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March 12, 2024

Pennsylvania Department of Education  
Bureau of Special Education  
Division of Compliance, Monitoring, and Planning  
222 Market Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17126

***RE: Complaint Against the School District of Philadelphia and the Pennsylvania Department of Education on Behalf of T.R., M.N., D.H., and Students Similarly Situated for Failure to Provide a Free Appropriate Public Education of Students with Disabilities at the PJJSC***

Dear Bureau of Special Education:

The Education Law Center files this Complaint as an organization,<sup>1</sup> and on behalf of individual students T.R., M.N., D.H., and other similarly situated students with known and suspected disabilities who were deprived of a free, appropriate public education and discriminated against based on their disabilities while at the Philadelphia Juvenile Justice Service Center (“PJJSC”), operated by the School District of Philadelphia (“the District”). This Complaint is filed against both the District and the Pennsylvania Department of Education (“PDE” or “the Department”) for discrimination on the basis of disability emanating from their failure to provide a Free Appropriate Public Education (“FAPE”) to qualified students with disabilities at the PJJSC in violation of Part B of the Individuals with Disabilities Education Act (“IDEA”) and its implementing regulation, 34 C.F.R. Part 300, Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and its implementing regulation, 34 C.F.R. Part 104, Chapter 14 of the Pennsylvania Code, 22 Pa. Code Chapter 14 (“Chapter 14”), and Chapter 15 of the Pennsylvania Code, 22 Pa. Code Chapter 15 (“Chapter 15”).

Complainants seek individualized relief for the named Complainants and systemic relief for all those similarly situated, including specific corrective action and monitoring to remedy current policies and practices that result in the denial of a free appropriate public education to students with disabilities at the PJJSC.

## **I. Introduction**

As part of its investigation, we request that the Bureau of Special Education (“Bureau”) interview the following persons:

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<sup>1</sup> 34 C.F.R. § 300.153(a) (“An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.”).

<b>Name</b>	<b>Occupation/Title</b>	<b>Phone Number and Email</b>	<b>Regarding</b>
T.R.	Student	Contact through EDM Renee Platz [REDACTED] [REDACTED]	T.R.'s experience at PJJSC
M.N.	Student	Contact through counsel at the Defenders Association of Philadelphia Adrienne Winney [REDACTED] [REDACTED]	M.N.'s experience at PJJSC
D.H.	Student	Contact through Parent [REDACTED] [REDACTED] [REDACTED]	D.H.'s experience at PJJSC
Renee Platz	EDM, CASA-Philadelphia	[REDACTED] [REDACTED]	T.R.'s experience at PJJSC and Similarly Situated Students
Kunovenu Haimbodi	Client Advocate, Defenders Association of Philadelphia	[REDACTED] [REDACTED]	M.N.'s experience at PJJSC
Adrienne Winney	Defenders Association of Philadelphia, Attorney	[REDACTED] [REDACTED]	M.N.'s experience at PJJSC
[REDACTED] [REDACTED]	Parent	[REDACTED] [REDACTED]	D.H.'s experience at PJJSC
[REDACTED] [REDACTED]	Parent	[REDACTED] [REDACTED]	Similarly Situated Students
Sydney Groll	Attorney, Support Center for Child Advocates	[REDACTED] [REDACTED]	Similarly Situated Students
Nicole El	Assistant Chief, Children & Youth Justice Unit at the Defender Association of Philadelphia	[REDACTED] [REDACTED]	Similarly Situated Students

Sarah Morris	Youth Art & Self-empowerment Project (YASP), Executive Director	[REDACTED]	Similarly Situated Students
My Le	YASP, Participatory Defense Hub Facilitator	[REDACTED]	Similarly Situated Students
Emily Robb	Youth Sentencing and Reentry Project (YSRP), Director of Advocacy	[REDACTED]	Similarly Situated Students
Rhonda Brownstein	Disability Rights PA, Litigation Counsel	[REDACTED]	Similarly Situated Students
Malik Pickett	Juvenile Law Center, Staff Attorney	[REDACTED]	Similarly Situated Students

### Complainants

**Education Law Center (“ELC”)** is a non-profit, legal advocacy organization dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, and policy advocacy, ELC advances the rights of underserved students, including children experiencing poverty, Black and Brown children, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ+ students, children experiencing homelessness and those at the intersections of multiple identities.

**T.R., M.N., and D.H.** are students with disabilities who were placed by court order at the Philadelphia Juvenile Justice Services Center (“PJJSC”), for which education is provided by the District and overseen by PDE. Similarly situated students are students with disabilities who resided at the PJJSC from March 2023 to the present.

### Respondents

**Respondent District** is the local educational agency for all named students and those similarly situated. *See* 20 U.S.C. § 1401(19); 34 CFR § 300.28. The PJJSC is a secure juvenile detention center located at 91 North 48<sup>th</sup> Street, Philadelphia, PA 19139, which meets the definition of a “children’s institution” for which education is assigned to Respondent District under 24 P.S. § 13-1306 as the host district. Respondent District qualifies as a recipient of federal financial assistance within the definition of 34 CFR 104.3(f).

**Respondent PDE** is the state education agency (“SEA”) under the IDEA charged with responsibility to ensure that all eligible children receive a free appropriate public education. *See* 20 U.S.C. § 1412(a)(11)(A) (SEA responsible for ensuring the requirements of the IDEA are met);

34 C.F.R. § 300.149 (delineating SEA responsibilities for general supervision). Respondent PDE qualifies as a recipient of federal financial assistance within the definition of 34 CFR 104.3(f).

## II. Factual Background

### *Philadelphia Juvenile Justice Services Center*

The Philadelphia Juvenile Justice Services Center (“PJJSC”) is Philadelphia’s only secure juvenile detention center, which is licensed by Philadelphia Department of Human Services to serve 184 students, but often serves many more due to overcrowding. (See Affidavit of Gary Williams, attached as Exhibit A). As of June 2023, more than half of students resided at PJJSC for over 30 days. (Ex. A, at 3-4). The PJJSC is designed to provide students with education, social services, medical services, behavioral health services, and recreational services. (About, The Philadelphia Juvenile Justice Services Center (PJJSC), available at <https://www.phila.gov/programs/the-philadelphia-juvenile-justice-services-center-pjjsc/>). The District offers “an on-site school so youth remain engaged with their education.” *Id.*

██████████ (“T.R.”), D.O.B. September 8, 2006

T.R. is a seventeen-year-old student with a disability in foster care who was placed at the PJJSC for the entirety of the 2022-2023 school year where she was denied a FAPE. This violation compounded the educational deficits she experienced based on her extensive history of denials of necessary educational services.

In 2018, as a twelve-year-old student at John B. Stetson Charter School, T.R. received multiple suspensions for behavioral incidents. One teacher noted that, the “few times” T.R. was on-task, “her academic performance was excellent” but that she had “extreme” emotional and behavioral needs. According to this teacher, T.R. demonstrated “concerning” behaviors, including verbal outbursts towards peers, attention-seeking behaviors, and age-inappropriate responses to frustration such as whining, tantrums, and refusing to complete activities that she found challenging. T.R. also had difficulty staying on-task and experienced social isolation from peers. Her teachers recommended continued counselor involvement to address her emotional and behavioral needs. In 2019, T.R. was admitted to Belmont Behavioral Hospital due to her significant behavioral and mental health needs.

In August of 2019, the District proposed that T.R. be evaluated to determine if she needed specially designed instruction. T.R. received a psychoeducational evaluation while residing at Belmont Behavioral Hospital. Academically, the 2019 evaluation revealed that T.R. demonstrated average word reading, decoding, reading fluency, and math fluency abilities, but struggled with reading comprehension, math comprehension, and math problem-solving. Specifically, T.R. scored at a first-grade level in reading comprehension and a second-grade level in math computation. On the BASC-3 behavior assessment, T.R. demonstrated clinically significant levels of externalized problems, internalizing problems, hyperactivity, aggression, depression, somatization, and withdrawal. The evaluation team determined that T.R. met the diagnostic criteria for Attention Deficit Hyperactivity Disorder (ADHD), intermittent explosive disorder, posttraumatic stress disorder (PTSD), and disruptive mood dysregulation disorder.

Given T.R.'s testing results and diagnoses, the evaluation team determined that she was eligible for special education services under the primary disability category of Emotional Disturbance and a secondary disability category of Other Health Impairment ("OHI"). The report was completed on August 26, 2019, but T.R. never received an IEP based on the results of the evaluation and she did not begin receiving special education services.

In August of 2020, when T.R. was fourteen years old and in foster care, she was sent to a residential treatment facility in Arkansas, where she continued to struggle emotionally and academically. In November of 2020, unexpectedly and unprecedentedly, staff at the residential treatment facility drove from Arkansas to the Children's Hospital of Philadelphia ("CHOP") and left her there due to their inability to meet her mental health needs. Despite T.R.'s significant mental health needs, documented record of qualifying for special education services and changing academic and emotional needs, the District did not initiate any evaluation to determine her eligibility for special education services. While at CHOP, T.R. received minimal education services, consisting of a scant number of hours each week and no special education or related services. Even though CHOP reported that T.R. wanted to attend school off grounds and needed an evaluation for an IEP, the District instead reported that she was not a student enrolled in the District and was not their responsibility. In October 2021, the dependency court judge appointed a Court Appointed Special Advocate ("CASA") to serve as T.R.'s Education Decision Maker ("EDM") In December of 2021, following a mental health incident at CHOP, T.R. was detained at PJJSC. It was only then, while T.R. was detained, that the District followed through with an evaluation.

### 2022 Evaluation

T.R.'s 2022 evaluation revealed that, as a ninth-grade student, she was testing at a fourth-grade reading level and a third-grade math level. Behavioral and social-emotional test results revealed clinically significant levels of inappropriate behavior/feelings, unsatisfactory interpersonal relationships, unhappiness or depression, physical symptoms or fears, disordered thoughts, hyperactivity, conduct problems, anxiety, depression, somatization, attention problems, withdrawal, adaptability, internalizing problems, externalizing problems, behavior control, and negative emotionality. The evaluation team noted that T.R. "struggle[d] to control her behavior when aggravated or frustrated" and "require[d] highly specialized services when participating in the general education curriculum in order to control her emotions/behavior and maximize her learning potential." Similarly, her teachers noted that T.R. required one-on-one attention in order to succeed academically and manage her behavior.

Consistent with T.R.'s original 2019 evaluation, the evaluation team determined that she met the criteria for a primary disability of Emotional Disturbance, due to her severe emotional and behavioral needs. Further, test scores, direct observation, and T.R.'s prior diagnosis of ADHD reflected that she has a difficult time with initiating and sustaining attention and with paying attention to details. Thus, the team determined that T.R. also qualified for special education services under the secondary disability category of Other Health Impairment, consistent with the prior 2019 evaluation.

The evaluating psychologist noted that T.R. “performs very well with a low teacher/student ratio” and recommended accommodations such as additional time to complete assignments, review of directions, concrete examples, and space for movement or breaks. The psychologist also determined that T.R. would benefit from a behavioral plan that would address her frustration tolerance, impulsivity, hyperactivity, “quick to anger” reaction, and movements within the classroom. Further, the evaluation report recommended repeated directions, verbal reminders, positive feedback, clear behavioral expectations, access to counseling, and preferred seating.

### 2022 IEP

On June 10, 2022, the District sent a Notice of Recommended Educational Placement (“NOREP”), which affirmed T.R.’s need for full time emotional support. The letter rejected a regular education environment with supplemental emotional support as an option, stating, “At this time, given consideration to her past school experiences, recent gap in school enrollment and current input from her team, this level of support will not meet her needs.” Further, the letter stated that T.R. was “in need of full time emotional support programming in order to make meaningful progress.”

An IEP meeting was held on September 29, 2022 with District and PJJSC staff. Despite the consistent determinations that T.R. needed full time one-on-one support, both academically and behaviorally, the District failed to recommend a 1:1 aide. Instead, the 2022 IEP recommended individual school-based counseling for just 30 minutes each month. The 2022 IEP also recommended a number of modifications across all environments, including a small group (2-5 students) setting, frequent breaks, preparation for changes of routine, definite purposes and expectations, and the use of private signals to cue appropriate behavior for more difficult times. Notably, the 2022 IEP was created while she resided at PJJSC and reflected the limited services which PJJSC offers, not the services that T.R. needed to access her education.

### Education Services at PJJSC

While at PJJSC, T.R. did not receive the education support to which she was legally entitled and which would allow her to access her education. In December of 2022, the District sent another NOREP which acknowledged that, “while her IEP indicates a Full-Time Emotional Support Program (out of district), she will receive 850 minutes of Emotional Support within the regular classroom and 15 minutes of school-based counseling until her discharge from PJJSC.” Here, the District acknowledged that the services which T.R. received while at PJJSC were not in alignment with her educational needs, her 2022 evaluation results, and her 2022 IEP.

Additionally, T.R. faced significant and prolonged educational interruptions and received a woefully deficient education while at PJJSC. This included frequent placements in PJJSC’s “quarantine” unit, where T.R. received no access to instructors or education services. One academic Progress Monitoring report entry dated March 24, 2023, stated that “[T.R.] is currently placed in the secure portion of the PJJSC facility and there is no access to her from an educational perspective.” The District used instances of self-injurious behavior and safety

concerns to isolate T.R. in a unit where there was “no access” to her and she could not receive school instruction at all.

Similarly, an Extended School Year (“ESY”) Progress Monitoring Report for the Summer of 2023 indicates that T.R. was “unavailable due to city side procedures, meetings, etc. on all but two days of ESY.” The reporting teacher admitted in the report that, during the classes which T.R. attended, the teacher “did not interrupt to conduct one on one instruction with T.R.” Despite T.R.’s need for one-on-one instruction, the District failed to provide it.

T.R. resided at PJJSC for the entirety of the 2022-2023 school year. While she was there, she received little to no academic instruction, and when she did receive educational services, they were not in alignment with her educational needs as reflected in her 2023 IEP.

An IEP meeting was held on May 24, 2023, while T.R. was still at PJJSC. Per T.R.’s 2023 IEP, she is entitled to receive 30 minutes of individual school-based counseling each week, a full-time 1:1 adult assistant provided by the District and authorized by the IEP team, special curb-to-curb transportation to and from school, administration of medication by a nurse, and a variety of testing accommodations. Further, T.R.’s IEP requires that all school staff who work with her receive 60 minutes of training and support. The IEP team also determined that T.R. is entitled to Extended School Year (ESY) services, including 450 minutes of emotional support each week, 450 minutes of learning support each week, 30 minutes of individual school-based counseling each week, and the same 1:1 adult assistant, special transportation, and nursing services that she requires during the school year.

In making these recommendations, the 2023 IEP team relied on the same evaluation data as the 2022 IEP, which underscores the inappropriateness of both the 2022 IEP and the services T.R. received while residing at PJJSC during the entire 2022-2023 school year.

T.R. was released from PJJSC in August of 2023. Notably, on August 29, 2023, when T.R. was no longer residing at PJJSC, the District sent a NOREP explicitly recommending full time emotional support with a 1:1 adult assistant at T.R.’s future educational placement. In the letter, the District stated that T.R.’s 2022 IEP was “written while at [PJJSC]. While it is an appropriate IEP for that location, they were only able to offer supplemental Sp Ed support.” The District admitted that the recommendations and services outlined in T.R.’s 2022 IEP were not based on her needs, but instead were based on the educational facility at which she was located. The District also wrote that “[T.R.] has not had residential or school stability in several years. She is in need of full time emotional support in order to access instruction and make appropriate progress.” Here, the District once again acknowledged that the services which T.R. received while at PJJSC were inappropriate and insufficient to meet her educational needs.

**██████████ (“M.N.”), D.O.B. October 26, 2006**

M.N. is a seventeen-year-old, ninth grade student with a disability and English learner who was held at PJJSC from August 31, 2023 to September 18, 2023 and beginning again in January 2024. M.N. is deaf and emigrated from Brazil to Philadelphia during the last year. While he does not read or write in any language, he can communicate in LIBRAS (Brazilian Sign Language).

### Education Services at PJJSC

While at PJJSC, M.N. was not enrolled by the District in any educational program and was not provided with any educational services to address his unique needs. While M.N. was eligible for school enrollment when he resided at PJJSC, he was not enrolled in the District at all. The only record that the District has of his time at the PJJSC are scattered emails initiated after he had been at the PJJSC for over two weeks. The District did not initiate an evaluation of M.N. despite his clear eligibility for special education and related services, nor did the District communicate with his parent to determine his educational needs.

During his time at the PJJSC, M.N. was not provided with a LIBRAS interpreter, which impacted both his participation in the PJJSC's programming and his ability to access his education. The District claimed they could only work with interpreting services with which they contract, none of which offer LIBRAS interpretation. When an advocate at the Defender's Association of Philadelphia proactively found a service, Inclusive Communication Services, which offered LIBRAS interpretation, the District refused to work with them. Accordingly, M.N. was unable to communicate with school staff while at PJJSC and unable to access any educational materials. M.N. was wholly denied a FAPE and discriminated against on the basis of his disability.

### Evaluation and Necessary Special Education Services

Immediately upon his enrollment at Lincoln High School in the District after M.N. left the PJJSC, the District issued a Permission to Evaluate and conducted an evaluation of M.N. The November 1, 2023 evaluation found M.N. eligible for special education and related services under the IDEA in the category of Hearing Impaired including Deafness. The evaluation found that M.N. lacked basic literacy skills and could only identify some upper-case and lower-case letters. It recommended that M.N. receive small group classes with a teacher of the deaf and that he be provided a deaf interpreter whenever he was in regular education classes.

In light of his evaluation and significant needs, M.N.'s team created an IEP that same day on November 1, 2023 that provided small group instruction with a teacher of the deaf in order to make progress in school. When participating in a general education classroom, M.N.'s IEP required a Certified Deaf Interpreter. His IEP required 1445 minutes per week of instruction through his IEP, outside of the general education classroom. The high level of special education and supportive services required by M.N.'s IEP, which was created based on the needs determined by his IEP team, underscores the denials he experienced while at the PJJSC where he received no special education and supports.

M.N. returned to the PJJSC in January 2024 where he remains at the time of filing and has continued to be denied a FAPE and access to education.

**██████████ ("D.H."), D.O.B. October 7, 2007**

### Background

D.H. is a fifteen-year-old student with a disability who attended the PJJSC in the District from November 2022 until April 2023.



Since D.H.'s birth on October 7, 2007, he has experienced extensive and deep trauma due to experiencing and witnessing physical, sexual and psychological abuse. His family history is also marked by intellectual and other disabilities. While in elementary school, D.H. was diagnosed with Post-Traumatic Stress Disorder and referred for an evaluation to determine his eligibility for special education.

In February of 2017, when D.H. was nine-years old and in the third grade, he moved from Georgia to Florida to live with an aunt, before moving to Philadelphia, Pennsylvania when D.H.'s aunt [REDACTED] ("D.C.") agreed to temporary guardianship over D.H. and he moved to live with her.

Between February 15, 2017, and February 2022, while enrolled at Wissahickon Charter School, D.H. was evaluated and diagnosed with Post Traumatic Stress Disorder. Through the behavioral health system, D.H. received services from a behavior specialist consultant ("BSC"), 30 hours per week of Therapeutic Support Services ("TSS") in school, and outpatient therapy to address "anger management, impulsivity and compliance skills." However, D.H.'s IEP was not followed and this resulted in devastating incidents. Specifically, D.H. was bullied on a consistent basis over the course of three years, starting as early as the first week of school where a group of students stole D.H.'s lunch and pulled him to the ground. The group beat him up leaving him with a lump on his head. Instead of receiving interventions to prevent him from being subject to bullying, he was repeatedly removed from the classroom and suspended for varying periods of time.

#### Prior Services/IEPs

D.H.'s December 2019 IEP was for Itinerant Learning Support with counseling as a related service. He was re-evaluated in February 2020 and received a Positive Behavior Support Plan ("PBSP"). During an IEP meeting on February 6, 2020, the team at Wissahickon Charter School recommended D.H. receive a 1:1 for better participation in the general education setting. In September 2020, counseling as a related service was removed through parental request in light of privacy concerns.

Through D.H.'s March 2022 IEP from Wissahickon Charter he was entitled to receive itinerant emotional and learning support, had a PBSP, and required 1:1 behavior support. It was also crucial that D.H. receive preferential seating away from distractions and peers who previously had conflicts with him. D.H.'s IEP goals were centered on his behavior: maintaining positive peer interactions, beginning and completing unfavorable tasks, and getting permission before leaving the classroom. However, his IDEA Parent, Ms. Coleman reported that D.H. was without the 1:1 more often than not and he struggled because of it. Nearly all of D.H.'s disciplinary infractions happened during times where D.H. would have benefited from, but did not receive, the 1:1 support required by his IEP.

#### PJJSC - School Year 2023-2024

In December 2022, as a 14-year-old student in the 9<sup>th</sup> grade, D.H. was placed at the PJJSC. Between December 2022 and February 2023, D.H. not only failed to receive any of the accommodations or services required by his IEP, he received no educational instruction at all.

On February 14, 2023, the PJJSC re-evaluated D.H. According to the 2023 Wide Range Achievement Test Fifth Edition (WRAT-V) assessment conducted while D.H. was held at the

PJJSC, D.H. was performing in the 1<sup>st</sup> month of the 7<sup>th</sup> grade in reading. Specifically, D.H. scored on the level of a 1<sup>st</sup> month 9<sup>th</sup> grade student in Sentence Comprehension, an 8<sup>th</sup> grade student in Spelling, and a 7<sup>th</sup> grade student in Math Computation. Ultimately, D.H. was below grade level in all key subject areas.

The IEP developed by staff at PJJSC recommended that D.H. receive the following services and supports: interventions including small group; individual check ins with the learning support teacher; check ins with the school step case manager; weekly individual counseling with the school counselor; seating away from peers; frequent opportunities to work for small rewards and reinforcers; earned time with preferred adults to take walks or a break with them; and consequences for negative behaviors.

When compared with the February 2022 IEP from Wissahickon Charter School, the February 2023 IEP from the PJJSC modified his level of learning support from Itinerant (2022) to Supplemental (2023). However, his new IEP removed critical behavior supports. For example, while school-based counseling was returned to the 2023 IEP, it was for just 15 minutes/week and in small group, whereas prior IEPs recommended 30-minutes/week in individual sessions. Based on 2023, Q3 progress monitoring, one of D.H.'s behavioral goals was "not introduced", and the only goal noting progress was taking the transitional-career survey. The IEP from the PJJSC only had 1 behavioral goal, and 2 transitional-career goals. In contrast, D.H.'s 2022 IEP had contained 3 PBSP goals, and 2 academic goals.

D.H. did not receive any of the IEP required services delineated in his IEP while he was at the PJJSC.

On April 18, 2023, D.H. was transferred from the PJJSC to the Youth Forestry Camp 3 diversion program without notice. However, at the time of this complaint, D.H. has returned to the PJJSC where he continues to be denied a FAPE.

### *Similarly Situated Students*

The Education Law Center is aware that other students with disabilities at the PJJSC are not being provided with a free appropriate public education while at the facility. This information is based on calls to our Intake Line as well as discussions with public defenders and education and disability advocates, including testimony provided by the Philadelphia Department of Human Resources, which focused primarily on living conditions at PJJSC. (*See* Aff. of Gary Williams, attached as Exhibit A). Students with disabilities and all students are not receiving appropriate hours of instruction, are regularly deprived of any access to education due to inadequate staffing or external matters, and many experience complete removal from school during prolonged quarantine periods.

First, students are not receiving an appropriate education or sometimes no education at all. Upon information and belief, sometimes when students *do* receive education, they are required to remain on their unit instead of in the designated classrooms. There are classrooms equipped with desks and chalkboards, but students do not always have access to them. When students receive education within the unit instead of in the classroom, only a limited number of students are allowed out of their cells at one time while the others remain in their cells and receive worksheets slid under the door. Instead of instruction, students regularly receive paperwork or

worksheets and are given little to no guidance to understand the work or how to complete it. Upon information and belief, this leads them to be unable to complete the worksheets.

Next, students are not receiving the required hours of instruction. Upon information and belief, students spend various amounts of time at school, ranging from one to four days a week. Some eligible students with disabilities receive no special education services, while some receive them infrequently. Upon information and belief, students are denied access to school as a form of discipline.

Students also experience educational denials during the admission process. The Admissions unit in the PJJSC, which is not meant to house students overnight, is often overcrowded and stripping students of any access to education. Advocates and students have reported over 20 students sleeping on rubber mats in dirty, overcrowded rooms for weeks at a time. While they are being “processed” in this unit, they are not receiving any education services. (*See* Aff. of Gary Williams, at 7, Exhibit A). Students can remain in the Admissions unit for twenty to thirty days. *Id.*

When admitted to the PJJSC, students are automatically quarantined for weeks at a time, in light of the COVID-19 pandemic, and during these two weeks, receive no education at all. Students may return to quarantine at various points during their time at the PJJSC and they are once again denied education. Further, students with disabilities or suspected disabilities are not being identified, evaluated, or timely re-evaluated for special education services. Students with IEPs have their services cut and modified upon entry to the PJJSC, a determination made out of convenience and inadequate staffing, not individual student need.

Students at the PJJSC, as well as students in other juvenile and adult detention centers are not being provided with special education and related supports they need and legally entitled to receive. There exists a larger system breakdown involving the District’s failure to ensure a FAPE for students at the PJJSC, as well as other facilities including but not limited to Pennypack, Curran-Fromhold Correctional Facility (“CFCF”), the Philadelphia Industrial Correction Center (“PICC”), the Detention Center (“DC Jail”), and Riverside Correction Facility (“RCF”). The District does not have a functioning system in place through which they identify eligible students residing in these placements and the District fails to provide them with the proper support and services as required by law. As such, T.R., M.N., and D.H., as well as similarly situated students at PJJSC as well as other juvenile and adult detention centers located in the District continue to be denied their rights as a result of the District’s actions and inactions in violation of federal and state disability laws.

To address this systemic harm, ELC seeks relief against the District in the form of revisions to current policies and procedures and other reforms as well as proactive monitoring and oversight by the Bureau, review of student files, and awards of compensatory education services where indicated for deprivations of a FAPE to named students T.R., M.N., and D.H. and students similarly situated. We seek specific remedies against the Pennsylvania Department of Education for its failure to provide oversight and monitoring as the state educational agency to ensure a FAPE for T.R., M.N., D.H., and others similarly situated. ELC contends that this is a systemic matter that requires not only immediate intervention by the District as LEA but action

and guidance to be issued by the Department pursuant to its duties as a State Education Agency (SEA) to ensure a FAPE for all students.

ELC also continues to be concerned that issues at the PJJSC are ongoing for students including overcrowding, understaffing, improper sleeping arrangements, lack of access to classrooms, teachers, and deprivation of special education services. ELC is aware of similar issues at other juvenile and adult detention centers in the District as well elsewhere in the Commonwealth, including the Allegheny County Jail, which is the subject of an ongoing investigation undertaken by the Bureau in response to a Complaint submitted by ELC. In light of the statewide nature of this issue, we request that the Department issue guidance regarding the obligations of LEAs and undertake substantial efforts to investigate, monitor, and ensure provision of a FAPE at other juvenile and adult detention centers across the Commonwealth.

### **III. Legal Analysis**

#### **A. The Bureau of Special Education (“BSE”) Has Jurisdiction Over This Complaint.**

BSE has jurisdiction over this Complaint because it alleges that the Respondents District discriminated against qualified students on the basis of their disabilities and denied them a FAPE,<sup>2</sup> in violation of Part B of the IDEA, Section 504, Chapter 14, and Chapter 15, all of which BSE enforces.<sup>3</sup>

This Complaint is timely because the alleged FAPE violations and discriminatory conduct occurred within one year of the filing of this Complaint and are continuing. Specifically, over the past year, the District denied students with disabilities a FAPE and discriminated against students on the basis of disability by:

- (1) failing to provide any education to students with disabilities while in Admissions and Quarantine;
- (2) failing to identify, locate, and evaluate all students suspected of having disabilities;
- (3) failing to provide individualized, appropriate special education services or accommodations to students with disabilities;
- (4) failing to reevaluate students with disabilities;
- (5) failing to provide equal access to educational and rehabilitative programming for individuals with disabilities; and
- (6) failing to provide education consistent with the Pennsylvania State Standards and in accordance with Chapter 4 of the Pa Code.

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<sup>2</sup> The Third Circuit has held that the “[f]ailure to provide a FAPE violates Part B of the IDEA and generally violates the ADA and RA because it deprives disabled students of a benefit that nondisabled students receive simply by attending school in the normal course—a free, appropriate public education.” *CG v. Pennsylvania Dep’t of Educ.*, 734 F.3d 229, 235 (3d Cir. 2013). As such, courts have found allegations that a student has been denied a FAPE sufficient to allege a claim under the Rehabilitation Act. *See, e.g., Centennial Sch. Dist. v. Phil L. ex rel. Matthew L.*, 799 F. Supp. 2d 473, 489 (E.D. Pa. 2011).

<sup>3</sup> *See* 22 Pa. Code § 14.107; 22 Pa. Code § 15.8(a) and 22 Pa. Code § 15.10.

**B. Respondents Discriminated Against Students with Disabilities and Failed to Provide a FAPE by Failing to Provide Education during Admissions and Quarantine.**

Part B of the IDEA requires that a free appropriate public education (“FAPE”) must be available to all children with disabilities residing in the State between the ages of 3 and 21.<sup>4</sup> *See* 20 U.S.C. § 1412(a)(1)(A); *see also* *Andrew F. ex rel. Joseph F. v. Douglas Sch. Dist.*, 137 S. Ct. 988, 993 (2017); *D.S. v. Bayonne Bd. of Educ.*, 602 F.3d 553, 556 (3d Cir. 2010). As the Pennsylvania Department recently clarified, all students with disabilities are entitled to a FAPE until their 22<sup>nd</sup> birthday. The Department therefore revised its guidance pertaining to the IDEA Part B Policies and Procedures Under 34 CFR §§ 300.101—300.176 to state as follows:

*The Commonwealth of Pennsylvania ensures that all children with disabilities ages 3 years through 21 years residing in Pennsylvania have the right to a FAPE, including children with disabilities who have been suspended or expelled from school. The commonwealth shall make FAPE available to a child with a disability eligible under IDEA until the student turns 22. Notwithstanding any other provision of law to the contrary, a child eligible under IDEA who attains the age of twenty-one (21) years may remain enrolled in their resident district free of charge until their 22nd birthday.*

PENN\*LINK, *Change in Age of Eligibility for Free and Appropriate Public Education* available at [https://www.education.pa.gov/Documents/K-12/Special%20Education/IDEIA-IDEA/Special%20Education%20Change%20of%20Age%20of%20Eligibility%20Penn%20Link\\_August\\_30\\_2023.pdf](https://www.education.pa.gov/Documents/K-12/Special%20Education/IDEIA-IDEA/Special%20Education%20Change%20of%20Age%20of%20Eligibility%20Penn%20Link_August_30_2023.pdf).

The failure of an LEA to ensure a FAPE to qualifying students with disabilities constitutes a significant violation of Part B of the IDEA<sup>5</sup> as well as discrimination under Section 504.<sup>6</sup> Section 504 of the Rehabilitation Act prohibits discrimination against persons on the basis of their disabilities. In order to establish a violation of Section 504, a student must demonstrate: (1) the student has a disability, as defined by the Act; (2) the student otherwise qualified to participate in school activities; (3) the school or board of education receives federal financial assistance; and (4) the student was excluded from participation in, denied the benefits of, or subject to discrimination at, the school. *C.G. v. Pennsylvania Dep’t of Educ.*, 888 F. Supp. 2d 534, 573 (M.D. Pa. 2012).

In this case, students with disabilities at the PJJSC are being deprived of their right to a FAPE as a result of Respondents’ failure to provide any education while in Admissions and Quarantine. These students are abruptly deprived of access to the classroom and planned instruction even if they have few credits needed to graduate or have intellectual disabilities and cannot learn or make progress in the absence of individualized programming and support services. Here, Respondent District has already determined that these students have impairments that “substantially limit one or more major life activities,” and require specially designed instruction through an IEP or accommodations through a 504 Plan. All students with disabilities who are school-age and reside at the PJJSC qualify to participate in school programming and activities

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<sup>4</sup> 34 CFR § 300.101.

<sup>5</sup> 34 CFR § 300.101.

<sup>6</sup> *CG*, 734 F.3d at 235.

and are entitled to a FAPE until they turn 22. Yet, in clear contravention of their unequivocal rights, students with disabilities are unilaterally stripped of these rights and cannot participate in any school program. Nor are their IEPs or Section 504 Plans followed. Instead, these students are denied their right to a FAPE and wrongfully excluded from participation in, denied the benefits of education and services required by their IEPs or 504 Plans.

### **C. Respondents Discriminated Against Students with Disabilities by Failing to Comply with Their Obligations to Students with Disabilities.**

Because “the IEP is ‘the centerpiece of the [IDEA’s] education delivery system for disabled children’...an IEP must be drafted in compliance with a detailed set of procedures...[that] require careful consideration of the child’s individual circumstances.” *Andrew F. ex rel. Joseph F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386, 391 (2017) (cleaned up). All of the requirements under the IDEA for IEP content universally apply for student with disabilities in correctional settings. 34 CFR § 300.320; *see* Office of Special Education Programs’ Dear Colleague Letter on the Individuals with Disabilities Education Act for Students with Disabilities in Correctional Facilities (Dec. 5, 2014), 12, at <https://sites.ed.gov/idea/files/idea-letter.pdf>. This includes ensuring “a continuum of alternative placements,” and not “routinely plac[ing] all students with disabilities in correctional facilities in classes that include only students with disabilities.” *Id.* at 14.

Upon information and belief based on the reports of advocates, parents and students, students educated in the District’s school within the PJJSC are universally deprived of certain services and rights mandated by the IDEA including: (1) related services as required by 34 CFR § 300.34; (2) specially designed instruction required by 34 CFR § 300.4320(a)(4); (3) measurable goals to address their unique needs required by 34 CFR § 300.320(a)(2); (4) transition services required by 34 CFR § 300.43, 34 CFR § 300.320(b); (5) individually determined educational placements required by 34 CFR § 300.327; (6) progress monitoring as required by 34 CFR § 300.320; and (7) comparable services upon arriving at the facility as required by 34 CFR § 361.53. In addition, parents are deprived of their right to participate in legally compliant IEP meetings required under 34 CFR §§ 300.322, 300.327.

In addition, T.R., M.N., and D.H. specifically were denied special education and related services that were determined based on the individual circumstances stemming from their disabilities. Despite their demonstrated significant need for individually determined educational services, they received the general education program that was provided within the PJJSC. Where modifications were made, they were not reasonably calculated to ensure educational benefit for the student. As a result, T.R., M.N., and D.H. were denied a FAPE.

### **D. The Department Violated the Rights of Named Plaintiffs and Other Students Similarly Situated by Failing to Ensure Compliance with IDEA Requirements.**

PDE, as the SEA, must monitor all educational programs for students with disabilities in correctional facilities to ensure that these programs meet the standards of the IDEA and the SEA. 34 CFR §300.149. SEAs must also ensure that teachers providing special education to incarcerated youth are properly trained and have qualifications consistent with state-approved or state-recognized certification, licensing and registration. 34 CFR §300.156(a).

PDE is responsible for ensuring that IDEA requirements are carried out and that the educational program at the PJJSC meets state educational standards. *See* 34 CFR §300.149. PDE must have effective policies and procedures in place to ensure it complies with the monitoring and enforcement requirements set for the in federal regulations. *Id. See also* 34 CFR § 300.600-608. In this case, PDE failed to effectively monitor the educational program at the PJJSC and doing so would have revealed numerous deficiencies in the PJJSC program as well as the District’s failure to identify and serve students placed at the PJJSC.

**E. Complainants and Similarly-Situated Students Are Entitled to Compensatory Education and Other Relief to Remedy the District and PDE’s Violations of their Rights.**

Compensatory education is an equitable remedy, intended to make the student whole; it is “crucial...to make up for the child’s lost process and to restore the child to the educational path he or she would have traveled but for the deprivation.” *G.L. v. Ligonier Valley Sch. Dist. Auth.*, 802 F.3d 601, 625 (3d Cir. 2015). Each named Complainant, and all others similarly situated, are entitled to awards of compensatory education on an hour-by-hour quantitative bases in accordance with Third Circuit law. A child with a disability is entitled to compensatory education “for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.” *Mary Courtney T. v. Sch. Dist. of Philadelphia*, 575 F.3d 235, 249 (3d Cir. 2009) (quoting *M.C. v. Cent. Reg’l Sch. Dist.*, 81 F.3d 389, 395 (3d Cir. 1996).

Both the LEA and SEA can be held responsible for providing relief, including compensatory education, for their contributions to the injury of a denial of a legally-compliant education. *See, e.g., Gadsby ex rel. Gadsby v. Grasmick*, 109 F.3d 940, 955 (4th Cir. 1997) (holding that the “language and structure of IDEA” indicate that either the LEA or SEA, or *both*, may be held liable for equitable remedies, including reimbursement, for the failure to provide a student a FAPE); *see also St. Tammany Par. Sch. Bd. v. State of La.*, 142 F.3d 776, 785 (5<sup>th</sup> Cir. 1998) (determining that the SEA could be liable for educational placement costs due to its role in the IDEA violation); *Jose P.*, 669 F.2d 865, 871 (2d Cir. 1982 (affirming relative allocation of legal responsibility between the LEA and SEA for special education violations and disability discrimination).

As a result of their widespread denial of a FAPE for T.R., M.N., D.H., and similarly situated students, they are entitled to compensatory education on an hour-by-hour basis, to include 5.5 hours per school day they resided at the PJJSC, as well as other injunctive relief.

**IV. Proposed Remedy**

In light of the foregoing violations by the **School District of Philadelphia (“District”)**, we respectfully request that the Bureau of Special Education (“Bureau”) undertake the following actions:

### *Individual Complainants*

1. Investigate the allegations contained herein pertaining to the named complainants T.R., M.N., and D.H.
2. Direct the District to award compensatory education services to named complainants in accordance with governing quantitative standards for the period that the student was placed at the PJJSC.

### *Similarly Situated Students*

We request that the Bureau ensure the prompt provision of compensatory education services to all identified students with disabilities by undertaking the following actions:

1. Direct the District to conduct an audit to identify all students eligible for compensatory education services including:
  - a. All students with disabilities eligible under the IDEA who resided at the PJJSC anytime from March 12, 2023 to the present;
  - b. All students suspected of having a disability who should have been evaluated pursuant to the IDEA who resided at the PJJSC anytime from March 12, 2023 to the present;
  - c. All students with disabilities eligible under Section 504 of the rehabilitation act who resided at the PJJSC anytime from March 12, 2023 to the present.
2. Direct the District to issue awards of compensatory education services through a Notice of Recommended Educational Placement (“NOREP”) pursuant to this Complaint to all students specified in Paragraph 1 in accordance with quantitative standards for every hour of every day that a student was denied a FAPE by the District at the PJJSC.
3. Direct the District to issue a letter to all parents of students identified in Paragraph 1 apprising them in a language they understand of PDE’s corrective action.
4. Direct the District to revise its practices or procedures, or lack thereof and adopt revised policies and practices to ensure that all students with disabilities at the PJJSC receive a FAPE, including procedures to:
  - a. Promptly enroll and provide timely provision of comparable services as required;
  - b. Provide appropriate education services during any quarantine periods;
  - c. Provide a continuum of educational placements to address students’ individualized needs, including appropriate placement for those students with low-incidence disabilities and/or language needs;
  - d. Provide appropriate transition services as required;
  - e. Communicate progress monitoring and provide meeting notices to parents/guardians;and



- f. Provide an ongoing audit and provision of compensatory education when students are denied a FAPE.

*Three Year Monitoring of the District*

1. Direct the District to provide a narrative description of its improvement plan to the State and Complainants herein within 30 days of issuing corrective action.
2. Direct the District to collect, record, and submit the following data elements to the State and Complainants herein on a quarterly basis over a three-year period to ensure compliance with legal obligations and accurately assess the effectiveness of the Plan:
  - a. The date a student arrived at the PJJSC;
  - b. The date they were enrolled into school;
  - c. The number of hours a student participated in classroom learning;
  - d. A copy of their rostered courses, including electives, and
    - i. for students with disabilities, a copy of their revised IEP and/or NOREP indicating comparable services, and progress notes while at PJJSC
    - ii. For students who require language services, access to a continuum of placements where proper language instruction and access is provided;
  - e. For students with suspected disabilities, the dates of all oral and written requests for evaluations and the dates that PTEs were provided to IDEA Parents.
  - f. The dates of all signed PTEs and the dates evaluations were completed.
  - g. The percentage of evaluations completed within 60 days of the date the PTEs were signed.
  - h. For students who experienced a change in schools, documentation indicating the District has complied with the protections and obligations under Act 1.

In light of the foregoing violations by the **Pennsylvania Department of Education** (“**Department**”) we respectfully request that the Bureau undertake the following actions:

*Statewide Remedy*

1. Order the Department to update its current guidance with regard to juvenile correctional facilities to comply with federal regulations and guidance and direct LEAs to proactively identify all children residing in juvenile correctional facilities and adopt policies and procedures to ensure that every child receives a free, appropriate public education in compliance with the IDEA, Section 504 of the Rehabilitation Act, federal regulations, Chapter 14 of the PA School Code, and Chapter 15 of the PA School Code.
2. Order the Department to develop and implement a statewide review and oversight plan to include yearly monitoring of educational programs in juvenile correctional facilities. Such monitoring should include:
  - a. Interviews of students, parents, teachers, and administrators;

- b. A survey of juvenile correctional facilities to address common issues identified by Complainant ELC including but not limited to: prompt enrollment in an educational program, provision of comparable services, ongoing access to learning even during periods of quarantine, the availability of a range of educational placements, policies and procedures to ensure parent participation, and the provision of transition services.
  - c. Random file reviews of 10 percent of the annual census of students with disabilities; and,
  - d. Classroom and facility observations.
3. If the Department identifies deficiencies during an on-site visit at an educational program or as a result of its review of mandatory data and/or surveys, or as a result of its investigation of a complaint, the Department shall develop Corrective Action Plans to promptly address and remedy issues identified at an on-grounds school or educational program.

Respectfully submitted,



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# **EXHIBITS**