EDUCATION LAW CENTER

PHILADELPHIA
1800 JFK Blvd., Suite 1900A
Philadelphia, PA 19103
T 215-238-6970
F 215-772-3125
WWW. ELC-PA.ORG

PITTSBURGH
429 Fourth Ave., Suite 1910
Pittsburgh, PA 15219
T 412-258-2120
F 412-535-8225

December 11, 2025

Pennsylvania Department of Education
Bureau of Special Education
Division of Compliance, Monitoring, and Planning
607 South Drive, 3rd Floor
Harrisburg, PA 17120
ra-pdespecialed@pa.gov

RE: Complaint Against the School District of Philadelphia and Pennsylvania Department of Education on Behalf of T.J., M.F., Z.B. and Students Similarly Situated for Failure to Provide a Free Appropriate Public Education to Students with Disabilities at the PJJSC

Dear Bureau of Special Education:

The Education Law Center files this Complaint as an organization,[1] and on behalf of individual students T.J., M.F., Z.B. 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 students with disabilities, including specific corrective action to remedy policies and practices that result in the denial of a free appropriate public education to students with disabilities at the PJJSC, specifically: (1) failure to provide "comparable services" upon entry to the PJJSC and instead imposing significantly reduced services through unilateral changes to a student's IEP; (2) failure to ensure parent participation in the evaluation and IEP process; (3) failure to properly evaluate students; (4) failure to provide related services mandated

[1] 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.").

by a student's IEP; (5) failure to implement progress monitoring; and (6) failure to provide transition services. Importantly, the changes imposed by the PJJSC follow the youth and therefore can have a significant impact on their school placement and services. We seek compensatory education services for all students impacted by these violations, including Named Complainants and those similarly situated.

I. Introduction

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

Name	Occupation/Title	Phone Number and Email	Regarding
[redacted]	Student	Contact through Court Appointed Special Advocate (CASA) EDM [redacted]	J.T.'s experience at PJJSC
[redacted]	CASA EDM	[redacted]	J.T. and M.F.
[redacted]	EDM CASA Volunteer for J.T.	[redacted]	J.T.'s experience at PJJSC
[redacted]	Staff Attorney, Support for Child Advocates	[redacted]	J.T.'s experience at PJJSC
[redacted]	Student	Contact through CASA Philadelphia EDM [redacted]	M.F.'s experience at PJJSC from
[redacted]	EDM CASA Volunteer for M.F.	[redacted]	M.F.'s experience at PJJSC

[redacted]	Pro Bono Attorney for M.F. [redacted] via Support Center for Child Advocates	[redacted]	M.F.'s experience at PJJSC
[redacted]	Staff Attorney, GAL for M.F.	[redacted] Staff Attorney [redacted]	M.F.'s experience at PJJSC
[redacted]	Student	Contact through CASA Philadelphia: EDM [redacted]	Z.B.'s experience at PJJSC
[redacted]	CASA EDM	[redacted]	Z.B.'s experience at PJJSC
[redacted]	Attorney, Support Center for Child Advocates	[redacted]	Z.B.'s experience at PJJSC
[redacted]	Attorney, Support Center for Child Advocates	[redacted]	Similarly Situated Students
[redacted]	Supervising Attorney*	[redacted]	*Alternative contact, if the Bureau cannot reach any of the Support Center attorneys listed above.
[redacted]	[redacted] Children & Youth Justice Unit at the Defender Association of Philadelphia	[redacted]	Similarly Situated Students
[redacted]	Youth Art & Self-empowerment Project (YASP), [redacted]	[redacted]	Similarly Situated Students
[redacted]	YASP, [redacted]	[redacted]	Similarly Situated Students
[redacted]	Youth Sentencing and Reentry Projec	[redacted]	Similarly Situated Students

	t (YSRP), [redacted]		
[redacted]	Disability Rights PA, [redacted]	[redacted]	Similarly Situated Students
[redacted]	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.J., M.F., Z.B are students with disabilities who were placed by court order at the Philadelphia Juvenile Justice Services Center ("PJJSC") where education is provided by the School District of Philadelphia and overseen by PDE. Similarly situated students are students with disabilities who resided at the PJJSC over the past year.

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 48th 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 Department 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.*

[redacted] ("J.T."), D.O.B. January 30, 2010

J.T. is a fifteen-year-old student in foster care who has been placed at the PJJSC from April 25th to August 20th 2025. J.T. has a history of requiring emotional support services and has been subject to multiple hospitalizations due to acute mental health needs. J.T. has been diagnosed with Emotional Disturbance and a Specific Learning Disability in Mathematics.

Background

Since September 2022, Court Appointed Special Advocates of Philadelphia has been appointed to serve as J.T.'s Educational Decisionmaker. Upon information and belief, prior to arriving at the PJJSC, J.T. experienced a lack of school and placement stability. In March 2023, J.T. was placed at New Oaks Academy at Belmont Institute, where he received services for mental health instability. In July of 2023, J.T. received inpatient services while at Foundations Behavioral Heath for a residential treatment placement. From August 2024 to November 2024, he attended High Road School of Philadelphia – Germantown (Approved Private School) and received emotional support services. Upon information and belief, J.T. previously attended the local public high school at Frankford High School, but the District issued a NOREP specifying a more specialized placement, believed to be High Roads Germantown. On November 8th, 2024 J.T. then became disconnected from school after an incident with police. Before his placement at the PJJSC in April 2025, J.T. was most successful when receiving full-time emotional support services; he has also experienced some success with autism support services.

June 2024 IEP

J.T.'s June 2024 IEP through the School District of Philadelphia included full-time Emotional Support with robust related services including School Based Counseling, Special Transportation (curb to curb), and Occupational Therapy as related services. He received a primary diagnosis of Emotional Disturbance and a secondary diagnosis of Specific Learning Disability in Mathematics. The IEP identifies that J.T. has skill needs related to self-regulation and expressing his emotions to control his emotions, has regular outbursts, and is generally unable to self-regulate without prompting. J.T. will often pace in and out of rooms and "impulsively voice his thoughts aloud in class even if they are irrelevant to the class activity." June 2024 IEP, pg. 9. He can also grow argumentative and yell at his fellow students. *Id.*

Relating to math, J.T. struggles with word problems and applying strategies to solve complex math problems. His math teacher noted that his "greatest weaknesses include [] low motivation to complete work or pay attention as well as [the] ability to work in groups." *Id.* His teacher

commented that positive reinforcement for good behavior improves J.T.'s behaviors, including receiving time to draw, listening to music on his headphones, or an extra break. *Id.*
As a result, J.T.'s IEP goals were centered around his behavior: improving anger management and coping skills, following directions, beginning and completing unfavorable tasks, advocating for himself when seeking help, and using break time more appropriately. To achieve these goals, J.T. received 1500 minutes of Emotional Support per week. June 2024 IEP pg. 4.

The District shared a NOREP for J.T. in June 2024, which noted that J.T. needed full-time emotional support services but was currently only receiving supplemental services. The NOREP was how District staff communicated with J.T.'s EDM that J.T.'s level of services was being reduced and that the District was failing to provide an appropriate educational placement. June 2024 IEP pg. 35. Specifically, the NOREP noted that J.T.'s needs require full-time services, not just supplementary services and his needs would not be met through only supplementary services. *Id.*

Education Deficiencies at the PJJSC

In April 2025, J.T. interacted with the police and, after an emotional outburst, was taken to the Children's Hospital of Pennsylvania. After being discharged, he came to reside at the PJJSC. He remained at the PJJSC from late April or early May 2025 through August, giving J.T. his highest level of residential stability in recent years.

In May 2025, the PJJSC insisted on reviewing J.T.'s IEP and updating it, and subsequently unilaterally revised it while conducting only one test as the basis for revision. On May 27, 2025, J.T.'s special education case manager, Lynda Hicks, notified J.T.'s EDM that the PJJSC would not be issuing a PTRE because J.T. was not in a re-evaluation year. As part of the update, J.T. was administered the Wide Range Achievement Test (WRATS), a standardized achievement test that measures skills in reading, spelling, and math. The IEP was updated without J.T.'s EDM ever signing a PTRE, violating J.T.'s educational rights.

J.T. received his new IEP on June 10, 2025 ("June 2025 IEP"). The June 2025 IEP significantly reduced services that J.T. was entitled to, reducing his emotional support services from 1500 minutes/week to 450 minutes/week. June 2025 IEP pg. 5. PJJSC claimed that due to the "structure of his current placement," J.T. "does not exhibit the extreme behaviors within the classroom as in the traditional school setting" but they acknowledged the behaviors previously exhibited as a reference point for future IEPs in a more traditional school setting. June 2025 IEP pg. 7. The NOREP also stated that J.T. would receive supplementary emotional support to maximize the amount of time he could spend in a regular education classroom. May NOREP pg. 2. The June 2025 IEP also removed all Extended School Year objectives outside of one relating to math. *Id.* at 30. The May NOREP stated that data showed that J.T. "demonstrates regression towards his IEP goals and does not meet the qualifications. . . to qualify for ESY services" to explain why ESY services were denied. May NOREP pg. 2. However, that is a substantial reduction of ESY services as all four of the behavior goals and two of the transition goals that J.T. had in his June 2024 IEP were removed, leaving only a single math goal, without any thorough reasoning as to why these reductions were occurring.

On June 4, 2025, J.T.'s advocates at CASA requested to meet with the IEP team at the PJJSC, which included J.T.'s special education teacher Lynda Jennette Hicks, his day-to-day regular education teacher Roberta West, and the PJJSC's special education director, Jamie Henley. J.T.'s advocates called this meeting to discuss the significant changes, specifically the reduction of services, to J.T.'s IEP. When J.T.'s CASA advocates asked the PJJSC IEP team about their reduction of services, the IEP team justified the reduction on the basis of how many minutes PJJSC could provide, rather than basing the reduction on J.T.'s needs. The IEP team similarly stated that the ESY goals disappeared from the IEP because of a limited capacity to provide ESY services. The IEP team noted several times that though these services were removed from the IEP, they would remain in place in an updated NOREP to give clear direction to J.T.'s placement once he leaves the PJJSC. However, the IEP provided no updated NOREP. There was little communication with the PJJSC staff regarding J.T.'s reduction in services that are thereby depriving him of a FAPE.

According to the Report of Progress from Summer 2025, J.T. made little to no progress in any of the goals set for him in the June IEP, compared to his Report of Progress in Summer 2024 where J.T. received marks of satisfactory on all but two of his seven ESY goals. PJJSC did not introduce five of the goals and the two they did introduce, received comments of "needs improvement." J.T. was released from PJJSC after four months, at the end of the summer. Since his release, on August 20th, J.T. was placed in an adult residential treatment facility. SDP assigned J.T. to Samuel Fels High School. Despite the hard work of his advocacy team, there is concern that that the substantial changes to his latest IEP at PJJSC will not only set him back from the time he was under the supervision of PJJSC but will also negatively impact how smoothly he can get the services he needs at his new school.

[redacted] ("M.F."), D.O.B. December 27, 2008

M.F. is a sixteen-year-old student in foster care with a disability who currently qualifies for special education services under the primary disability category of emotional disturbance. In the spring of 2025, M.F. was placed at PJJSC for a few weeks during which time he was denied a FAPE. In addition to the inadequate services M.F. received while at PJJSC, the District also conducted a reevaluation that resulted in a proposed IEP that inappropriately reduced and altered M.F.'s necessary and recommended services.

Background

Information about M.F.'s birth, medical history, and early development is largely unknown prior to 2017, when he was first appointed a Court Appointed Special Advocate ("CASA"). It is believed that he was born in Brooklyn, New York before moving to Philadelphia when he was six years old. Since M.F. entered foster care in 2017, however, he has experienced significant challenges impacting his educational continuity and stability.

In 2017, M.F. experienced a profound personal loss with the death of his infant brother. In 2019, when M.F. was 11 years old, his mother was incarcerated, and her parental rights were terminated. M.F. has six siblings who in 2019 were all in pre-adoptive homes and with whom he

had monthly supervised visits in 2019. M.F. has been placed in several host homes over the years since entering foster care.

M.F. has experienced extensive trauma, resulting in multiple in-patient hospitalizations and at least one partial hospitalization for mental health and behavioral concerns. Prior to his hospitalization, he attended Robert E. Lamberton Elementary School in Philadelphia for the sixth grade, where he reportedly struggled with attendance, academic performance, and social-emotional/behavioral functioning, leading to an initial evaluation for special education services.

In the fall of 2019, M.F. was hospitalized at Belmont Behavioral Health before being placed at Silver Springs Residential Treatment Facility, where he received Homebound Instruction. M.F. was diagnosed with ADHD, PTSD, and Oppositional Defiant Disorder (ODD) for which he has received outpatient trauma focused therapy from Children's Crisis Treatment Center, school therapeutic services, wraparound services, and clinical transition and stabilization services. According the PJJSC's Reevaluation Report, M.F. was evaluated at Silver Springs in 2019, and staff reported M.F. had "poor frustration tolerance, peer interaction difficulties, and physical aggression" that was deemed "clinically significant." Yet, an evaluation report from Colonial School District in 2019 reported that despite these difficulties, M.F. seemed eager to be in a school environment again" and wanted to know if his academic skills were on grade level. He received this therapeutic support from around 2017 until around 2023 according to records from Martin Luther. In his 2019 reevaluation report, M.F. was noted to have eloped multiple times from the home of a former foster family as well as from his school. While the report noted that M.F. was "easily triggered" and had a history of physical altercations with peers, teachers, and his foster family, it also noted that M.F. was "engaging and intelligent" and open to work with professional on identifying new ways to cope with his anger.

Since at least the 2021-2022 school year, M.F. has been attending Martin Luther School, an approved private school, in a full-time emotional support classroom. According to M.F.'s 2021 Reevaluation Report, which was conducted at Martin Luther School, he received social-emotional and behavioral supports such as morning community circles to cultivate a sense of belonging, group counseling sessions, a Work Orientation and Readiness Center program for professional skill building, and time for student-chosen social activities.

M.F.'s February 2020 IEP from Martin Luther School found that M.F. had behaviors that impeded his learning, so the IEP team had to develop a Positive Behavior Support Plan after completing a Functional Behavioral Assessment ("FBA"). When asked how M.F.'s disability affects his involvement and progress in the general education curriculum the IEP states " [h]e is also in need of a positive behavior support plan, which includes the opportunity for frequent reinforcement of desired behaviors." For the 2019-2020 school year, M.F. had three incidences of physical aggression against students, six instances of physical aggression against staff, and one instance of property destruction. The February 2020 IEP required M.F. to have full-time special education support and lists twelve modifications and specifically designed instructions, half of which are also addressed in the Positive Behavior Support Plan.

M.F.'s December 2022 IEP set forth multiple goals related to transition services for M.F., reading comprehension and mathematics, and reducing disruptive behavior. Some of his

academic modifications included frequent teacher check ins, breaking down instructions, and repetition. His behavior modifications focused on his Positive Behavioral Support Plan that promoted positive reinforcements, redirection, and frequent feedback. His IEP also called for a Functional Behavioral Assessment. Some of the services provided to accomplish these goals and modifications included curb to curb transportation, 30 minutes a week of individualized counseling, and weekly consultations with a behavioral analyst. This IEP also stated that M.F. was entitled to Extended School Year Services at M.F.'s local high school for emotional support programing. At that time, M.F.'s IEP team did not feel like he was ready to transition to a less restrictive environment because of a small uptick of minor behaviors, so he continued to receive full time support.

In March 2023, Martin Luther revised M.F.'s December 2022 IEP based on his progress and the results of the Functional Behavioral Assessment given. His Functional Behavioral Assessment flagged that M.F. was likely to engage in off-task behaviors to gain attention, so a new suggestion in the IEP was for M.F.'s teachers to not engage back and forth debate with him but instead to disincentivize that behavior. As a whole, M.F. made progress on most of his academic and behavioral goals, and Martin Luther suggested that M.F. may be ready to transition to a less restrictive setting at Upper Darby High School.

During the 2023-2024 school year, M.F. was AWOL for the entirety of the school year. When he returned to Martin Luther in August 2024, he continued to require intensive emotional support and was not forthcoming when asked about what had occurred during the year he was absent. He no longer was expected to transition to a less restrictive environment.

2024 Revised IEP

In M.F.'s October 2024 revised IEP, his teachers expressed concerns about returning him to previous academic levels after he missed an entire school year. He continued to require a highly structured environment with a low teacher-to-student ratio as well as in-classroom assistants for additional support. His assessment scores were below benchmark for reading and math, though his math teacher noted that he was "completely capable" in math, but his progress suffered because he expressed no motivation or engagement with the material. He also continued to need behavioral goals of decreasing task refusal and decreasing incidents of physical aggression. During the fall of 2024, M.F. had several behavioral incidents that resulted in several short three-day suspensions, which M.F. described as self-defense incidents. One of his teachers remarked that his negative behaviors toward his peers can be redirected quickly and that he "takes ownership of his behavior."

The October 2024 IEP team recommended that M.F. remain in a full-time emotional support classroom. Based on the IEP, M.F. was still entitled to receive 30 minutes of individual counseling per week in addition to an array of academic and behavioral modifications and specially designed instruction including: frequent teacher check-ins to keep him on task; repeated directions; tasks broken down into smaller chunks; repetition and review of concepts; opportunities for energetic and multi-modal instruction; a positive behavior support plan; positive reinforcement; frequent feedback; reinforcement of class expectations; and a recommendation that teachers refrain from engaging in back-and-forth arguments with M.F.

PJJSC Evaluation

The last reevaluation M.F. received prior to the 2024-25 school year was in December 2021. On December 2, 2024, Martin Luther School requested that M.F.'s EDM sign a Permission to Reevaluate ("PTRE") form for M.F.'s triennial IEP review, which included permission to perform a recommended Functional Behavior Assessment ("FBA"). M.F. was due for his mandatory triennial IEP review However, M.F. "wasn't in school [at Martin Luther School] to get it done." M.F. entered PJJSC on February 24 after again going AWOL for some time between December 2024 and February of 2025. On February 26, PJJSC asked M.F.'s EDM to sign another PTRE recommending updated measures and assessments. Notably, the new PTRE did not recommend an FBA.

On March 12, 2025, PJJSC issued both a reevaluation report, based on a review of existing data and new academic and intelligence assessments, and a proposed IEP. M.F. disclosed to the PJJSC evaluator that his IEP "was solely behavioral in nature," yet the reevaluation report noted that M.F. self-reported positive social relationships his BASC-3 self-report assessment showed "no significant clinical concerns regarding intervention." However, because "no current teacher information could be obtained due to limited time at the current setting, limited interaction, and multiple changes in his location," M.F.'s proposed IEP maintained his emotional disability classification and noted that he had an existing Behavior Support Plan that needed to be implemented. PJJSC's evaluation also reported M.F. received low-average to average-range scores in reading and math achievement. The report recommended M.F. receive specially designed instruction, support in mathematics, written expression, and increasing visual learning strengths. PJJSC's evaluators left the conclusion portion of the reevaluation report —where they were meant to mark if the student required SDI or not —blank. They informed his EDM that this was "due to a system error," but that M.F. was recommended to continue services.

The most notable and concerning difference between M.F.'s previous IEP and the IEP proposed by the PJJSC was the PJJSC's recommendation that M.F.'s supports be reduced from full-time to supplemental. PJJSC's IEP recommended M.F. spend 100% of his day in the general education classroom with only differentiated and specially designed instruction in mathematics, reading, and behavior. Notably, the proposed IEP stated explicitly that the Martin Luther School team believes M.F. had "done the work needed to transition to a less restrictive school setting." However, in M.F.'s most recent IEP completed by Martin Luther School in November 2024—a mere four months prior to PJJSC's IEP—continued to stress that M.F.'s disability significantly interferes with his "academic involvement in the regular education curriculum" and that he requires a highly structured environment with small student to teacher ratios in a full time emotional support program. Martin Luther's previous belief that M.F. may have been ready to transition to a less restrictive setting was superseded by additional subsequent information, including that M.F. went AWOL for an entire school year. The stark difference between shifting 100% of M.F.'s time in special education to 100% of his time in a general education classroom after a re-evaluation that relied on previously collected academic data from his last school indicates that the change in M.F.'s IEP were not tailored to his needs but rather the needs of PJJSC.

The proposed IEP maintained M.F.'s previous 30 minutes per week of individual counseling. Upon information and belief, M.F. did not get this service because he was released from PJJSC shortly after the District completed his IEP. In addition, the proposed IEP recommended the following specially designed instruction: explicit instruction aimed at acquiring and retaining employment, including getting math and reading skills up to grade level; opportunities to emphasize leadership abilities; opportunities for service learning; modeling and practice in coping skills and anger management; extended time and simplified directions in mathematics; and extended time and provided writing structure in reading and writing instruction.

Martin Luther Re-Evaluation and Current IEP

M.F.'s EDM at CASA attempted to get the PJJSC IEP revised or rescinded altogether and to receive a new reevaluation report with an FBA. In particular, M.F.'s EDM was concerned that PJJSC's report and proposed IEP were not "comprehensive and accurate" and would not ensure M.F. received "appropriate programming and services." The team at Martin Luther School also expressed confusion in an email correspondence with M.F.'s EDM about why PJJSC created a new IEP considering they were in possession of M.F.'s October 2024 IEP from the school.

Upon his discharge from PJJSC, M.F. ultimately received a new reevaluation and proposed IEP at Martin Luther School.

In contrast to PJJSC's recommendations, Martin Luther School's evaluators instructed the IEP team to conduct an FBA and develop a Positive Behavior Support Plan. In addition, despite the statement in PJJSC's proposed IEP that Martin Luther School staff believed M.F. was prepared to transition to a less restrictive setting, the April 2025 IEP – which is currently in effect – again recommended that M.F. remain in a full-time emotional support placement and receive 30 minutes per week of individual counseling services. The Martin Luther IEP team also reported that M.F. continued to have significant emotional, social, and behavioral challenges that interfere with his participation in the regular education classroom environment and that he required a positive behavior support plan that includes clear expectations, structure, consequences (positive and negative), and frequent reinforcement for desired behaviors. In fact, with two of M.F.'s Behavior IEP Goals, he regressed after his time at PJJSC.

Since returning to MLS in the spring of 2025, M.F. has also had other behavioral incidents involving physical aggression, one of which led to short 3-day suspension. With this suspension, M.F. had been suspended for a combined twelve days of the 2024-2025 school year, all for "physical aggression." M.F.'s IEP team met for a manifestation determination meeting following these incidents in May 2025 and determined that the incidents were a manifestation of M.F.'s disability. A new PTRE for an FBA was signed and "in the process" so that M.F.'s PBSP could be revised. As of May 12, 2025, however, M.F. was not permitted back on campus, so an FBA could not be completed. The IEP team recommended the FBA be completed upon M.F.'s return to in-person instruction so that his PBSP could be revised.

For the remainder of the 2024-2025 school year, M.F. received only the services recommended by Martin Luther's IEP team after their own April 2025 reevaluation — a full-time emotional support placement and 30 minutes per week of individual counseling services. M.F. was not

permitted to return to Martin Luther School for the 2025-2026 year and was supposed to begin at High Roads Germantown until he went AWOL this school year.

[redacted] ("Z.B."), D.O.B. June 29, 2007

Z.B. is an eighteen-year-old student with a disability in foster care who was placed at the PJJSC from January 9th-September 15th of 2025 and who was denied a FAPE throughout that time. Z.B. has a long history of DHS involvement and has experienced significant neglect, abuse, and trauma. He has also had multiple placements outside the home, including kinship care, guardianship, foster care, and multiple residential treatment facilities ("RTFs"). Z.B. also has a significant history of psychiatric and psychological treatment, including hospitalizations and outpatient services. Past evaluations contain evidence of early lead exposure at high levels. Previous evaluators stated that Z.B.'s learning and behavior problems were likely due to genetic problems and possible prenatal exposure to substances. Z.B. also has prior diagnoses of seizure disorder (epilepsy), pica (eating non-food substances), enuresis (bed wetting), scoliosis, minor visual deficits, and a history of head trauma.

Background

Z.B. was first identified as eligible for early intervention services under a classification of autism when he was in kindergarten in March 2013. He was also diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD) at this time. His teachers reported concerns with his behavior, including noncompliance, leaving his seat, physical aggression, difficulty expressing emotions, and eating nonfood items.

Two functional behavior assessments (FBA) were conducted for Z.B. in 2014 when he was six years old and in first grade at the Robert B. Pollock school. At this time, he exhibited hyperactivity, difficulty interacting with peers, and excessive absences. He also showed impulsive behaviors and issues related to food and stealing. He would also have tantrums that lasted for up to two hours consisting of crying, hitting, screaming, and attempts to elope. He was diagnosed with autism, pica and intellectual disability at this time.

In March 2015, a psychological re-evaluation was conducted by PSD but could not be finished because Z.B. was placed in an inpatient behavioral health facility. In June 2015, based on knowledge and belief during his inpatient stay, it was determined that Z.B. met the eligibility criteria for special education services under a classification of emotional disturbance. In September 2015, Z.B. had his first stable home environment with a therapeutic foster family.

In 2016, Z.B. was placed in a Community Residential Rehabilitation ("CRR") treatment program with Elwyn Inc. A community residential rehabilitation treatment plan dated March 2016 noted diagnoses of oppositional defiance disorder (ODD), intermittent explosive disorder (IED), autism spectrum disorder (ASD), attention-deficit hyperactivity disorder (ADHD), and intellectual disability (mild). He exhibited negative behaviors including physical and verbal aggression, unstable mood, a propensity for frustration and agitation, and impulsivity in demonstrating inappropriate sexualized behaviors. These behaviors manifested as physical attacks against teachers, foster siblings, and foster parents. As a result, Elwyn created goals to address his needs

to: 1) increase his ability to express his thoughts and feelings across settings; 2) utilize age-appropriate social skills to manage his mood; and 3) eliminate all inappropriate sexual behaviors. A safety plan was also developed to address his sexualized behaviors.

According to his Residential Service Plan completed through Elwyn in March 2016, Z.B. was discharged from Fairmount Psychiatric Hospital with the recommendations for a CRR Host Home. Upon discharge, Z.B. had treatment foster parents in place, an ISS worker to provide 20 hours of assistance in implementing his behavioral interventions and supporting his foster parents in the home, a therapist to provide individual and family therapy, clinical case management, and medication management provided by a psychiatrist. Z.B.'s foster mother reported that Z.B. was beginning to exhibit stuttering at this time. He was also becoming agitated during therapy sessions and having a difficult time with transitions.

In April 2016, when Z.B. was 9 years old and in 4th grade, he alleged abuse at the hands of his biological father and visitations with his father were suspended as a result. Z.B. behaviors also escalated due to distress over a change in his therapeutic team. In May 2016, Z.B. was seen at the crisis center after threatening to jump out of a window to hurt himself, but hospitalization was not recommended. In 2016, Z.B. was attending Gen. George C. Meade with supplemental autistic support services and various behavioral health services.

Z.B.'s next academic record is an IEP dated May 2018 from the YALE School Inc, which requested a Functional Behavior Assessment ("FBA") because of Z.B.'s extensive and intense history of behavioral challenges. The FBA found that Z.B. had challenges with aggression, elopement, self-injury, and rocking, and his behaviors escalated when he wanted to escape from tasks. The IEP provided a reading specialist and 1:1 support in a full-time emotional support environment.

An IEP revision occurred on 10/29/18 to discuss two physical restraints that had occurred due to Z.B.'s response to the challenging behaviors of his peers. Family-based services recommended increased extracurricular activities and increased support through family therapy.

Z.B. was moved to KidsPeace and attended their school in the Parkland School District in 2019. His IEP team reported that he continued to be eligible to receive full-time special education services in an emotional support setting under a primary classification of Autism and secondary classifications of Emotional Disturbance and Intellectual Disability. Z.B. also received diagnoses of scoliosis, Disruptive Mood Dysregulation Disorder (DMDD) and visual deficit at this time.

From 2021 to 2023, Z.B. remained eligible for special education services under a classification of Intellectual Disability with a secondary classification of Emotional Disturbance. Z.B. attended the St. Katherine Drexel School while a resident of the St. Francis Group Home in 8th grade. He then attended Norristown Area high school for 10th grade and moved to Devereux Advanced Behavioral Health in 2023 where he remained until his detention at the PJJSC. An FBA conducted in February of 2023 while at Devereux reinforced similar concerns previously reported including elopement, aggression, and inappropriate language.

June 2024 IEP:

Z.B.'s last IEP before his transfer to PJJSC was written by Devereux in June 2024 and revised in October 2024 to update his present levels and goals in math fluency. Again, Z.B. qualified for full time special education services under the primary category of intellectual disability and the secondary disability category of emotional disturbance.

Past cognitive testing from multiple administrations indicated significantly below average intellectual functioning. Past adaptive ratings indicated significantly below average skill levels in multiple areas. At the age of 17, the District determined Z.B. was performing at a third-grade level in reading and mathematics. General recommendations for programming modifications and supports included (but were not limited to): modified curriculum and assessments; testing accommodations; small group setting; clarification of directions; opportunities for individualized instruction and practice; frequent repetition and review of concepts; and a positive behavior support plan to include rewards-based incentives, daily monitoring of behaviors and frequent positive reinforcement.

Z.B.'s academic goals included Oral Reading Fluency, Reading Comprehension, and Number Sense Fluency. Z.B. made some progress in each goal but did not achieve the targeted levels for any goal. A review of academic and cognitive testing ranging from 2016 to 2021 indicated that Z.B. scored in the "Very Low" category for every tested metric. His most recent full scale IQ score from 2019 was 62 which is categorized as "very low."

In addition, Z.B. has also struggled with negative behaviors. He had 12 minor behavior incidents and 9 major behavior incidents during the 2023-24 school year. The IEP noted that the function of those behaviors was primarily to escape a task or obtain peer attention. The team noted that his behaviors spiked in April when he had a new temporary teacher. Z.B. had one behavioral goal in the area of self-regulation. The goal stated: "when Z.B. becomes upset, frustrated, or angry, he will use a self-regulation/coping strategy (movement break, deep breathing, quiet space break, etc.) to avoid engaging in inappropriate behaviors (inappropriate language, yelling, threatening, physical aggression etc.) with two prompts, as evidenced by earning 100% of his safety points on his daily point sheet for 9 consecutive weeks. Z.B. achieved a 100% average in self-regulation and coping during 4 weeks in quarter 2 and 96% across 9 weeks in quarter 3.

Z.B.'s recommended services, modifications, aids, and supports included: positive behavior support plan implemented by trained staff with access to a behavior manager; academic SDIs, and mental health services, twice weekly for 30 minutes per session. Special education staff was also given support in the form of consultation with head teacher, BCBA, and IEP team members as needed. All Devereux Mapleton staff was to complete Safe and Positive Approaches courses annually in order to facilitate implementation of the IEP. Z.B. was eligible for ESY (optional) under the categories of severity of disability and regression and recoupment.

The team determined that Z.B. needed a full-time Emotional Support placement to be successful in the academic setting. It also determined that Z.B. would benefit from socialization with regular education peers by participating in the general education curriculum with supplementary aids and services.

Z.B. expressed a desire to live independently and obtain a job in the future in his transition plan. He was to receive daily services to support all three transition plan areas (independent living, post-secondary education, and employment).

PJJSC IEP

Z.B. was transferred to PJJSC following his arrest in January 2025. SDP sent Z.B.'s EDM a Petition to Reevaluate Consent Form because a biennial review was due to see if Z.B. continued to be eligible for special education and services. Four months after his arrival, PJJSC held an IEP meeting on May 14, 2025, and developed a new IEP for Z.B.

The team relied on a new re-evaluation conducted in March 2025. The evaluation did not indicate significant improvement in any area from his previous evaluation in 2023. The evaluation indicated that Z.B. continued to exhibit persistent behavior problems, including daily physical and verbal aggression behaviors when presented with a non-preferred task. His special education teacher reported that he was able to maintain appropriate classroom behavior but would not engage with assigned tasks or materials. A previous Functional Behavioral Assessment indicated that Z.B.'s work refusal was partially due to avoiding instructional demands and expectations as reflected in his FBA of February 2023 pg. 5. His 2024 IEP stated that he would refuse to do work to gain access to a preferred area away from peer or staff conflict. Z.B. continues to struggle with participating in small group activities and non-preferred tasks, often demonstrating verbal refusals, physical withdrawal, and avoidance when asked to participate. This underscores the need for full time emotional support, as Z.B. still displays extremely low to low scores across almost all academic performance metrics. Z.B.'s only average scores were in the area of oral expression.

The 2025 reevaluation included the administration of an ABAS-3 assessment to measure Z.B.'s adaptive skills in light of ongoing autism needs. SDP failed to properly obtain the necessary data to ultimately score the ABAS-3 because of the "limited observation opportunities in the highly structured environment along with the fact that the student would have received the lowest possible scores." Re-evaluation Report 4-23-25 pg. 13. Z.B. was also given a behavior assessment (BASC-II) and was rated in the At-Risk range in the areas of: conduct problems, depression, learning problems, withdrawal, social skills, leadership, and study skills. He was in the clinically significant range in the areas of: hyperactivity, aggression, attention problems, adaptability, and function communication. These results "suggest that Z.B. exhibits significant behavior and emotional concerns in a number of areas." Re-evaluation Report 4-23-25 pg. 24.

Despite the determination in his prior IEP that Z.B. required full time Emotional Support and the above-noted academic struggles and "significant behavior and emotional concerns," the May 15, 2025 NOREP indicated that supplemental emotional support would be the most appropriate support type and level for Z.B. while placed at PJJSC. The IEP stated that Z.B. would participate in the regular education classroom for the entire day due to the structure of the facility and that supplemental services were the most appropriate support based on a "review of the current Reevaluation Report and IEP." IEP 2025 pg. 32. The IEP maintained his placement in the general education classroom at 100% of the school day, despite his prior IEP indicating the need

for full time emotional support in this context due to behavior issues caused by peer instigation, too little structure, and too large of a student to teacher ratio. Z.B.'s October 2023 IEP clearly explained that Z.B. "could not participate meaningfully in the instruction or activities in which non-disabled peers would engage" and that his need for supplemental instruction in the areas of social and academic skills greatly outweigh any benefit he could receive in a regular education classroom, even with substantial modifications and adaptations. October 2023 IEP pg. 39.

While Z.B.'s prior IEP indicated a need for daily support to meet his transition plan goals, this support was reduced to 30 minutes per week in all categories for post-secondary education at PJSSC. The team determined that Z.B. did not require support to meet his independent living and employment goals. Z.B.'s services and supports were reduced despite his ongoing needs that have required intensive services and supports since he was in kindergarten.

The SDP provided no justification for significant reductions in services and the drastic change from a fulltime Emotional Support classroom to a regular education classroom. While asserting that the changes were based on his recent reevaluation, the re-evaluation conducted while at the PJJSC reflected significant academic and emotional challenges consistent with those addressed in his prior IEP. Z.B. continued to struggle with behavioral challenges, reading comprehension, mathematics, and self-regulation yet his IEP while placed at the PJJSC only contained goals related to his academic struggles and transition services.

Z.B. was released from PJJSC on Monday, September 15th, and he is currently staying at a shelter with hopes of being accepted into a group home setting and continuing his education. However, there are concerns that the significant reduction in Z.B.'s services and prior placement in regular education will further elongate the time it takes to ultimately place Z.B. in a proper educational placement based on his own individualized true needs, rather than what the District provided based on what was available at the PJJSC.

Similarly Situated Students

The Education Law Center is aware that other students with disabilities at the PJJSC who are not not receiving a free appropriate public education while at the facility based on common policies and practices impacting all students. This information is based on calls to ELC's Intake Line as well as discussions with public defenders, CASA Philadelphia, and other education and disability advocates. Students with disabilities are similarly receiving reduced services, the elimination of IEP goals, and are placed in inappropriate classroom settings which do not comport with prior IEPs or evaluations. Reductions in services are often modified upon entry to the PJJSC based on a determination made out of convenience or the availability of services rather than the individual needs of students. In addition, Section 504 Plans are not followed. Named Complainants and those similarly situated also often fail to receive appropriate hours of instruction and are deprived of access to education.

To address this systemic harm, ELC seeks relief against the District in the form of revisions to current policies and procedures as well as proactive monitoring and oversight by the Bureau to include a review of student files and awards of compensatory education services where indicated

for deprivations of a FAPE to Named Complainants and students at PJJSC who are similarly situated.

We also seek specific remedies against the Pennsylvania Department of Education to include issuing guidance to both local education agencies and detention centers regarding federal and state obligations to provide a free appropriate public education to students with disabilities. ELC contends that this is a systemic mater that requires not only immediate intervention by LEAs but action and guidance by the Department pursuant to its duties as a State Education Agency (SEA) to ensure a FAPE for all students. In light of the statewide nature of this issue, we request that the Department issue statewide guidance and undertake substantial efforts to proactively investigate, monitor, and ensure provision of a FAPE for students in other juvenile detention centers and state facilities 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,[2] in violation of Part B of the IDEA, Section 504, Chapter 14, and Chapter 15, all of which BSE enforces.[3]

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 individualized, appropriate special education services or accommodations to students with disabilities;
2. failing to provide "comparable services" and instead imposing significantly reduced services through unilateral changes to a student's IEP;
3. failing to properly evaluate students with disabilities;
4. failure to ensure parent participation in the evaluation and IEP process, including failing to obtain proper parental consent before reevaluating students with disabilities;
5. failing to provide related services mandated by a student's IEP;
6. failing to conduct adequate progress monitoring;
7. failing to provide mandated appropriate transition services; and
8. failing to provide equal access to educational and rehabilitative programming for individuals with disabilities.

B. Respondents Discriminated Against Students with Disabilities By Failing to Provide a FAPE Due to Unilateral Changes to IEPs and Deprivation of Services

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. *See* 20 U.S.C.

§ 1412(a)(1)(A); *see also Endrew 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).

The failure of an LEA to ensure a FAPE to qualifying students with disabilities constitutes a significant violation of Part B of the IDEA[5] as well as discrimination under Section 504.[6] As the Third Circuit has held, 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). 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.*, 888 F. Supp. 2d at 573.

In this case, students with disabilities at the PJJSC are being deprived of their right to a FAPE as a result of the District unilaterally changing their IEPs, providing reduced services or no services, failing to provide comparable services, and relying on inappropriate and incomplete re-evaluations without parent participation. Such changes to IEPs are not based on the individual needs of students and fail to confer a FAPE. The District has also failed to complete thorough reevaluations and follow procedural protocols before significantly reducing the services that the students should receive, relying on incomplete and dated information to make substantial changes to the students' IEPs even though the same 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 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. Their IEPs or Section 504 Plans are not 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 as a result of the District unilaterally changing their IEPs. In addition to reducing services, many students who need full-time emotional support or autism support are placed in a classroom 100% of the time with their peers without disabilities while significantly reducing the level of support they receive in those classrooms. By significantly reducing critical students' services required by their IEPs or 504 Plans or based on evaluations, the District deprives them of the FAPE they are entitled to by law and denies these students the ability to gain any meaningful education while at PJJSC.

C. The District Denied a FAPE to Named Complainants and Students Similarly Situated

Under the IDEA, every eligible student with a disability is entitled to a FAPE. 20 U.S.C. § 1400(d)(1)(A). To provide a FAPE, a local educational agency ("LEA") must implement an IEP that affords the student the necessary and requisite services to enable the student to make progress and to access the general education curriculum to the greatest extent possible. 20 U.S.C. § 1412(a)(1)(A). An appropriate education for a student with a disability includes specialized instruction and related services that are provided in conformity with the IEP. 20 U.S.C. § 1400(d)(1)(A). The notion of an "appropriate" education cannot be distilled to a single standard, but "must be gauged in relation to a particular child's potential." *Ridgewood Bd. of Educ. v. N.E. ex rel. M.E.*, 172 F.3d 238, 239 (3d Cir. 1999) (quoting *Polk v. Cent. Susquehanna Intermediate Unit 16*, 853 F.2d 171, 185 (3d Cir. 1988). To this end, the IEP must provide "significant learning . . . and confer meaningful benefit," beyond a "trivial educational benefit." *Ridgewood*, 172 F.3d 238, 239 (3d Cir. 1999) (citing *Polk*, 853 F.2d at 182-84). Moreover, under Pennsylvania law, students with intellectual disabilities are entitled to additional specific protections to ensure provision of a FAPE, including mandatory reevaluations every two years instead of every three years and additional robust protections from exclusionary discipline. 22 PA Code § 14.124(c) (students with intellectual disability to be evaluated at least every two years); 22 PA Code § 14.143(b) (a removal from school for even one day is a change of placement for a student identified with an intellectual disability).

Upon information and belief based on the reports of advocates, students educated in the "regular school" in the Juvenile Pod, including Named Plaintiffs are universally deprived of certain services and rights mandated by the IDEA including: (1) related services as required by 34 CFR § 300.34; (2) transition services required by 34 CFR § 300.43; (3) progress monitoring as required by 34 CFR § 300.320; and 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.

D. The District Denied the Right of IDEA Parents to Participate in the IEP Process

Callers to ELC's Intake Line have raised concerns that IDEA Parents are not consistently invited to attend the initial IEP meetings. Convening any IEP meeting without inviting the IDEA Parent directly contravenes the IDEA's mandate that LEAs must attempt to secure participation by IDEA Parents in all IEP meetings. *See* 34 CFR § 300.322; § 300.501(b)-(c). *See Sch. Dist. Of Phila. V. Post*, 262 F.Supp.3d 178, 187 (E.D. Pa. 2017) (stating IEP needs to be developed through collaboration between parents and schools). LEAs are only permitted to hold IEP meetings without either of the concerned student's parents in attendance if both parents have received notice of the meeting and neither is able to attend, in which case the LEA must take alternative steps to ensure the parent's participation, including individual or conference calls. 34 C.F.R. § 300.322(c). We ask the Bureau to investigate whether parents are involved in initial and all IEP meetings and how school placement decisions are made.

In addition, we ask that the Bureau investigate how the District secures parental participation in subsequent IEP meetings and additional steps that are taken to support IDEA parents to attend IEP meetings, including calling them on the phone, or requiring documentation of those efforts. *See* 34 CFR § 300.322(d); § 300.328. At a minimum, the Bureau should require revisions to

current policies and practices to ensure parents are given notice and a meaningful opportunity to participate in *all* IEP meetings, particularly any *initial* IEP meeting.

Here, the District failed to meaningfully include the students' Educational Decision Makers ("EDMs") in the IEP process. For example, the District failed to not only issue a Permission to Re-Evaluation form to the EDM of J.T., but failed to regularly provide information, explanations, and reasonings to the EDMs as to why the District significantly reduced the services provided to their students. M.F.'s EDM had to reach out to the District to find out why portions of his IEP were missing and received an answer that this was due to a system error. Concerns that EDMs raised about reduction of services from full time to supplemental support were written off, stating that the District could not offer full time services so they eliminated them from the documents. The District's lack of engagement with the EDMs left them with the responsibility of organizing meetings seeking to push back against the proposed IEPs, instead of being involved with the initial drafting process.

Under the IDEA, a public education agency must also obtain parental informed consent before re-evaluating a student with a disability. 34 C.F.R. § 300.300(c)(1). The IDEA characterizes informed consent as an agreement in writing to the action for which consent is sought, given by a parent or educational decision-maker who has been fully informed of all of the information relevant to the activity for which consent is sought and who has an understanding of said relevant information. 34 C.F.R. § 300.9(a) - (b). Furthermore, parents are entitled to request a re-evaluation at any time, and that request may be oral but triggers an obligation by the LEA to issue a Permission To Re-Evaluate form ("PTRE") which must be signed by the IDEA Parent. 22 Pa. Code § 14.123. School entities must make the PTRE readily available so that parents can utilize it. Specifically, an employee or administrator of a school entity who receives an oral request for an evaluation from a parent must provide a copy of the PTRE to the parent within 10 calendar days of the oral request. *Id.* If a school district's guidelines specifically require a PTRE as its standard form of written parental informed consent prior to a re-evaluation, the district in question has violated the IDEA if it fails to obtain a signed PTRE before re-evaluating a student. *Montanye v. Wissahickon Sch. Dist.*, 399 F.Supp.2d 615, 625 (E.D. Pa., 2005).

Upon information and belief, the PJJSC failed to issue PTREs and thereby obtain written parental consent before re-evaluating certain of the Named Complainants and similarly situated persons. While the PJJSC performed a re-evaluation of J.T. and updated his IEP accordingly, they did so without issuing a PTRE to J.T.'s EDM. Instead, J.T.'s case manager informed his EDM that PJJSC would not be issuing a PTRE, as it was not a re-evaluation year for J.T. The PJJSC administered one solitary test – the Wide Range Achievement Test (WRATS), a standardized test that only measures skills in reading, spelling, and math. Then J.T.'s IEP was updated based on the results of the WRATS. J.T.'s EDM did not receive a PTRE affording them the opportunity to authorize this test and subsequent updating of the IEP, much less sign a document. J.T.'s re-evaluation without written consent from his EDM in the form of a PTRE thus constitutes a violation of the IDEA.

E. The District Failed to Provide Comparable Services

We ask the Bureau to investigate whether students receive "services comparable to those" in the student's last IEP in consultation with the child's IDEA parent(s) when a child transfers to the school from a prior local educational agency. *See* 20 U.S.C. 1414(d)(2)(C)(i)(I).

If student with a disability transfers school districts within the same year and the student had an IEP in effect in the same state, the LEA's provision of a FAPE to that child must include services comparable to those in the previous IEP, provided in consultation with the student's parents, until the LEA adopts the previous IEP or implements a new IEP. 20 U.S.C. § 1414(d)(2)(C)(i)(I). Additionally, a student removed from their current placement for a period of not more than 45 days for possession of a weapon, use or sale of drugs, or infliction of serious bodily injury or due to school personnel seeking alternate placement for more than 10 days for behavior determined not to be a manifestation of the student's disability is entitled to continue to receive educational services that enables them to access the general education curriculum and progress toward their IEP goals. 20 U.S.C. § 1415(k)(1)(D)(i). The same student is also entitled to receive a functional behavior assessment ("FBA"), as appropriate. 20 U.S.C. § 1415(k)(1)(D)(ii).

The IDEA and implementing regulations do not require an FBA when initially testing a student for suspected disabilities; instead, an FBA is only required when addressing behavioral problems exhibited by a student who already has an IEP. *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 251 (3d Cir. 2012). However, if an IEP does not include an FBA, it must set forth alternative means to address the student's problematic behaviors. *Jalen Z. v. Sch. Dist. of Philadelphia*, 104 F.Supp.3d 660, 670 (E.D. Pa. 2015). When designing an IEP for a student, school districts need to consider positive behavioral intervention strategies among other strategies to address the behavior, which in Pennsylvania must be developed by the IEP team based on an FBA. *Mobley v. Lab'y Charter Sch.*, No. 24-2267, 2025 U.S. Dist. LEXIS 178177 at *53-*54 (E.D. Pa. Sep. 11, 2025).

Here, the District failed to provide comparable services to Named Complainants and those similarly situated based on their then-current IEPs when they entered the PJJSC. In addition, the District failed to conduct FBAs for any of the Named Complainants, despite the fact that each Complainant had an IEP and was still displaying behavioral challenges. Each Named Complainant displayed behavioral challenges in their previous educational placement, and continued to do so upon their arrival at the PJJSC. In the case of Z.B., the evaluation performed specifically noted his persistent behavior problems. Z.B.'s behavioral problems continued to persist when he was confronted with the need to perform non-preferred tasks. In the case of J.T., the NOREP provided for him after his arrival at PJJSC noted that he was regressing on his IEP goals, which were all behavioral. However, an FBA was not conducted for either of these Named Complainants.

F. The District Failed to Properly Evaluate and Serve J.T. and M.F. and Others Similarly Situated

Under the IDEA, when performing an initial evaluation or a re-evaluation, an LEA must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student that will help determine whether the student has a

disability and what the contents of the IEP should be 20 U.S.C. § 1414(b)(2)(A)(i)-(ii); *Council Rock Sch. Dist. v. Bolick*, 2010 U.S.Dist. LEXIS 135 at *22-*23 (E.D. Pa. 2010). *See Methacton Sch. Dist. v. D.W. ex rel. G.W.*, No. CV 16-2582, 2017 WL 4518765, at *7 (E.D. Pa. Oct 6, 2017). An LEA may not use a single measure or assessment as the sole criterion to determine whether a student has a disability or what the contents of the IEP should be when conducting an evaluation. 20 U.S.C. § 1414(b)(2)(B). *See also S. v. W. Chester Area Sch. Dist.*, 353 F.Supp.3d 369, 380 (E.D. Pa. 2019) (holding that a later finding after an initial evaluation that a student is eligible for services is not enough to render the previous negative evaluation improper but that a district that has already evaluated a child and found them ineligible must have a reasonable time to monitor the student's progress before determining that a new evaluation is needed). An evaluation must also be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified. 34 CFR § 300.304(c)(6).

Here, the District failed to provide accurate written notice before placing a student in a different environment, a move that constitutes a change of placement. *See* 20 U.S.C. § 1415(f)(3)(E)(ii) (explaining when prior written notice must be provided and what that notice needs to contain). The failure to conduct appropriate assessments led the District to remove important services in a student's IEP and place students in inappropriate school settings. In the absences of accurate present levels in an IEP, the information is insufficient to inform appropriate goals and SDIs and leads to goals without accurate baselines and provides a student with insufficient supports. *Methaction Sch. Dist. v. D.W. ex rel. G.W.*, No. CV 16-2582, 2017 WL 4518765, at *7 (upholding finding of FAPE denial where the district failed to obtain data on the student's baseline level of performance, rendering the goals provided for in the IEP per se insufficient.).

When a reevaluation is conducted, the school district must ensure the evaluation "is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child is classified." *A.A. v. Northside Indep. Sch. Dist.*, 951 F.3d 678, 685 (5th Cir. 2020) *citing* 34 C.F.R. § 300.304(c)(6). The IDEA calls for the use of a variety of assessment tools and strategies in order to gather relevant information relating to the child's functional, developmental, and academic performance and that the public agency cannot use "any single measure or assessment as the sole criterion for. . . determining an appropriate educational program for the child." 34 C.F.R. § 300.304(b)(1 and 2). Absent a comprehensive evaluation in every area of suspected disability, a school cannot offer a FAPE. See *Mobley v. Lab'y Charter Sch.*, No. 24-2267, 2025 LX 346147 (E.D. Pa. Sep. 11, 2025) (finding that an evaluation report with a single test and no Functional Behavioral Assessment or Positive Behavioral Support Plan was not comprehensive and without a comprehensive evaluation the school cannot craft proper goal statements or SDIs thereby substantively denying the student a FAPE).

While traditionally specific tests are not mandated by the IDEA, courts in Pennsylvania have found that FBAs are required by the IDEA where a student "has been identified with a disability and has an IEP in place, yet still displays behavioral problems." *Coleman v. Pottstown Sch. Dist.*, 983 F. Supp. 2d 543, 565 (E.D. Pa. 2013), aff'd in part, 581 F. App'x 141 (3d Cir. 2014) (quoting *D. K. v. Abington Sch. Dist.*, No. 08-4914, 2010 U.S. Dist. LEXIS 29216, 2010 WL 1223596, at *9 (E.D. Pa., Mar. 25, 2010), aff'd 696 F.3d 233 (3d Cir. 2012)); see also *Jalen Z. v. Sch. Dist. of*

Phila., 104 F. Supp. 3d 660, 669-70 (E.D. Pa. 2015) ("When designing an IEP for a behaviorally challenged student, school districts must 'consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.' ") (quoting 34 C.F.R. § 300.324(a)(2)).

Here, the District failed to properly re-evaluate J.T. but only administered a singular test, the Wide Range Achievement Test (WRATS), which measures reading, spelling, and math. J.T.'s previous IEP from June 2024 did include a goal relating to mathematics, but the vast majority of his goals were related to behavioral manifestations of his disabilities. The District kept many of these behavioral related goals on his May 2025 IEP but significantly reduced his services from 1500 minutes of Emotional Support per week to 450 minutes of Emotional Support per week. The District did not conduct any behavioral related assessments during their reevaluation. While acknowledging that J.T. needed behavioral-related goals, it unilaterally reduced his emotional supports by 70%. The District explained this reduction by claiming that the "structure" of PJJSC itself reduces J.T.'s extreme behaviors, yet J.T. only entered PJJSC in May of 2025 and this IEP was conducted in the same month, not giving the District much time— especially without any sort of behavioral test— to make such a drastic decision that would impact J.T.'s education beyond the PJJSC. J.T.'s progress report while at PJJSC commented on J.T. becoming physically aggressive and negatively expressing his emotions, demonstrating the same behavioral and emotional struggles that he had prior to coming to PJJSC while his services were significantly reduced. Additionally, while the District kept J.T.'s behavioral goals in his regular IEP, they completely eliminated J.T.'s behavioral and transition goals from his Extended School Year Services claiming that he no longer qualified for ESY services without any further elaboration.

The District also failed to properly re-evaluate M.F. when they failed to give him a Functional Behavioral Assessment ("FBA") despite a clear history of behavioral concerns manifesting from his disabilities, and subsequently reducing his services from full time to supplementary. In December 2024, M.F.'s previous school Martin Luther issued a "PTRE" that included permission to perform an FBA. However, due to M.F. going AWOL, Martin Luther was unable to complete that assessment. The next time M.F. was in school was when he was at PJJSC. While PJJSC claimed that M.F. was not displaying behavioral issues while at PJJSC for his short time there, they decided to keep his designation of emotional disturbance and M.F. said his IEP was primarily for behavioral concerns. In fact, M.F. was having behavioral challenges up and until he went AWOL from his previous school before being placed at PJJSC. The District had this information and knew that M.F. was supposed to have a "FBA" at his last school but instead of issuing a comprehensive re-evaluation with an "FBA," they rushed the re-evaluation and did not provide M.F. behavioral supports. The District failed to conduct an "FBA" for M.F. despite M.F. being previously identified with a disability, having an IEP, and consistently demonstrating behavioral problems. The District failed to have enough information to properly develop "SDIs" and goals. This failure is further exemplified by the fact that Martin Luther immediately issued an "FBA" once M.F. returned and changed his services back from supplementary support as revised by the District to full time emotional support.

G. Respondents Discriminated Against Students with Disabilities and Violated the IDEA by Failing to Comply to Provide Individualized Placements and Services Required to Confer a FAPE

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." *Endrew 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.

J.T., M.F., and Z.B. 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, their services were unilaterally reduced. In addition, the District's failed to provide full time services when clearly required by student's individual circumstances as demonstrated by previous, and recently modified IEPs or NOREPs from schools outside of the District. For example, despite their need for significant support, J.T., M.F., and Z.B. were all placed in general education classrooms for 100% of their day, compared to their previous placement in general education for 0% of the day (M.F. and Z.B.) and 24% of the day (J.T.). By unilaterally changing their placements and significantly reducing their services, the District failed to comply with their duties and obligations to the children in their care.

Where modifications were made, they were not comparable and were not reasonably calculated to ensure educational benefit for the student. As a result, J.T., M.F., and Z.B. and similarly situated students were denied a FAPE.

H. The Pennsylvania Department of Education 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.

I. Complainants and Similarly-Situated Students Are Entitled to Compensatory Education and Other Relief to Remedy 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 (5th 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 J.T., M.F., Z.B. 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 J.T., M.F., Z.B.

2. Direct the District to award compensatory education services to J.T., M.F., Z.B. in accordance with governing quantitative standards for the period that each student was educated at the PJJSC.

3. If needed, direct that the District notify the current educational placement of each student that the classroom placement and reductions in services which occurred during their placement at PJJSC was not based on the individual needs of the student and should not inform future decisions.

Similarly Situated Students

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 over the past year;
   b. All students suspected of having a disability who were evaluated or re-evaluated pursuant to the IDEA who resided at the PJJSC over the past year;
   c. All students with disabilities eligible under Section 504 of the Rehabilitation Act who resided at the PJJSC anytime over the past year.

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 who were denied a FAPE due to violations by the District described herein in accordance with quantitative standards for every hour of every day that a student was deprived of a FAPE.

3. Direct the District to issue a letter to all parents of students 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 new procedures to:

   a. Provide timely provision of comparable services upon entry to the PJJSC;
   b. Eliminate the practice of unilaterally reducing services mandated by IEPS and ensure that the level of services offered and provided meets the individualized needs of each student;
   c. Ensure full and meaningful parent participation throughout the IEP process, including notifying IDEA Parents of any proposed changes to an IEP, IEP meetings, proposals to evaluate or re-evaluate a student and provide progress monitoring reports;

b. Offer a continuum of educational placements to address students' individualized needs, including appropriate placements for students needing full-time emotional support;
c. Provide appropriate individualized placements for each student based on their documented individualized needs;
d. Conduct comprehensive and legally compliant evaluations and re-evaluations when needed, including addressing each student's behavioral needs and conducting FBAs;
c. Provide related services as required;
d. Provide appropriate and legally compliant transition services as required;
e. Conduct progress monitoring as needed;
f. Provide an ongoing audit and provision of compensatory education when students are denied a FAPE.

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

Monitoring and Oversight of the School District of Philadelphia

We request that the Department exercise greater oversight and monitoring of the PJJSC, including the issues identified herein and specifically request that the Department:

1. Direct the District to provide a narrative description of its improvement plan to the State and Complainants 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. This data should include:
    a. the date a student arrived at the PJJSC;
    b. the date they began receiving an education;
    c. the modality and location by which a student is educated (e.g., on a unit or in the classroom);
    d. the number of instruction hours a student received while at the PJJSC;
    e. a copy of each student's revised IEP and/or NOREP indicating any change in placement or services;
    f. a list of each student's classroom placement mandated by their prior IEP and the student's classroom placement while at the PJJSC and the reason(s) for any change in placement;
    g. a list of each student's prior special education services and the frequency and duration of such services (including but not limited to related services, transition services, and behavioral supports) and the list of services provided at the PJJSC;
    c. documentation of the reason(s) for any reduction in services.
    d. the dates of all oral and written requests for evaluations and the dates that PTEs were provided to IDEA Parents.

e. the dates of all signed PTEs and the dates evaluations were completed including the scope of the evaluation, and how the District secured parent consent for the evaluation;
f. documentation of how the District ensured parent participation in the IEP process for each student;
g. documentation regarding whether a student failed to receive any services and supports required by their IEP
h. documentation of any offers of compensatory education services for each student.
i. progress notes for each student while at the PJJSC

Statewide Remedy

1. Order the Department to update its current guidance with regard to juvenile correctional facilities to address the range of violations the Bureau has addressed in the past few years, including issues raised herein and in prior administrative complaints where corrective action has been issued (*e.g.*, prior complaints regarding the PJJSC and Allegheny County Jail). In compliance with federal regulations, this guidance should 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,

Maura McInerney
Legal Director
Education Law Center-PA
1800 JFK Blvd., Suite 1900-A
Philadelphia, PA 19103
215-346-6906 (direct)
mmcinerney@elc-pa.org

Rebecca Preuss
Senior Attorney
Education Law Center-PA
1800 JFK Boulevard, Suite 1900-A
Philadelphia, PA 19103
215-346-6904 (direct)
rpreuss@elc-pa.org

Jesse Rubin
Equal Justice Works Fellow
Education Law Center-PA
1800 JFK Boulevard, Suite 1900-A
Philadelphia, PA 19103
(215) 948-6949 (direct)
jrubin@elc-pa.org