and throughout the 2017-2018 school year. The Translation and Interpretation Services Section of the Quick Reference Guide that is attached will be built into the larger Special Education Quick Reference Guide that is used to educate and train Special Education staff throughout the 2017-2018 school year. I am also attaching a copy of the 2017-2018 Translation Request Form that will be used in connection with the process described in the Special Education Quick Reference Guide.

This protocol is being implemented consistent with the efforts of the School District of Philadelphia to constantly improve the services it provides to its students and their parents/guardians. The School District of Philadelphia remains willing to engage in negotiations with Plaintiffs that reflect these updated procedures.

1500 Market Street • Suite 3500E • Philadelphia, PA 19102-2101 • 215-575-7000 • Fax: 215-575-7200
www.dilworthlaw.com • Cherry Hill, NJ • Harrisburg, PA • Wilmington, DE • New York, NY

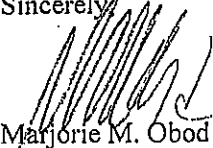
119773520_1



Paul H. Saint-Antoine
September 27, 2017
Page 2

As always, please let me know if you have any questions.

Sincerely,



Marjorie M. Obod

MMO:def
Enclosure

cc: All Counsel of record (*via email*)

SCHOOL DISTRICT OF PHILADELPHIA
OFFICE OF SPECIALIZED SERVICES

2017-2018 TRANSLATION REQUEST FORM

[SCAN and EMAIL this Request Form and document(s) to be translated to OSS, Nancy Velez (navelez@philasd.org).]

Date of Request: _____

School: _____ Network #: _____

District Requester's Name: _____

School Contact Name: _____ School Contact Title: _____

School Contact Email Address: _____ @philasd.org School Contact Phone: _____

Student Full Name: _____

Student ID#: _____

Document(s) to Translate: _____ # Pages to Translate: _____

Translate from ENGLISH to (Language): _____

☐ APPROVED

☐ DENIED

Special Education Director: _____ Date: _____

Special Instructions: _____

If denied, date submitted to OSS Deputy Chief: _____

OSS Deputy Chief: ☐ APPROVED
☐ DENIED

Date of Approval/Denial by OSS Deputy Chief: _____

Final Determination: _____

Date distributed to parent by Special Education Director: _____

OSS USE ONLY

Date Request Received: _____

Date Outsourced: _____

Date Translation Received: _____

Date Invoice Received: _____

Invoice #: _____

Cost: _____

Date Submitted for Payment: _____

Date Translated Doc Sent to Requester: _____

Notes: _____

Special Education Parental/Guardian Rights

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

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

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

Quick Reference Guide

Translation and Interpretation Services

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

<p>efforts to come to the school and utilize the District's interpretation services and every effort should be made to ensure the parent/guardian is supported in such efforts.</p> <p>5. The District understands that not every parent/guardian will be able to visit their child's school to make use of these services, but the District asks that parents/guardians work with the SEL to arrange a time to do so, if possible. Every effort will be made to accommodate a parent/guardian's schedule, which may include arranging for meetings before or after regular school hours, if feasible. Parents/guardians will be allowed to bring family members, friends, or community advocates to assist with interpretation services.</p> <p>6. The use of Pacific Interpreters services will always be made available with assistance from the neighborhood school SEL. In addition, BCA services during IEP meetings can be arranged by contacting the SEL or through a formal request via the District's online site. Interpretation services shall be made available upon request to parents/guardians who are limited English proficient (LEP) at all IEP meetings.</p> <p>7. Parents/guardian who utilize interpretation services will be asked to confirm that the interpretation services permitted them to meaningfully participate at the IEP meeting and documentation of the parent/guardian's confirmation will be included in the IEP meeting under the section of parent concerns or in the NOREP sent to the parents/guardians.</p> <p>8. If in-person interpretation services are not practically accessible to a parent/guardian or if he/she feels that such services were not adequate to permit meaningful parental preparation, the parent/guardian may request a translation of the special education documents, whether drafts or finals at any time, including prior to the IEP meeting. Those requests should be directed to the SEL. The parent/guardian's request will be handled pursuant to the procedure(s) set forth below.</p> <p>9. A parent/guardian may also request written translation of the special education documents, whether drafts or finals, at the IEP meeting. Those requests should be directed to the SEL. The determination of whether a written translation will be provided shall be made pursuant to the following protocol:</p> <p>The SEL will first ask the parent/guardian:</p>	
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<p>1. Did you request interpretation services prior to today?</p> <p style="margin-left: 40px;">a. If so, did the interpretation services help you understand your child's special education documents?</p> <p style="margin-left: 40px;">b. If not, what can we do to help you meaningfully participate?</p> <p>2. Do you feel you have enough information to make an informed decision about your child's special education services?</p> <p>If the answer to Question # 2 is "no", the parent/guardian will be asked:</p> <p style="margin-left: 40px;">3. Are you able to read English?</p> <p style="margin-left: 40px;">4. Are you able to read your native language?</p> <p>If the answer to Question # 4 is "yes", the parent/guardian will be asked:</p> <p style="margin-left: 40px;">5. Will translating the special education documents into your native language assist you in participating in the IEP process in a more meaningful way?</p> <p>If the answer to Question # 5 above is "yes", the SEL shall transmit the request for translation to the assigned Special Education Director and carbon copy Nancy Velez, who will log the request. Nancy shall log every request and keep records of whether such requests were granted or denied. When transmitting the request, the SEL shall include the information gathered during the SEL's discussion with the parent/guardian and may use a pre-printed form provided by the District.</p> <p>Once the Special Education Director receives a translation request from the SEL, the Director may follow-up with the SEL and/or the parent/guardian directly. In determining whether to approve a translation request, the Special Education Director will review the information provided by the SEL and/or parent/guardian and will also consider the following:</p> <p style="margin-left: 40px;">a) Whether the parent/guardian requested interpretation services prior to requesting a translated document.</p> <p style="margin-left: 40px;">b) Which services were provided to the parent/guardian prior to and at the IEP meeting.</p>	
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<p>c) Whether the parent/guardian reported that he/she was able to understand the special education document(s) and/or reported that he/she was able to meaningfully participate in the IEP process.</p> <p>If the Special Education Director approves a translation request, he/she will notify the SEL and Nancy Velez. The SEL will communicate this information directly to the parent/guardian. If a translation request is approved, Nancy Velez shall begin processing the request.</p> <p>If the Special Education Director denies a translation request, he/she will forward all information and/or documents relating to the request, as well as the decision to deny the request, to the Deputy Chief of the Office of Specialized Services for review. After reviewing the relevant information and/or documents, the Deputy Chief will make a final determination as to whether the request should be denied or granted. Upon making a final determination, the Deputy Chief will convey that decision to the Special Education Director and Nancy Velez. If the request is granted, Nancy Velez may begin processing the request. If the request is denied, the Deputy Chief will provide a written statement explaining why. The Special Education Director will distribute that statement to the parent/guardian who made the request. Nancy Velez will log the denial and keep a record of the reason(s) why the request was denied.</p> <p>If the request is approved, the translated special education documents, whether drafts or finals, must be provided to the parent/guardian within 30 days of the request for translation.</p>	
---	--

EXHIBIT 18

Saint-Antoine, Paul H.

From: Goebel, Danielle <dgoebel@dilworthlaw.com>
Sent: Monday, December 4, 2017 3:10 PM
To: Saint-Antoine, Paul H.; 'Maïra McInerney (mmcinerney@elc-pa.org)'; 'Michael Churchill (mchurchill@pubintl.org)'; 'ypelotte@elc-pa.org'; 'Dan Urevick-Ackelsberg'; Miller, Chanda A.; Michelen, Lucas B.; Andrews, Victoria L.
Cc: Obod, Marjorie L.; Hartman, Katharine
Subject: RE: Additional ESI production
Attachments: Quick Reference Guide.pdf

Counsel – In addition, please find attached the most recent iteration of the Translation and Interpretation section of the District's Special Education Quick Reference Guide.

Thanks,

Danielle

DANIELLE GOEBEL | DILWORTH PAXSON LLP
1500 Market Street | Suite 3500E | Philadelphia, PA 19102
Tel: (215) 575-7293 | Fax: (215) 575-7200
dgoebel@dilworthlaw.com | www.dilworthlaw.com

From: Goebel, Danielle
Sent: Monday, December 04, 2017 2:34 PM
To: 'Saint-Antoine, Paul H.'; Maura McInerney (mmcinerney@elc-pa.org); Michael Churchill (mchurchill@pubintl.org); ypelotte@elc-pa.org; Dan Urevick-Ackelsberg; 'Chanda.Miller@dbr.com'; 'Lucas.Michelen@dbr.com'; 'victoria.andrews@dbr.com'
Cc: Obod, Marjorie L.; Hartman, Katharine
Subject: Additional ESI production

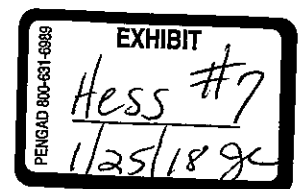
Paul --

Please see the attached correspondence for information on accessing additional documents from the District's ESI production.

Thanks,

Danielle

DANIELLE GOEBEL | DILWORTH PAXSON LLP
1500 Market Street | Suite 3500E | Philadelphia, PA 19102
Tel: (215) 575-7293 | Fax: (215) 575-7200
dgoebel@dilworthlaw.com | www.dilworthlaw.com



www.DilworthLaw.com

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Quick Reference Guide

Translation and Interpretation Services

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3. As per IDEA regulations, NOREPs, Procedural Safeguards, Permission to Evaluate, and Permission to Re-evaluate must be in the parents/guardians native language, unless it is clearly not feasible to do so. The District must distribute the Parental Rights Document to parents/guardians when the parents/guardians are given the PTE that initiates the IEP process as well as any time a parent/guardian is given a copy of the Procedural Safeguards that occurs at least annually at the annual IEP meeting.
4. Parents/guardians may request translation and/or interpretation services at any time throughout the IEP process. For example, upon receiving the 10-day notice of an IEP meeting that includes a draft IEP, a parent/guardian can request interpretation services by contacting the Special Education Liaison (SEL) assigned to the child's school and the SEL will arrange for the parent/guardian to meet with one of the District's Bilingual Counseling Assistants (BCA) or another bilingual staff member to review the child's special education document with the parent/guardian before the scheduled IEP meeting. The SEL should make every effort to accommodate a parent/guardian's schedule to meet with a BCA, including arranging for a meeting before or after regular school hours, if feasible. If a BCA or other bilingual staff member is not available, the SEL will make arrangements with the parent/guardian to come to the school and receive interpretation services through the District's phone-based interpretation service,

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

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

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

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

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

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

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

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

and at the IEP meeting.

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

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

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

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

EXHIBIT 19

**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 20

**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

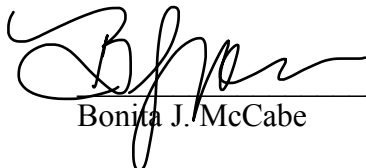
students with disabilities results in advocates spending time trying to explain District letters and documents to parents. Of course, most LEP parents have no advocates to support them through this process.

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