

EXHIBIT 1

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

T.R., et al.,

Plaintiffs,

v.

SCHOOL DISTRICT OF PHILADELPHIA,

Defendant.

Case No. 15-cv-4782

**DEFENDANT’S SUR-REPLY BRIEF IN FURTHER OPPOSITION
TO PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION**

Plaintiffs’ Reply does not remedy any of the shortcomings with their Motion for Class Certification, which continues to fail to establish any of the requirements of Rule 23.

I. Plaintiffs Disregard the Third Circuit’s Interpretation of Meaningful Participation

The crux of Plaintiffs’ case is the allegation the District’s practices violate the parental right to meaningful participation in their child’s IEP process, as mandated by the IDEA. Plaintiffs’ Reply ignores the Third Circuit’s analysis of the meaningful participation requirement, which considers the individual factual circumstances of each parent’s involvement. Because meaningful participation is not a one-size-fits-all standard, the District has a discretionary practice that gives appropriate latitude to school personnel to take the necessary steps to effectively engage parents through the variety of language services available. Def.’s Response at 2-5. The result is twofold: 1) Plaintiffs cannot establish commonality, insofar as the District does not engage in a common pattern of conduct, and 2) Plaintiffs cannot meet the requirement of Rule 23(b)(2), because the services needed for each parent to meaningfully participate can vary

significantly. Furthermore, Plaintiffs do not dispute the overwhelming record evidence that the Named Plaintiffs themselves, Ms. Lin and Ms. Perez, have both meaningfully participated in the IEP processes for their children. Def.'s Response at 14, n.7.

The District's discretionary practice is at odds with the commonality requirement for class certification, and Plaintiffs' characterization of the applicable case law is incorrect. Specifically, Plaintiffs' attempt to distinguish *Dukes* and *Rodriguez* simply underscores the fact that they cannot point to any common mode of exercising discretion in a discriminatory fashion, as is their burden. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 356 (2011), *Rodriguez v. National City Bank*, 726 F.3d 372, 383 (2013) (“[T]o bring a case *as a class action*, the named plaintiffs must show that each class member was subjected to the specific challenged practice in roughly the same manner.”).

II. Plaintiffs' Reply is Replete with Factual Inaccuracies

Plaintiffs' Reply perpetuates the false narrative, begun in their initial pleadings, that the District does not translate documents for parents, which is overwhelmingly contradicted by the factual record. Pls.' Reply Br. at 5. To be abundantly clear, the District provides Permissions to Evaluate, Notices of Recommended Placement, Procedural Safeguards, and Permissions to Re-evaluate to LEP parents in their native languages, as required by the IDEA. *See* Def.'s Response at Ex. C, Ex. H. In addition, numerous child-specific IEP process documents are translated every year by an outside vendor with whom the Office of Specialized Services contracts. *See* Def.'s Response at Ex. C. All of this is in addition to documents translated by the District's Translation and Interpretation Center for *all* LEP parents (not just parents of special education students), such as letters sent home to parents, information regarding workshops or trainings, and report

cards. See Def.'s Response at Ex. G (Monley dep.) at 77:4-81:20. Plaintiffs' gross misstatement of this fact at this stage in the litigation, after the District has produced thousands of documents and District employees have provided hours of testimony on point, is indefensible.

Other similarly egregious misstatements of fact in Plaintiffs' Reply include:

- Plaintiffs' claim that the District is somehow to blame for Plaintiffs' faulty class definition because it never raised the issue previously, which is just false. The District explicitly alerted Plaintiffs to the flaw in their class definition months ago when their trial plan failed to define the class. Ex. 1.
- Plaintiffs' implication that the District's issue with the term LEP is feigned for purposes of this motion is misleading. Numerous District witnesses took issue with Plaintiffs' use of the term LEP, particularly as applied to parents, as did Plaintiffs' own expert. See Def.'s Response at Ex. D (Capitolo dep.) at 122:21-124:2; Ex. 2 (Flores dep.) at 103:5-23; Ex. 3 (Still dep.) at 96:1-99:8; Ex. 4 (Sharer dep.) at 26:10-28:18.
- The claim that "there is no basis for the District's suggestion that there was a court order for the Named Plaintiffs to attend a settlement conference" is false. Pls.' Reply Br. at 14, n.13. Judge Strawbridge ordered that the Plaintiffs were "**required to appear in person**" for a settlement conference, yet Ms. Galarza, T.R., and Ms. Perez were not even aware that such a conference had occurred. Ex. 5 (emphasis in original); Ex. 10 (T.R. dep.) at 59:18-24; Def.'s Response at Ex. L (Perez dep.) at 58:5-13, Ex. B (Galarza dep.) at 150:7-14. Plaintiffs similarly offer no justification for the failure by counsel to convey offers of settlement to the

Plaintiffs. Plaintiffs' suggestion that counsel did not convey settlement offers because they were not "final" is problematic given that the rules of professional conduct require communication of all settlement offers. Pls.' Reply Br. at 14, n.13; Pa. Rule of Prof. Conduct 1.4 and cmt.; *see also Builders Square, Inc. v. Saraco*, 868 F.Supp. 748, 749 (E.D. Pa. 1994) ("An attorney has a duty to explore and timely communicate to his client settlement offers." (citing *Rizzo v. Haines*, 520 Pa. 484 (1989))).

- Plaintiffs' selective quotation of the deposition testimony of Marie Capitolo is misleading. Pls.' Reply Br. at 12. When reviewing the line of questioning from which Plaintiffs excerpt in totality it is evident that although Ms. Capitolo initially believed that translation services were necessary for Ms. Lin to meaningfully participate, it soon became apparent that translation of all drafts was, in fact, not necessary for her to meaningfully participate in IEP process meetings for her son. Ex. 9 (Capitolo dep.) at 63:3-71:12. To be clear, Ms. Lin continues to receive a number of documents translated, including all final IEPs.¹
- Plaintiffs' attempt to characterize Ms. Lin's Mediation Agreement as applicable only to a discrete time period is unsupported by the language of the agreement itself and at odds with her own understanding of the agreement. For example, Ms. Lin sent the agreement to District personnel in March 2017, seven months after signing it, as support for her demand that a particular interpreter be present

¹ Plaintiffs spend nearly a third of their reply defending Ms. Lin's status as LEP. This in and of itself makes the point that Ms. Lin's LEP status is controversial and will cause a distraction at trial, rendering her an inappropriate class representative. *See, e.g., Richburg v. Palisades Collection LLC*, 247 F.R.D. 457, 463 (E.D. Pa. 2008) (denying class certification where the proposed class representative was subject to a unique defense that was "ultimately [a] question ... of credibility, left for the jury, and one likely to focus the jury's attention away from the relevant class issues").

at a meeting, evidencing her belief that the agreement remained in effect. Ex. 6. The applicability of the Mediation Agreement to Ms. Lin's claims is a unique defense that is likely to become a focus of the litigation, rendering her neither typical nor adequate as a class representative. *Beck v. Maximus, Inc.*, 457 F.3d 291, 301 (3d Cir. 2006).

- With no cite to the record, Plaintiffs contend that there is a “lack of a sufficient number of trained interpreters and the lack of adequate resources to provide translations of IEP documents.” In fact, Plaintiffs can point to no record evidence in support of that proposition because it is simply not true. Ex. 7 (Monley dep.) at 87:1-88:17; Ex. 8 (Hess dep.) at 130:17-132:1, 302:7-303:23; Ex. 9 (Capitolo dep.) at 86:20-88:18.
- Plaintiffs incorrectly claim that the District is seeking reconsideration of the Court's previous decision on the Motion to Dismiss. Pls.' Reply Br. at 8. To the contrary, the District contrasted the motion to dismiss stage where mere allegations must be accepted by the Court, to Plaintiffs' current burden when they must now have record evidence to support their motion for class certification. Plaintiffs fail to meet their burden and cannot point to record evidence of their allegations of systemic failure, which is simply not supported now that the factual record has been developed.

For these reasons, and the reasons discussed in the District's Response, the District

respectfully requests that Plaintiffs' Motion for Class Certification be denied in its entirety.

Respectfully submitted:

/s/ Marjorie M. Obod
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EXHIBIT 1

Goebel, Danielle

From: Obod, Marjorie L.
Sent: Friday, March 23, 2018 4:17 PM
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Cc: 'Maura McNerney (mmcinerney@elc-pa.org)'; 'ypelotte@elc-pa.org'; 'Michael Churchill'; 'Dan Urevick-Ackelsberg'; Miller, Chanda A.; Michelen, Lucas B.; Andrews, Victoria L.
Subject: RE: T.R., et al. v. SDP -- Plaintiffs' Objections and Second Supplemental Responses to Second Set of Interrogatories

Good afternoon Paul,

While we appreciate you sending this 2nd supplemental response to the interrogatory, it is deficient in many respects. We were more than accommodating with regards to giving Plaintiffs additional time to provide the answer, which we did not receive until the last day of discovery, but the information provided is not a complete response. We firmly believe we are entitled to a fulsome response to this interrogatory and are prepared to take this issue to the Court if necessary.

The interrogatory requests information regarding how Plaintiffs propose to present the claims at trial. This is the crux of the interrogatory, yet this supplemental response falls far short of presenting any sort of workable plan for trial, as is Plaintiffs' burden, and instead demonstrates that this case is far too broad and overreaching to be suitable for class treatment. Despite being 43 pages long, the Plaintiffs' response is just a list of individualized grievances with no common thread, unmoored from the Amended Complaint, the elements of the claims at issue, and the requirements for class certification. The response fails to address the threshold issue that the majority of the Named Plaintiffs have not exhausted their administrative remedies for the IDEA claims (Counts I and II) and must establish that there is "systemic failure" such that an administrative hearing cannot grant the requested relief (*see* Judge Goldberg's ruling on the Motion to Dismiss). This issue, which is a threshold issue for the majority of the Named Plaintiffs and both of the proposed classes, is glaringly absent from the response proffered by Plaintiffs. The factual record, which is now fully developed, simply does not support Plaintiffs' systemic legal deficiency theory. Similarly, the response relies upon a definition of LEP that is only applicable to students, and fails to acknowledge the significant testimony regarding the vast range of parental language proficiency (i.e. parents who are bilingual, parents who are illiterate, etc.) or propose any way to establish through common evidence that those parents are all entitled to the same relief, as is necessary to justify this litigation's end-run around the administrative process put in place by Congress.

Additionally, the interrogatory seeks information regarding questions of law or fact that are individualized and *not* common to the class for each count, which was entirely ignored in this iteration of Plaintiffs' response. Plaintiffs cannot, in good faith, claim that there are no individualized issues, the most obvious of which is that two of the Parent Named Plaintiffs, Ms. Lin and Ms. Perez, entered into legal settlement agreements with the District that directly bear upon the claims and relief sought in this matter. Plaintiffs are clearly aware of this individualized issue as the District raised it in the Answer and it was covered extensively at depositions, so the failure to address this highly individualized and potentially dispositive issue is inexplicable. Please include in your supplemented answer how you intend to deal with that issue should those claims be permitted to proceed to trial.

Overall, the supplemented response ignores the actual elements of the claims that were brought and instead focuses on issues like the District's record-keeping. Consistent with the testimony and documents produced in discovery, OSS ensures compliance with all state and federal record keeping requirements, including those imposed by the IDEA. Plaintiffs do not and cannot point to any legal authority requiring centralized records of each translation of IEP process documents at the school level. The District has never maintained that the translation request spreadsheet maintained by Ms. Velez is an exhaustive recording of every translated request ever made, so the allegation that the District has "underreported" the number of requests does not make sense. Rather, the spreadsheet is a budgetary document, intended to track the funding used to have documents translated by one particular contractor, Global Arena. If Plaintiffs have some legal authority for the contention that the District is required to have a centralized record for all translation requests please provide it in the supplemented response. Record keeping is one example of new issues raised in Plaintiffs' supplemental interrogatory that goes beyond the Amended Complaint in an attempt to allege purported deficiencies despite

overwhelming testimony and documentation that the District has had an effective practice for ensuring meaningful participation of LEP parents of students with disabilities that predates the filing of this lawsuit.

Rather than providing the necessary response regarding the claims brought in the First Amended Complaint, the supplemental response instead purports to raise new issues, after the close of discovery, which have no basis in Plaintiffs' Amended Complaint, including: "[t]he policy, procedure, or practice of the District for identifying students who are ELs" and "[t]he policy, procedure, or practice of the District for identifying students with disabilities" (2nd supplement at p. 6-7). There are no allegations in the Amended Complaint regarding these supposed issues, the requested relief has no relation to these issues, *and* there is no Named Student Plaintiff to whom such issues would even be applicable. Instead, this is a thinly veiled attempt to remedy the testimony of Ms. Galarza, a Named Parent Plaintiff, who testified that she believed this case to be about a failure to identify children with disabilities, which is not and has never been part of this case. Plaintiffs' attempt to back-door claims that fit her understanding is both disingenuous and factually insupportable insofar as Ms. Galarza plainly testified that the failure to identify T.R. as in need of special education services occurred while she was a student at a non-District school.

Finally, the 43 page response is replete with allegations unrelated to the claims at issue and contains numerous factual statements that are inaccurate and/or contradicted by record evidence, including the testimony of Plaintiffs themselves. A few examples include:

- The attack on the level of training of the BCAs is without basis in the record. Ludy Soderman and Jenna Monley, who have responsibility for overseeing the BCAs, both testified extensively about the training that the BCAs receive, including training specifically about special education, special education terminology and interpreting at IEP meetings. The statement that "District personnel described little, if any, relevant training on special education issues and interacting with LEP parents" is false.
- The claim that the District's use of Language Line in IEP meetings "interferes with the parents' meaningful participation" is without record support. In fact, there is record evidence to the exact opposite, insofar as Ms. Galarza testified she was able to communicate effectively using Language Line and neither Ms. Perez or Ms. Lin have ever used it for an IEP meeting.
- The statement that BCA schedules are not made available to families is false. Ms. Sharer, Ms. Still, Ms. Soderman, Ms. Hess, and Ms. Capitolo testified to the attendance of BCAs at all IEP meetings and Ms. Soderman explicitly testified that BCAs write a letter to parents at the beginning of each school year to advise them of which days they are at the school and the services they can offer.
- The instances of mischaracterization of testimony are too numerous to list all of, but specifically, the claim that "Natalie Hess testified that there are no records maintained with respect to bilingual evaluations conducted by the District" is particularly egregious because a) she did *not* say there were no records – she said she wasn't aware of them, and b) Nancy Velez testified at length about the process for tracking bilingual evaluations and there were a significant number of documents produced relating to that process, so counsel's reliance on this testimony is disingenuous.
- Plaintiffs' repeated reliance on letters from counsel is inappropriate insofar as those letters are not admissible evidence and there is abundant record evidence that goes well beyond the information provided therein. Similarly, the Plaintiffs' purported reliance on the District's responses to interrogatories, which were provided prior to any depositions and the production of ESI, is disingenuous given that Plaintiffs are clearly aware of significant additional responsive information, by way of the dozens of hours of deposition testimony and thousands of pages of documents produced. Plaintiffs cannot turn a blind eye to the significant evidence of the District's practice, for ensuring meaningful participation to parents through both interpretation and translation, that was in place for years prior to this litigation, simply because it is not explicitly identified in an interrogatory response.

We want to give you an opportunity to address these issues in a more responsive document. If you are not willing to do so, please let us know immediately and we will bring this issue to the attention of the Court. Additionally, please advise as to the status of Ms. Lin's supplemental document production, which we have asked about on numerous occasions and received no substantive response, as we would like to include this in our motion to the Court if necessary.

We look forward to hearing from you.

Enjoy your weekend.

Best regards,

Marjorie

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From: Saint-Antoine, Paul H. [mailto:Paul.Saint-Antoine@dbi.com]

Sent: Friday, March 16, 2018 8:33 PM

To: Obod, Marjorie L.; Goebel, Danielle

Cc: 'Maura McInerney (mmcinerney@elc-pa.org)'; 'ypelotte@elc-pa.org'; 'Michael Churchill'; 'Dan Urevick-Ackelsberg'; Miller, Chanda A.; Michelen, Lucas B.; Andrews, Victoria L.

Subject: RE: T.R., et al. v. SDP -- Plaintiffs' Objections and Second Supplemental Responses to Second Set of Interrogatories

Dear Marjorie and Danielle,

Attached is a copy of Plaintiffs' Objections and Second Supplemental Responses to Defendant School District of Philadelphia's Second Set of Interrogatories.

Thanks, and have a good weekend.

Paul

Drinker Biddle & Reath LLP is a Delaware limited liability partnership. The partner responsible for the firm's Princeton office is Jonathan I. Epstein, and the partner responsible for the firm's Florham Park office is Andrew B. Joseph.

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EXHIBIT 2

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

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T.R., et al	:	
	:	Case No. 15-cv-4782
	:	
vs.	:	
	:	
	:	
School District of	:	
Philadelphia	:	

- - -

Philadelphia, Pennsylvania

Friday, July 6, 2018

- - -

Deposition of Nelson Flores, Ph.D. was taken at
Dilworth Paxson, LLP, 1500 Market Street, Suite 3500E,
Philadelphia, Pennsylvania, commencing at 9:30 a.m.
before Marcia Sulla, R.M.R., and Notary Public.

- - -

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Nelson Flores, Ph.D.

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Nelson Flores, Ph.D.

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1 **Q** **Do you have current knowledge of what the New**
2 **York school practices are in communicating with the**
3 **LEP parents?**

4 A I don't.

5 **Q** **And the none of your articles use the term LEP?**

6 A No.

7 **Q** **None of the articles you attached use the term**
8 **LEP?**

9 A No.

10 **Q** **Can we talk about that a little bit?**

11 A LEP is a legal term. It's kind of a policy
12 term. Academics typically don't use the term LEP.
13 They do use the term IEP. So I think academics have
14 argued that LEP is kind of more of a deficit oriented
15 term. So the terms that are typically used in the
16 field have been English learner or English language
17 learner. More recently emergent bilingual has become
18 a term that academics use.

19 When I'm writing an article for an academic
20 audience, I use the terminology that's going to be
21 more familiar to an academic audience. Where as when
22 I'm speaking to policy people, I want to use terms
23 that will be more clear to them.

24 **Q** **In your reports you state that there is no**

EXHIBIT 3

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ALLISON STILL

EXAMINATION BY

MR. SAINT-ANTOINE

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MS. OBOD

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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

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Agreement to Terminate (Incomplete)

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Agreement to Terminate (Complete)

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2 (Pages 2 - 5)

<p style="text-align: right;">Page 94</p> <p>1 students who have an IEP are also marked in the 2 system. 3 Q. So, there's a field that 4 indicates whether they have an IEP currently or 5 not? 6 A. Yes. 7 Q. And how far back could you do a 8 similar computer search to generate that 9 number? 10 A. I'm not sure. Can you clarify? 11 Q. Sure. Could you -- going back 12 how many years could you identify the number of 13 English learners who had an IEP? 14 A. I would have to ask specifically 15 if they can do these kind of snapshots. 16 Q. Okay. And who would you ask if 17 they could have done that? 18 A. People on the IT team that we 19 would work with on our data. 20 Q. I want to turn to the second top, 21 unless you need a break. Do you want to take a 22 short break? 23 A. I'm okay. 24 Q. Okay. As a reminder on Topic 2,</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. How does the district become 2 aware of whether a parent has limited English 3 proficiency? 4 A. Do you mean who in the district; 5 what do you mean. 6 Q. Well, there are parents in the 7 district that have English proficiency, right? 8 A. Yes. 9 Q. And I think it's reasonable to 10 assume that there are a large number -- given 11 the large number of students in the school 12 district, right? 13 A. Um-hum. 14 Q. How does the school district, if 15 at all become aware of whether these parents 16 are limited English proficient? 17 A. So, I don't do as much with that, 18 since that's the parent engagement and that is 19 another office. I know that it's part of the 20 enrollment process that students -- that 21 parents identify their primary language in the 22 student information system to complete that. 23 Yeah, for ESL teachers, they run a report that 24 shows the student identified as English</p>
<p style="text-align: right;">Page 95</p> <p>1 the policies, procedures and practices of the 2 district for identifying English proficient 3 parents. 4 A. Um-hum. 5 Q. Can you describe for me what 6 those policies, practices and procedure are? 7 A. Yeah, I mean, we don't identified 8 students as limited English proficient. We ask 9 for their primary language at the time of 10 enrollment. 11 Q. You said student -- 12 A. I mean parents, yeah. 13 Q. So, you ask the parents when they 14 are filling out the EH-40 what their primary 15 language is? 16 A. Um-hum. 17 Q. But the current policy doesn't 18 systematically ask for any other information to 19 flag parents with limited English proficient? 20 A. No. 21 Q. Does the district compile a list 22 of parents that may or may not be limited 23 English proficient? 24 A. I'm not sure.</p>	<p style="text-align: right;">Page 97</p> <p>1 learners and it indicates what their home 2 language is and that's usually the same as 3 their parents. It's not always, but they would 4 have to ask and find out. 5 Q. Okay. So, the systematic 6 question talks about the primary language, but 7 I think that you agree that that doesn't tell 8 you whether they have English proficiency or 9 not. They could be bilingual, correct? 10 A. Yes. 11 Q. So, am I right in terms of member 12 of the school district personnel becoming aware 13 of issues of proficiency by the parent, is it 14 fair to describe that as sort of an ad hoc 15 process? 16 A. I guess, yes. We usually just 17 find out from asking them. As a teacher, with 18 my students, we would have different 19 communications and I would say do you want this 20 in, these different languages for your parents 21 and they would say yes or no. 22 Q. Okay. And that was -- was there 23 for form that the students filled out for that? 24 A. No.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. It was just a teacher 2 individually asking a student and relying on 3 the student's feedback? 4 A. Yeah. Again, this isn't -- my 5 officer doesn't do the parent outreach as much, 6 so, I can't really speak to systems in place 7 now. 8 Q. To the extent there is on an ad 9 hoc basis information acquired by a teacher or 10 another school district person about a parent's 11 English proficiency, is that information 12 recorded anywhere in any systematic way? 13 A. Their English proficiency? 14 Q. Yeah. 15 A. No. 16 Q. Do you know how many parents of 17 students in the school district have limited 18 English proficiency, parents or guardians? 19 A. No. 20 Q. Is there any way to compile that 21 information? 22 A. No. We collect their primary 23 language. 24 Q. Is there a reason why on the</p>	<p style="text-align: right;">Page 100</p> <p>1 A. No. 2 Q. So, I asked the question about 3 whether you knew of all of the student in the 4 district currently how many parents were 5 limited English proficient and I believe the 6 answer was you didn't know and am I right to 7 assume that you also don't know of all the 8 special education students in the district how 9 many of their parents have limited English 10 proficiency; do you remember the answer to 11 that? 12 A. No. 13 Q. Do you know whether other school 14 districts capture that information on -- on the 15 parents English proficiency? 16 A. I don't know of any other school 17 district that does that. 18 MR. SAINT-ANTOINE: Bear with 19 me one second. This seems like a 20 good breaking point. 21 Off the record. 22 --- 23 (At this point, there was a 24 brief recess taken, after which, the</p>
<p style="text-align: right;">Page 99</p> <p>1 EH-40 there was no question for the parent 2 whether they had issues with limited English 3 proficiency? 4 A. I mean I think the question about 5 -- their question when you're asking for their 6 primary language, that's important to know, 7 what language they primarily use. That's 8 collected in that way. 9 Q. Understood, but is there a reason 10 why it doesn't include the additional language 11 about whether they have English proficiency? 12 A. I don't know the reason for why 13 it's not there. 14 Q. Going back for a moment to the 15 interrogatory number five. It includes 16 policies on -- with respect to identifying both 17 students that are English language learners as 18 well as parents with limited English 19 proficiency and identifies a number of 20 documents that we went through, exhibits four 21 through nine, are there any other written 22 documents that you're aware that that relate to 23 identifying parents as limited English 24 proficient?</p>	<p style="text-align: right;">Page 101</p> <p>1 deposition continued as follows:) 2 --- 3 MR. SAINT-ANTOINE: Back on the 4 record. 5 BY MR. SAINT-ANTOINE: 6 Q. Ms. Still, I want to turn now to 7 a different, but related, topic and ask you if 8 you are familiar with the district's policies 9 and practices with respect to the translation 10 or interpretation of IEP documents? 11 A. Oh, yes, if I'm aware of them, 12 yes, I have some knowledge of it, yes. 13 Q. What is your understanding of the 14 district's current policies and practices with 15 respect to those translations and 16 interpretations of IEP documents? 17 A. So, I know that certain pieces 18 are always translated and the IEP itself is, 19 usually it's upon request and that 20 interpretation is always provided at all IEP 21 meetings. 22 Q. What is your understanding of the 23 current policy based on? 24 A. Discussions with Natalie Hess in</p>

26 (Pages 98 - 101)

EXHIBIT 4

Page 1

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

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

Friday, December 8, 2017

Oral testimony of DONNA L.

SHARER, Ph.D, taken at Drinker, Biddle &
Reath, LLP, Philadelphia, Pennsylvania,
commencing at 9:40 a.m., before Janice L.
Welsh, Court Reporter and Notary Public; in
and for the Commonwealth of Pennsylvania.

* * *

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

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Representing the Defendant

13 ALSO PRESENT:

14 Maura I. McInerney, Esquire
Education Law Center
15
16
17
18
19
20
21
22
23
24

1 about your background as a teacher.

2 Dr. Sharer, do you recall when
3 you were at Furness, approximately what
4 percentage of those students were English
5 language learners?

6 A It changed every year, but at the time
7 the average was probably 40 percent. Last
8 year it was about 50 percent, and this year
9 it's down to about 45 percent.

10 Q Do you have an understanding of the
11 approximate percentage of the student's
12 parents that were limited English proficient?

13 A I have no idea. I'm not aware that that
14 data -- on the home language survey, which is
15 given to incoming students, there would be
16 information about the language spoken in the
17 home, or languages, but we certainly do not
18 have any data on the proficiency in English of
19 a parent or guardian. As a teacher you would
20 find out anecdotally, but I have no idea
21 officially.

22 Q Would anybody at the school have that
23 information?

24 A I don't believe so. When a student

1 enrolls there is a home language survey, and
2 one of the questions is about what language is
3 spoken in the home, but that doesn't ask the
4 parent's level of proficiency in English.

5 Students starting this year take WIDA
6 Screeners, W-I-D-A. It's an acronym. Before
7 that it was called W-APT, a different
8 acronym. It's a proficiency test.

9 Q Just so I understand, what you're saying
10 is when they fill out the home language
11 survey, and they write in that they speak a
12 non-English language at home, it doesn't
13 answer the question about whether or not the
14 parent or guardian has English proficiency; is
15 that right?

16 A No. I think it would be difficult to
17 ask that because then that parent would have
18 to say yes or no. I don't know how the parent
19 would know their level of proficiency
20 necessarily. When the home language survey is
21 completed, that sometimes is done in the
22 multilingual assessment center at the
23 district, and they would have interpretation
24 support. If it's done at a school level there

1 may be a bilingual counseling assistant that
2 helps, they may call what is now called
3 Language Line, what used to be Pacific
4 Interpreter, that helps with that. There's
5 many scenarios how that would get filled in.

6 For me, for example, if I
7 needed to contact a parent because we had a
8 class trip, the student hadn't brought in the
9 permission slip -- we do have the permission
10 slip translated in a number of languages --
11 but the student didn't bring it in, I tell the
12 student if you want to go on this trip I need
13 a permission slip. So, I'm going to call your
14 home. And then I just ask the student should
15 I get an interpreter, or should I just call
16 your house, and that's how I would find out,
17 but that's anecdotal and specific to certain
18 situations.

19 Q Was there any way other than anecdotally
20 that the teacher or principal would know if
21 the parent or guardian of the student had
22 English proficiency?

23 A I assume, just like with my situation,
24 it's case by case. If they need to contact

EXHIBIT 5

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

T.R., et al	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	NO. 15-4782
	:	
THE SCHOOL DISTRICT OF PHILADELPHIA	:	
Defendant	:	

SETTLEMENT CONFERENCE ORDER

Pursuant to the direction of the Honorable Mitchell S. Goldberg, a further settlement conference will be held in Chambers before the Honorable David R. Strawbridge in Room 3030, 3rd Floor, United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106 on **Tuesday, July 11, 2017** commencing at **9:30 a.m.**

Any individual plaintiff or other person bringing a claim (counterclaim or third-party claim) is **required to appear in person**. All other entities must appear through a duly-authorized representative knowledgeable about the facts of the case and with full settlement authority. The Court will grant an exception to this requirement **only** upon a **written** showing of good cause and exceptional circumstances.

The parties are directed to submit to the Court on or before **July 5, 2017**, a draft protocol which they believe would be appropriate for resolution of the case dealing with a principle area of concern. Where the parties are unable to agree upon the content of the protocol they must set out their own specific recommendations as to how that aspect of the protocol should read. Counsel are directed to make every effort to reach agreement as best they can. They are required to **meet and confer** prior to the July 11 conference in order to resolve as many differences as they can and narrow the matters in dispute. Where the parties do not agree they must articulate with particularity the basis for claims for their protocol entry. It is further **ordered** that intervenor plaintiff shall present to the district all particulars concerning their present circumstances. Counsel are further required to update any further information which was not available at our last conference of May 10, 2017.

All submissions to the Court must be sent electronically to Strawbridge_Chambers@paed.uscourts.gov.

The Court finds that diagrams, photos, schematics and particularly relevant documents are often helpful and their submission is encouraged. If any such items are in color, the color copies are to be brought to the conference. If any documents are over five (5) pages in length, counsel shall highlight or otherwise draw particular attention to the critically relevant portion of the document. Any submission which, including exhibits is over 20 pages, shall **not** to be submitted via facsimile or e-mail and should be sent via overnight mail or hand-delivery. Exhibits to any memorandum must be indexed and tabbed for ease of review. Counsel are

required to review Judge Strawbridge's Standard Policy and Procedures pertaining to settlement on the U.S. District Court for the Eastern District of Pennsylvania's website (<http://www.paed.uscourts.gov>).

BY THE COURT:

Date: June 13, 2017

/s/ David R. Strawbridge, USMJ

David R. Strawbridge
United States Magistrate Judge
phone: 267-299-7790
fax: 267-299-5065

EXHIBIT 6

Message

From: Anna Perng [anna.perng@gmail.com]
Sent: 11/6/2017 5:27:03 PM
To: Maura McInerney [mmcinerney@elc-pa.org]
Subject: Fwd: R.H. 's IEP meeting on 3/13.

----- Forwarded message -----

From: <mandylin323@gmail.com>
Date: Thu, Mar 2, 2017 at 4:14 PM
Subject: Fwd: R.H. 's IEP meeting on 3/13.
To: Stephanie McKenna Principal <sstover@philasd.org>
Cc: lydell@pa.gov, Anna <anna.perng@gmail.com>

Hi Principal Stephanie,

The attachment is the Mediation Agreement that I was signed with the school district in last August, 2016.

On item #7a, it said "The district will provide competent language interpretation service to review these documents in advance with parents." I have requested these services on 2/14 by the email, I sent the email to Marie and Christine, but Christine told me she needed to find out who will in charge to request these interpreter services from the school district. The IEP meeting will come soon (3/13), could you please help me to make this service request?

Sincerely,
Mandy

以下是转发的邮件：

发件人: mandylin323@gmail.com
日期: 2017年3月2日 GMT-5 上午3:02:05
收件人: "Capitolo, Marie" <mperaza@philasd.org>
抄送: Christine Kenney <chkenney@philasd.org>, SI Naziha Belazzougui <nbelazzougui@philasd.org>, Anna <anna.perng@gmail.com>
主题: R.H. 's IEP meeting on 3/13.

Hi Marie and Christine,

I would like to confirm that whether you have requested the interpreter service to help me understand the IEE? Who will be the interpreter for 3/13 IEP meeting? I will prefer Mr. Cong Wang be the interpreter. If he is not available, I would like to request Agnes Collison from Quantum be my mandarin interpreter. Quantum phone number is 215-627-2251.

Sincerely,
Mandy

在 2017年2月14日, 下午2:41, mandylin323@gmail.com 写道:

Hi Marie,

I have received a letter from Ms. Bela about the IEP meeting date is suggested on 3/13 at 10:00 am. We have a few things should be ready before the IEP meeting.

1. I need to receive a hard copy and email copy of the IEE psychological evaluation report translated into simplified Chinese.
2. I would like to receive a hard copy and email copy of the school district re-evaluation report in English and in simplified Chinese.
3. I would like the district to provide interpreter service help me to understand the draft IEP. I will prefer Mr. Cong Wang be the interpreter. If he is not available, I would like to request Agnes Collison from Quantum be my mandarin interpreter. Quantum phone number is 215-627-2251.

Thanks,
Mandy



File No. 15017-16-17-LS

Page 1 of 2**Mediation Agreement**

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

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

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

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

Continued

Mediator Theresa Church 8/18/16

Parent/Guardian Maria 8/18/16
1. AM A. M. for 8/18/16

Parent/Guardian Manas 8/13/16 202
 LEA Representative Marie (Liz) Miller 8/13/16
 Date 11/15 Miller 8/13/16

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.doe.pa.gov

- ⑤ An IEP meeting will occur within 30 days of the completion of the re-evaluation report.
- ⑥ The district in implementing the parent's 6-1-1 E/IEP will allocate an ABA trained ^{one on one} ~~BA~~ assistant as per the E/IEP.
- 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 or any reports, i.e., evaluations, and other relevant documents, 10-days in advance. The district will provide competent ^{language} interpretation services to review these documents in advance with parents.
 - b. District will provide the final copy of the IEP and ~~all~~ evaluation reports in simplified Chinese.
- ⑧ District will provide math or literacy enrichment for R.H. (Student).

EXHIBIT 7

215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830

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10 215-575-2000

mobod@dilworthlaw.com

11 Representing the Defendant

1 Q. Do you -- do you ever feel that the
2 district was understaffed when it came to BCAs?

3 A. No, I did not.

4 We never received -- and at that
5 time, I had not received any information,
6 whether it be from families or staff, that
7 indicated that we were not meeting individual's
8 needs.

9 It was just a matter of fact that
10 there was some additional funding and I wanted
11 to make sure that we increased our services to
12 provide more of a quality service to -- than we
13 had in prior years.

14 A lot of the work that we do is based
15 on service for days. So where I wanted to have
16 the ability to expand upon services. So,
17 before, we may have been able to provide a
18 school with two days, this opportunity now
19 allowed a school to go from two days to four
20 days or from three days to five days.

21 So it was about making sure that we
22 had adequate support and services that were
23 available for schools and increasing that. Not
24 based off of any feedback that was negative of

1 supports but if, in fact, there were, we would
2 address that as well.

3 Q. Okay. So do you feel that after the
4 increase of BCAs that was made, support to
5 family has improved?

6 A. I think that the same level of
7 quality services that were there before are
8 still there today. I think that we increased
9 our services. So as far as improvement -- the
10 improvement would be that someone now has
11 access to a BCA for more days than what they
12 had before, but the same quality that we
13 provided prior to the additional increase still
14 maintains.

15 Q. Have you ever received complaints
16 about BCAs?

17 A. I have not.

18 Q. Have you ever heard -- you can strike
19 that.

20 What type of oversight is there for
21 BCAs?

22 A. So the BCAs, as I said previously, is
23 an extension of our department, meaning that we
24 provide professional development support and

EXHIBIT 8

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

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

5 v. :

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

9 THURSDAY, JANUARY 25, 2018

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

17 ***

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

NATALIE HESS

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

34 (Pages 130 - 133)

NATALIE HESS

<p style="text-align: right;">Page 302</p> <p>1 Page 2?</p> <p>2 A. Yes.</p> <p>3 Q. And then there was an amendment?</p> <p>4 A. Yes.</p> <p>5 Q. That references 130,000?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know why there was -- why was</p> <p>8 there that increase? Was that due to</p> <p>9 increases in requests for translation?</p> <p>10 A. Yes.</p> <p>11 Q. And why did you seek \$1 million as the</p> <p>12 amount for the resolution?</p> <p>13 A. Again, it was a review of the data, the</p> <p>14 fact that we are having greater outreach to</p> <p>15 parents, the potential of having an increased</p> <p>16 volume of translation of documents.</p> <p>17 Q. And why was the contract amount for such</p> <p>18 a lower amount than the resolution amount of</p> <p>19 \$1 million?</p> <p>20 A. Because we started with what was more in</p> <p>21 line with what we had been spending in past</p> <p>22 years.</p> <p>23 Q. Knowing that if you needed to utilize</p> <p>24 more funding, you have it up to a million</p>	<p style="text-align: right;">Page 304</p> <p>1 that office for translation services and</p> <p>2 interpretation services from 2012, 2013 to the</p> <p>3 present?</p> <p>4 A. I'm trying to recall, when we went</p> <p>5 through documents, if that was one of them</p> <p>6 that I looked at. I don't recall.</p> <p>7 Q. And then, with respect to Topic Number</p> <p>8 14, annual budget, annual expenditures for</p> <p>9 translation services and interpretation</p> <p>10 services, during each school year for limited</p> <p>11 English proficient parents of students with</p> <p>12 disabilities for each school year, 2012, 2013</p> <p>13 to the present, do you know what the annual</p> <p>14 expenditures were for the District for</p> <p>15 translation services and interpretation for</p> <p>16 limited English proficient parents of students</p> <p>17 with disabilities?</p> <p>18 A. Do I know -- say that one more time.</p> <p>19 Q. Do you know what the annual expenditures</p> <p>20 were in total of the District?</p> <p>21 A. Oh, for all?</p> <p>22 Q. Yes.</p> <p>23 A. Not off the top of my head.</p> <p>24 Q. And does the District maintain any</p>
<p style="text-align: right;">Page 303</p> <p>1 dollars?</p> <p>2 A. Yes.</p> <p>3 Q. And on Topic Number 13, you were asked</p> <p>4 about annual budget, annual expenditures for</p> <p>5 translation services and interpretation</p> <p>6 services.</p> <p>7 Other than the Global Arena</p> <p>8 contract that we have discussed, are you aware</p> <p>9 of other funding, other annual expenditures or</p> <p>10 budgets for translation services and</p> <p>11 interpretation services?</p> <p>12 A. LanguageLine.</p> <p>13 Q. And do you know what that amount is?</p> <p>14 A. No.</p> <p>15 Q. And you also referenced that there may</p> <p>16 be other contracts in the Multilingual Office</p> <p>17 or in the Translation and Interpretation</p> <p>18 Office?</p> <p>19 A. I'm not in charge of those offices. I</p> <p>20 do have a contract with Global from our</p> <p>21 office. I do believe that there is another</p> <p>22 contract for Global Arena out of the Office of</p> <p>23 Interpretation and Translation.</p> <p>24 Q. Do you know about the expenditures of</p>	<p style="text-align: right;">Page 305</p> <p>1 policies, procedures, practices, for</p> <p>2 maintaining that information concerning the</p> <p>3 annual expenditures for translation services</p> <p>4 or interpretation services?</p> <p>5 A. We now have a system with Nancy Velez</p> <p>6 tracking those requests.</p> <p>7 Q. And they will be tracking those requests</p> <p>8 at OSS only, the Office of Specialized</p> <p>9 Services?</p> <p>10 A. She tracks those requests from our</p> <p>11 office, yes.</p> <p>12 Q. And are some of the requests still going</p> <p>13 to Mr. Wang, the smaller documents, the</p> <p>14 smaller IEP process documents?</p> <p>15 A. School teams can also utilize their</p> <p>16 services, yes.</p> <p>17 Q. So in some instances, school teams may</p> <p>18 be going directly to Mr. Wang, and your office</p> <p>19 would not be apprised of that?</p> <p>20 A. Well, not Mr. Wang, but certainly, that</p> <p>21 office.</p> <p>22 Q. Who is now the director of translation</p> <p>23 and interpretation services?</p> <p>24 A. Ludy Soderman.</p>

EXHIBIT 9

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.
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18
19
20
21

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

<p style="text-align: right;">Page 62</p> <p>1 in the meeting.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And the reference to law there, is</p> <p>5 that the law that we talked about earlier this</p> <p>6 morning, the IDEA?</p> <p>7 A. Yes.</p> <p>8 Q. If you look further down in that</p> <p>9 paragraph, there's a statement in your e-mail,</p> <p>10 so my question is: How long has -- and, then,</p> <p>11 it's M-C-C-L-L -- is that McCall --</p> <p>12 A. Yes.</p> <p>13 Q. -- been aware of a language barrier</p> <p>14 with this parent and has all notices, PTEs and</p> <p>15 safeguards, gone out to the parent in her</p> <p>16 native language?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see that question?</p> <p>19 A. Yes.</p> <p>20 Q. Do you recall receiving a response to</p> <p>21 that question?</p> <p>22 A. I do, but I don't remember what</p> <p>23 format the response was in.</p> <p>24 Q. You don't know if you got an e-mail</p>	<p style="text-align: right;">Page 64</p> <p>1 English, did not need interpretation or</p> <p>2 translation and they were not special education</p> <p>3 related.</p> <p>4 I was trying to get a feel for if the</p> <p>5 special education process was now a new entity</p> <p>6 for Mandy, therefore, now requiring her to need</p> <p>7 deeper levels of interpretation.</p> <p>8 Q. Okay.</p> <p>9 A. Which I had ultimately made the</p> <p>10 decision that it did.</p> <p>11 Q. And do you recall, Ms. Capitolo, when</p> <p>12 you made that decision?</p> <p>13 A. I made the decision back then, not</p> <p>14 knowing Mandy or ever having any experience</p> <p>15 with her or ever sitting in a meeting with her.</p> <p>16 Back then, Mandy had described that she forgets</p> <p>17 a lot of what goes on in the meeting verbally</p> <p>18 and that she wanted to go home with the tape</p> <p>19 recorder and replay it for her memory.</p> <p>20 Q. And it was on that basis that you</p> <p>21 made the determination that translation</p> <p>22 services should be provided?</p> <p>23 A. Yes.</p> <p>24 Q. It was your viewpoint that the</p>
<p style="text-align: right;">Page 63</p> <p>1 back or if it was verbal?</p> <p>2 A. Correct.</p> <p>3 Q. And what was the response?</p> <p>4 A. The response was from Principal Rock</p> <p>5 that during the time of her principalship, she</p> <p>6 didn't believe there was a language barrier</p> <p>7 because Mandy conducted all of the meetings</p> <p>8 with the school team for her older daughter in</p> <p>9 English and had never previously requested to</p> <p>10 tape a meeting.</p> <p>11 Q. Was there any other basis upon which</p> <p>12 Ms. Rock thought there was no language barrier</p> <p>13 for Ms. Lin?</p> <p>14 A. This was the first time that Mandy</p> <p>15 had a special education child. So I remember</p> <p>16 there being a lot of dialogue between myself</p> <p>17 and Principal Rock with this is a different</p> <p>18 kind of meeting, do you remember if documents</p> <p>19 of this size or this dense in terminology has</p> <p>20 ever had to go out to Mandy because her</p> <p>21 daughter was not in special ed.</p> <p>22 So I asked her to describe the kinds</p> <p>23 of meetings that she had previously had with</p> <p>24 Mandy where Mandy did not need -- spoke in</p>	<p style="text-align: right;">Page 65</p> <p>1 provision of translation services would allow</p> <p>2 Ms. Lin to more meaningfully participate?</p> <p>3 A. At that that point, I was, yes.</p> <p>4 Q. Did you change that your opinion</p> <p>5 about that?</p> <p>6 A. Today, I have, yes.</p> <p>7 Q. And --</p> <p>8 A. At this point, I have.</p> <p>9 Q. And why have you changed your</p> <p>10 opinion?</p> <p>11 A. Because we have had successful</p> <p>12 meetings from -- from that July/August time</p> <p>13 frame, until, now, where documents have not</p> <p>14 gone to Mandy previously translated and she has</p> <p>15 meaningfully participated in the meetings up</p> <p>16 until today.</p> <p>17 Q. Can you give me a time frame for when</p> <p>18 you concluded that translation services for</p> <p>19 Ms. Lin were not necessary?</p> <p>20 A. So it wasn't translation services in</p> <p>21 total. It was just translation of all of the</p> <p>22 documents in advance to her. We -- that was</p> <p>23 what our mediation -- part of our mediation was</p> <p>24 about, that we would give her the translated</p>

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

<p style="text-align: right;">Page 70</p> <p>1 there.</p> <p>2 Q. From your point of view, the</p> <p>3 provision of advance interpretation services,</p> <p>4 as opposed to a written translation of the</p> <p>5 document, has enabled Ms. Lin to participate</p> <p>6 meaningfully in the IEP meeting; is that a fair</p> <p>7 statement?</p> <p>8 A. I'm not sure because it is something</p> <p>9 that we provided her. Whether or not she would</p> <p>10 have been just as prepared without that advance</p> <p>11 interpretation, I couldn't say. I didn't know</p> <p>12 the parent that well back then. I didn't know</p> <p>13 what her proficiency with these types of</p> <p>14 meetings was.</p> <p>15 I know today what that is and I know</p> <p>16 what her experience is with IEP meetings and</p> <p>17 her knowledge base. And I believe today that</p> <p>18 she can get an English document, go to the BCA,</p> <p>19 get some interpretations of parts of it. A lot</p> <p>20 of it she can read herself. Parts of it, she</p> <p>21 might need some interpretation, some</p> <p>22 explanation from the special ed liaison that</p> <p>23 also sits in on those sessions to come to the</p> <p>24 meeting, but when I communicate with Mandy, we</p>	<p style="text-align: right;">Page 72</p> <p>1 particular date. I don't remember if it was</p> <p>2 November 15th or December 15th but, then, she</p> <p>3 kept delaying that meeting for outside</p> <p>4 circumstances. So I don't believe that</p> <p>5 evaluation meeting took place until</p> <p>6 February-ish. And, then, there was another IEP</p> <p>7 meeting after that.</p> <p>8 Q. February 2017?</p> <p>9 A. Yes.</p> <p>10 We've had an ESY meeting, which is</p> <p>11 essentially an IEP team convenes and has an IEP</p> <p>12 team meeting. It's not an annual IEP. It's</p> <p>13 specific to ESY.</p> <p>14 I have probably sat in a very formal</p> <p>15 meeting setting with Mandy seven or eight times</p> <p>16 since I have known her.</p> <p>17 Q. And one of those occasions was prior</p> <p>18 to the mediation?</p> <p>19 A. Yes.</p> <p>20 It might have been two occasions</p> <p>21 prior to the mediation, but I'm not quite sure.</p> <p>22 Q. On those occasions, prior to the</p> <p>23 meeting, where they both IEP meetings?</p> <p>24 A. So one might have been an evaluation</p>
<p style="text-align: right;">Page 71</p> <p>1 communicate in English back and forth.</p> <p>2 When I speak with her in person we</p> <p>3 communicate in English. And, often times,</p> <p>4 there have been instances where the Chinese</p> <p>5 interpretation has delayed her from saying what</p> <p>6 she wants to say because a lot of words in</p> <p>7 special ed don't translate over, especially</p> <p>8 with children with autism, there is a lot of</p> <p>9 technical terminology and she looks like she</p> <p>10 might get a little frustrated and she will just</p> <p>11 ask the question in English because that's how</p> <p>12 she knows to ask it.</p> <p>13 Q. How many IEP meetings have you</p> <p>14 attended with Ms. Lin?</p> <p>15 A. So we attended one prior to the</p> <p>16 mediation, as her child transitioned out of</p> <p>17 early intervention to the school. And by one</p> <p>18 meeting, I mean that it was an annual IEP</p> <p>19 meeting. It could have taken two days and</p> <p>20 actual two meeting times, but it was one IEP</p> <p>21 meeting.</p> <p>22 After the mediation, we concluded an</p> <p>23 evaluation meeting which, under the terms of</p> <p>24 the mediation, were supposed to occur by a very</p>	<p style="text-align: right;">Page 73</p> <p>1 meeting, so the child is evaluated out of early</p> <p>2 intervention. Sometimes those meetings are</p> <p>3 held together. Sometimes they are separated.</p> <p>4 I usually recommend to the school</p> <p>5 team that during an interpreted -- an</p> <p>6 interpreted meeting is lengthy. So to cram in</p> <p>7 an evaluation and an IEP meeting together in</p> <p>8 one day is often not feasible and not fair to</p> <p>9 the parent. So for Mandy, I do believe that</p> <p>10 all of her meetings were separated.</p> <p>11 So we met once for an evaluation,</p> <p>12 talked about the evaluation document. And at</p> <p>13 that time, we were translating drafts. So,</p> <p>14 then, there were several weeks in between that</p> <p>15 meeting and the IEP meeting. And, then, the</p> <p>16 IEP meeting could have taken two sessions.</p> <p>17 There is a lot of members of his IEP</p> <p>18 team and the meeting would typically be three</p> <p>19 to four hours for just one session, which was</p> <p>20 lot of pull on the school's resources. So I</p> <p>21 often cut it and said let's schedule another</p> <p>22 day to reconvene.</p> <p>23 Q. Okay. So the mediation -- the</p> <p>24 meetings that you attended with Ms. Lin, before</p>

<p style="text-align: right;">Page 86</p> <p>1 there's no resources on this Earth that could 2 do that. But, also, every student in this 3 district does not need their documents 4 translated. And I never have to be denied 5 getting one for resources, for any other 6 reason. 7 BY MR. SAINT-ANTOINE: 8 Q. So the portion of that statement in 9 Mr. Cong's e-mail that you take exception to is 10 the part that says: Due to limited resources? 11 A. Yes. 12 I think he's making a supposition 13 that that's the reason why. 14 Q. You don't think that is a reason why 15 not every written document is translated for 16 specialized services? 17 A. I know that's not the reason why. 18 We don't translate every written 19 document in special ed for many reasons. 20 Q. Are you aware of any consideration of 21 budgetary constraint since you've become a 22 special ed director on the decision making with 23 respect to translation of special ed documents? 24 MS. OBOD: Objection to</p>	<p style="text-align: right;">Page 88</p> <p>1 contractor? 2 A. I guess, yeah. 3 Q. And as far as you know, in terms of 4 the practice and policy of the school district 5 in providing translation services for special 6 ed documents, the cost of those services is not 7 a factor? 8 A. I guess the school -- it's the school 9 district, so cost is always a factor. I mean 10 we monitor the cost of all of our resources. 11 We try to do the maximum that we can with the 12 resources that we have. 13 So it's not a factor for me because 14 when I make a request for something, the 15 directors get -- we get what we need. So I 16 have never been told by the district that I 17 can't have something because it costs too much 18 money or anything like that. 19 Q. So in your experience as -- as a 20 special ed director, you've received requests 21 for translation of special ed documents? 22 A. Yes. 23 Q. And in that capacity, have you always 24 put in the request to have the documents --</p>
<p style="text-align: right;">Page 87</p> <p>1 form. 2 You can answer. 3 A. Not on the decision making. I'm 4 aware that it is expensive to translate the 5 documents. I'm aware that we do our best to 6 try to figure out which parents need the 7 documents translated and which ones do not. 8 I'm aware that we have two agencies 9 that do the translation and one is more 10 expensive than the other, but one is also more 11 timely than the other and that's why we have 12 two. 13 I'm not aware of what the district's 14 cap is on those numbers, nor have I ever been 15 told I can't have what I need. 16 Q. What are the two agencies you 17 referenced? 18 A. So one is our in-house interpretation 19 services and the other one is Global, it's a 20 contracted agency. 21 Q. The in-house would be Cong Wang's 22 group at the time? 23 A. Correct. 24 Q. And Global is a third-party</p>	<p style="text-align: right;">Page 89</p> <p>1 when you've received a request, have you always 2 approved the request? 3 A. I have not -- I have not had to deny 4 a parent a translated document. 5 I had one instance in which a school 6 team put in a request and bypassed me and went 7 right to Nancy Velez with the request. And 8 Nancy reached back and said, Marie, I just want 9 you to make sure that you are aware that the 10 school team has put in a request. And so, 11 then, I went back to the school team and had a 12 conversation and said why is the parent asking 13 for translation or is it the parent that's 14 asking for translation or is it the school 15 that's asking for it have you talked about 16 using the interpretation services with the 17 parent. And, then, in that one instance, the 18 school team had not done any of that. And when 19 they went back and talked to the parent, the 20 parent actually didn't want the document 21 translated. So, then, we pulled the request, 22 but it wasn't a denial. It was a -- we pulled 23 it. 24 Q. Okay.</p>

EXHIBIT 10

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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T.R.

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20 of Philadelphia

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22 Philadelphia

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- - -

T.R.

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1 she was having with the school not
2 translating documents other than when
3 they were looking at the complaint?

4 A. I believe so.

5 Q. Do you remember anything
6 about those conversations as to when they
7 took place, where they took place?

8 A. No.

9 Q. Raymond would know about
10 that and your mom?

11 A. Yeah.

12 Q. Does Raymond speak Spanish?

13 A. Yes.

14 Q. Do you care what happens
15 with this lawsuit?

16 A. No. Just my mom want me to
17 be part of it. She want me to be there.

18 Q. Did you know there was a
19 settlement conference on July 11th of
20 this year?

21 A. No.

22 Q. Were you ever asked to
23 attend a conference with the Court?

24 A. I don't -- no.