

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

Y.S. et al.,

Plaintiffs,

v.

THE SCHOOL DISTRICT OF
PHILADELPHIA,

Defendant.

Civil Action No. 85-6924

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION TO REOPEN

Plaintiffs, immigrant and refugee students who filed a class action in 1985 against the School District of Philadelphia, respectfully submit this memorandum in support of their Motion to Reopen this litigation. Plaintiffs move to reopen the litigation to address the numerous and ongoing issues related to the School District of Philadelphia's ("the District") compliance with the Amended Stipulation entered in this litigation on October 21, 2010.

I. BACKGROUND OF THE LITIGATION

This litigation was brought under the Equal Protection Clause of the Fourteenth Amendment, as enforced by 42 U.S.C. § 1983; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; the Equal Educational Opportunities Act, 20 U.S.C. § 1703; and state law, which generally require school districts to develop programs and services to meet the needs of limited English speakers, including those with special education needs. At the time the lawsuit was initiated, students in the District with limited English proficiency received only one to three periods of English as a Second Language ("ESL") instruction each day, and they spent the remainder of the educational day in the regular classroom. As a result, students with limited English proficiency ("LEP") fell significantly behind their native-English speaking peers in their

educational progress. This issue was even more pronounced in students who had special education needs, particularly those who came from LEP families, because the District's lack of interpretation and translation services meant that the family members could not effectively participate in their child's education. Plaintiffs' claims, therefore, focused on the District's ESL Program and its provision of interpretation and translation services to parents or guardians of students in LEP families, particularly LEP families with children who require special education services.

During the course of the litigation, a series of Remedial Orders and Stipulations were entered, addressing the provision of ESL services, bilingual tutoring, translation services, and other supports and services to the class members. On February 18, 2009, in an effort to bring closure to the litigation's remedial process, the parties entered into a Stipulation, which set forth numerous requirements with respect to the District's ESL Program. An Amended Stipulation was subsequently entered on October 21, 2010. *See* Exhibit A. The Amended Stipulation remains in effect, *see id.* ¶ 4, and sets forth numerous requirements with which the District must comply, including:

- The District must provide services to each student and parent class member in accordance with the *Program Standards for Services to English Language Learners* ("*Program Standards*"). Exhibit A ¶ 1. The *Program Standards* "also apply to services to students with disabilities," unless an Individualized Education Plan ("IEP") team "decides that a particular student requires a departure from these requirements." *Program Standards* at p. 1.
- The *Program Standards* set forth specific requirements regarding the District's communications with parents or guardians of students in LEP families. Under the *Program Standards*, the District is required to translate notices sent to parents regarding district-wide activities into the native languages spoken by at least the six most populous student groups. *Id.* The *Program Standards* also require the District to provide all parents "the bilingual and translation services they need in order to effectively understand notices provided to other parents and to participate effectively in all important issues for their children." *Id.* at pp. 1-2. Examples of the notices and meetings that must be translated include "notices and meetings concerning school

rules and procedures, report card conferences, testing and promotion requirements, extracurricular activities and school governance.” *Id.* at p. 2.

- The Amended Stipulation also sets forth internal and external evaluation procedures. Exhibit A ¶ 2. In accordance with these requirements, the District must perform, on an annual basis, “an internal evaluation of the implementation of the *Program Standards* with respect to the plaintiff class to assess the effectiveness of programs, both as conceived and as implemented.” *Id.* The District must “promptly disseminate[]” copies of each internal evaluation to the parties identified in the Amended Stipulation, including counsel for Plaintiffs. *Id.*
- Further, the Amended Stipulation obligates the District to provide promptly, upon Plaintiffs’ counsel’s request, all documents generated or maintained in connection with the implementation of Amended Stipulation. *Id.* ¶ 5. In connection with this requirement, the District must also meet promptly with Plaintiffs’ counsel to address the District’s compliance with the Amended Stipulation. *Id.*

II. THE DISTRICT’S FAILURE TO COOPERATE AND TO COMPLY WITH THE AMENDED STIPULATION

Since April 2011, advocates who regularly attend IEP team meetings for students in the District’s schools have reported that LEP parents of students with IEPs are being denied equal access to the IEP team process. Accordingly, for at least the last two years, Plaintiffs’ counsel has been attempting to gather information and documents from the District regarding the District’s compliance with the *Program Standards*, as they relate to the District’s communications with LEP families. Despite the requirements set forth in the Amended Stipulation, *see* Exhibit A ¶ 5, the District has failed to cooperate in any meaningful way, as outlined by the history of the parties’ communications over the course of the last two years.

First, on April 19, 2011, a coalition of organizations that advocate for the families of students with disabilities in Philadelphia, including the Public Interest Law Center of Philadelphia and the Education Law Center, wrote to the District to raise concerns about the District’s failure to ensure that LEP families are able to participate meaningfully in the IEP process and in IEP team meetings. Among the issues raised in the letter was the concern that the District was not complying with the Amended Stipulation because the District was not providing

interpreters and was not translating documents, such as evaluation reports and the written IEP plans. The coalition asked to meet with representatives of the District to discuss the concerns and to identify possible solutions. *See* Exhibit B. Representatives from the District subsequently met with non-lawyer members of the coalition in June 2011. During this meeting, the District's representatives acknowledged there were some problems with the District's translation and interpretation services and agreed to undertake certain follow-up actions to address some of the issues identified in the letter. However, the District's representatives did not follow through with the actions identified during the meeting.

Plaintiffs' counsel continued to raise the same issues with the District verbally over the course of the following months. In response, the District advised Plaintiffs' counsel that it was not prepared to address the concerns. Plaintiffs' counsel subsequently met with representatives from the District in March 2012 to discuss translation services, but the District again informed Plaintiffs' counsel that it was not prepared to address the ongoing issues related to the District's compliance with the Amended Stipulation.

Then, during the summer of 2012, a representative of ELC, with the District's counsel's knowledge, spoke directly to staff members in the District's schools to gather information on the availability of interpretation and translation services. These communications confirmed that the District was not providing all the translation and interpretation services required under the Amended Stipulation. For example, school staff confirmed that LEP parents and guardians are generally not provided written translations of IEP plans.

Plaintiffs' counsel wrote the District again, on September 13, 2012, reiterating the unresolved concerns regarding the District's failure to comply with the Amended Stipulation. Plaintiffs' counsel provided additional detail about their concerns with the District's continued

failure to comply with the Amended Stipulation, and presented a list of specific questions they have regarding the translation and interpretation services available for LEP families, particularly those with students with IEPs. Plaintiffs' counsel also expressed their concerns about the District's failure to cooperate fully with Plaintiffs' attempts to investigate the District's compliance and asked the District to respond within two weeks. Plaintiffs' counsel further advised the District that Plaintiffs would take legal action if the parties were not able to work together to resolve the issues. *See Exhibit C.* Over the course of the following two months, the District's representatives informed Plaintiffs' counsel that they were "working" to set up a meeting to discuss the concerns Plaintiffs' counsel had repeatedly raised. The District never scheduled the meeting.

On November 8, 2012, the District finally responded to Plaintiffs' September letter. *See Exhibit D.* The District's response confirmed that Plaintiffs' concerns were well founded. In particular, based on this response, it appears that:

- The District is not translating special education documents, including IEP-related documents, as required by the Amended Stipulation. *See id.*
- The District relies on individual schools to request translation and interpretation services from the Translation and Interpretation Center ("T&I") and the Multilingual Family Support Office ("MFSO") for the LEP families with students in those schools, despite clear evidence that this approach is not reaching the vast majority of LEP families in the District. *See id.* According to District statistics, only 350 parents out of over 14,000 LEP families were provided with interpretation services during the previous school year. *See Exhibit E.* It is counsel's understanding that this statistic reflects only the services provided by the MFSO and does not include services provided by the Bilingual Counseling Assistants, which are not being tracked at all.
- The District relies on individual school principals to report each school's needs for translation and interpretation services, as well as the number of students with parents and caregivers whose first language is not English and who might be in need of translation services. The District, however, has already collected this information through the Home Language Survey that each family must complete upon a child's enrollment in the District. It is clear from the District's description of the November 5, 2012 letter it sent to principals that the District has failed to make use of this information to ensure its compliance with the Amended Stipulation. *See Exhibit D.*

On November 29, 2012, Plaintiffs' counsel again requested a meeting to discuss the outstanding issues related to the District's compliance with the *Program Standards*, as mandated by the Amended Stipulation. *See* Exhibit E. The District did not respond until April 11, 2013. At that time, the District's counsel did not respond substantively to Plaintiffs' concerns, but orally informed Plaintiffs' counsel that the District was willing to set up a meeting to discuss its internal evaluation and that the District would respond to Plaintiffs' letter of November 2012 by April 19, 2013. The District did not provide a response as promised.

In the interim, the District has also failed to comply with the requirement that it promptly disseminate, to the public and to Plaintiffs' counsel, the 2011 – 2012 internal evaluation, which should have been issued in October or November 2012. *See* Exhibit A ¶ 2. Plaintiffs' counsel has not received a copy of the internal evaluation, and it has not been disseminated publicly.

III. CONCLUSION

In sum, over the course of two years, the District has repeatedly failed to respond to Plaintiffs' counsel's overtures and has repeatedly failed to engage in meaningful discussions regarding its compliance with the Amended Stipulation and the *Program Standards*. Plaintiffs, therefore, have no choice but to seek to reopen this litigation and ask for a formal status conference to discuss the now long-standing issues regarding the District's compliance with the Amended Stipulation in order to address the critical educational needs of English language learners and their parents who reside in the District.

Plaintiffs respectfully request that this Court issue an Order reopening this case and scheduling a status conference with the parties to address the status of the proceedings, including the following issues:

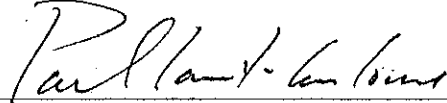
1. The District's failure to comply with the Amended Stipulation;
2. Future orders for compliance;

3. The appointment of a Magistrate Judge to monitor continued compliance with the Amended Stipulation; and
4. The District's provision of the information requested in Plaintiffs' counsel's November 2012 letter.

Dated: April 29, 2013.

Sonja D. Kerr
Michael Churchill
Public Interest Law Center of Philadelphia
1709 Ben Franklin Pkwy, 2nd Floor
Philadelphia, PA 19103
Tel: (215) 627-7100
Fax: (215) 627-3183
skerr@pilcop.org
mchurchill@pilcop.org

Respectfully submitted,



Paul H. Saint-Antoine (PA ID # 56224)
Chanda A. Miller (PA ID # 206491)
Drinker Biddle & Reath LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103-6996
Tel: (215) 988-2700
Fax: (215) 988-2757
paul.saint-antoine@dbr.com
chanda.miller@dbr.com

Maura McInerney
Education Law Center
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
Tel: (215) 238-6970
Fax: (215) 772-3125
mmcinerney@elc-pa.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April 2013, a true and correct copy of the Memorandum in Support of Plaintiffs' Motion to Reopen was sent via U.S. mail, postage prepaid, to the following counsel of record:

Miles H. Shore, Esq.
School District of Philadelphia
Office of General Counsel
440 North Broad Street, Suite 313
Philadelphia, PA 19130

A true and correct copy of the Memorandum in Support of Plaintiff's Motion to Reopen was also sent via U.S. mail, postage prepaid, to:

Rachel Holzman, Esq.
School District of Philadelphia
Office of General Counsel
440 North Broad Street, Suite 313
Philadelphia, PA 19130



EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PHILADELPHIA

Y. S., et al.,)

v.)

C. A. 85-6924

SCHOOL DISTRICT OF
PHILADELPHIA.)

AMENDED STIPULATION

1. *Rights of student and parent class members.* The School District shall provide services to each student and parent class member in accordance with the attached *Program Standards for Services to English Language Learners* (hereafter "*Program Standards*"), which are incorporated by reference herein.

2. *Evaluation and reporting.*

a. *Internal.* On an annual basis, the District shall perform an internal evaluation of the implementation of the *Program Standards* with respect to the plaintiff class to assess the effectiveness of programs, both as conceived and as implemented. Through its internal evaluation, the District shall identify schools in which class members are not performing at acceptable levels in relation to State and District standards or are not receiving services consistent with the *Program Standards*; and, if necessary, the District shall modify the services at those schools so as to improve class members' performance or the schools' compliance with the *Program Standards*. Reports of the results of the evaluations shall be promptly disseminated to the Chief Academic Officer, the School Reform Commission, the public (including organizations known to the District to be representing or providing services to English Language Learners), and counsel for plaintiffs.


- b. *External.* At least every three years, beginning in school year 2010-2011, the District, with input from plaintiffs' counsel, shall conduct a thorough evaluation, directed by external experts selected by the School District and approved by plaintiffs' counsel, which approval shall not unreasonably be withheld, in the education of English Language Learners, of the adequacy of the District's programs for and services to class members as measured against each of the *Program Standards*. Prior to engaging an expert(s) for the external evaluation process, the District shall consult with plaintiffs' counsel. A written report of the results of the external evaluation shall be promptly disseminated to the Chief Academic Officer, School Reform Commission, the public (including organizations known to the District to be representing or providing services to English Language Learners), and counsel for plaintiffs.
- c. *Performance data.* The District shall, at least annually, publish school-by-school and district-wide data concerning the performance of English Language Learners as measured on District and state assessments. The data shall be disaggregated by grade.
- d. *Reporting to the public.* The District will develop a summary of each report required by this section, translate it into at least the six major languages spoken by English Language Learners in the District, and make it available to the public via the district's website. The District will also send copies of the report to those organizations known to the District to represent and/or provide services to immigrant and refugee populations in Philadelphia.

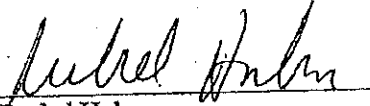
3. *Problem-solving Process.* The District's Multilingual Department in the Office of Teaching and Learning shall, by September 30 of each year, notify parent class members, in their native languages, that the District will provide services to them and their child(ren) in accordance with the Program Standards (which may be summarized). The notice shall also state that, if parents are dissatisfied with the services provided, they may (a) contact their principal and (b) if still dissatisfied, contact a staff member outside their child's school, whose name and

the Office of the Chief Academic Officer who will be responsible for promptly addressing parent concerns not resolved at lower levels. All staff participating in this process shall speak the parents' native language or have access to adequate translation services. The District shall ensure that the process functions properly and that all relevant staff and offices are aware of the existence of the process.


4. *Term of Stipulation.* This Stipulation will remain in effect until further Order of Court on motion by either party pursuant to Rule 60(b), F.R.Civ.P.

5. *Miscellaneous.* Plaintiffs, their attorneys and their consultants shall have the right promptly to obtain, on request, copies of all documents generated or maintained in connection with the implementation of this Stipulation, as well as meetings with District officials concerning the District's compliance with this Stipulation.


Leonard Rieser
Counsel for Plaintiffs
Education Law Center
1315 Walnut St., Room 400
Philadelphia, PA 19107
(215) 238-6970, ext. 307


Rachel Holzman
Counsel for School District
Office of General Counsel
School District of Philadelphia
440 N. Broad St.
Philadelphia, PA 19130
(215) 400-5120

SO ORDERED this 19 day of October, 2010:


United States District Judge

Program Standards for Services to English Language Learners

Best Practices

Students will be assessed, initially and on an ongoing basis, to determine their levels of English proficiency, using assessment methods of demonstrated effectiveness.

Students will be assessed, using multiple measures over time, to determine their school performance as measured against District and state academic standards. Accommodations will be made in the assessment process, and in the use of assessments in relation to such matters as promotion and graduation, to ensure that students are not unfairly penalized for lack of English proficiency.

Students will have access to a program of ESOL or bilingual instruction that uses instructional methods of demonstrated effectiveness and to programs of content area instruction that are communicated in language the students can understand and in modalities appropriate to the students' English proficiency.

A variety of program models will be available to meet differing students' needs, but all will be designed to enable students to acquire social and academic English proficiency and attain District and state academic standards. Programs will be available for adequate time to enable students to develop proficiency, will provide appropriate materials for a literacy-rich environment and will offer instructional support in the native language if necessary to attain standards.

Students will have equitable access to all other instructional programs and services available to peers who are native speakers of English (e.g., small learning communities, magnet schools, special programs, extracurricular activities); and receive the bilingual assistance, translation and other services necessary to ensure that they participate meaningfully in such programs and activities.

Students will have equal access to all support services provided to other students (including, e.g., counseling services). Bilingual assistance will be provided to the extent necessary to ensure that students can benefit from such support services as readily as their peers.

These standards also apply to services to students with disabilities, except to the extent that an IEP team (including an ESOL teacher or supervisor) decides that a particular student requires a departure from these requirements.

Program effectiveness will be reviewed and addressed through ongoing analysis of disaggregated data, identification and replication of successes, and intervention when school programs and models do not demonstrate progress.

Communication with Parents

Notices to parents regarding district-wide activities will be translated into the native languages spoken by at least the six most populous student groups.

All parents will be offered the bilingual and translation services they need in order to

effectively understand notices provided to other parents and to participate effectively in all important issues for their children. Examples are notices and meetings concerning school rules and procedures, report card conferences, testing and promotion requirements, extracurricular activities and school governance.

Parents and families will be encouraged to support students' first language literacy development.

Parents will receive notice at least annually of these Program Standards, and of the existence of a process that parents can use if they are dissatisfied with the services provided to them or their child. The process will include the right to present concerns to the principal; if dissatisfied, to present those concerns to a designated person outside their child's school; and, if still dissatisfied, to take the concerns to a designated person in the Office of the Chief Academic Officer. District personnel participating in this process will speak the parents' native language or have access to adequate translation services.

Personnel

The District, its schools and its administrative units will make maximum possible efforts to recruit, employ and retain sufficient qualified personnel, including bilingual personnel, to ensure that these rights can be fulfilled for all students and parents who are English Language Learners.

The District, its schools and its administrative units will define the skill sets and knowledge needed by each category of personnel (including, *e.g.*, paraprofessionals, teachers, counselors, administrators, instructional leaders, central office and Board members) who are involved in serving English Language Learners; and define the types and amounts of professional development activities required in order to develop, maintain and upgrade these skills.

The District, its schools and its administrative units will provide professional development programs sufficient to ensure that all such personnel do, in fact, possess the necessary knowledge and skills on an ongoing basis.

EXHIBIT B

April 19th, 2011

Linda Y. Williams
Interim Deputy Chief
Office of Specialized Instructional Services
School District of Philadelphia
440 N. Broad Street
2nd Floor
Philadelphia, PA 19130

Dear Ms. Williams:

I am writing to you on behalf of a coalition of organizations which advocates for families of children with special needs in Philadelphia. Our coalition has identified a number of critical issues regarding the provision of special education services in Philadelphia which we are committed to addressing to ensure that all children with disabilities in the School District of Philadelphia receive a free appropriate public education.

We are initially writing to express our concern that the School District of Philadelphia is not ensuring equal access to the IEP Team process for families for whom English is not their first language.¹ In particular, we are concerned about the inability of non-English speaking parents to participate meaningfully in IEP Team discussions because qualified interpreters are routinely not provided for them, and important documents, including Evaluation Reports and IEPs, are not translated into their native languages. See, e.g., 34 C.F.R. § 300.322(e) ("The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents...whose native language is other than English."); 34 C.F.R. § 300.503(c)(1)(ii) (requiring that prior written notice be provided in the native language of the parent unless it is clearly not feasible to do so). In addition, the Y.S. consent decree, with which the District still must comply, requires that: "All parents will be offered the bilingual and translation services they need in order to effectively understand notices provide to other parents and to participate effectively in all important issues for their children." See Amended Stipulation, *Y.S., et al., v. Sch. Dist. of Philadelphia* (Oct. 19, 2010). See generally 34 C.F.R. Part 100 (Title VI implementing regulations).

Several of the organizations which raise these concerns have advocates who attend IEP Team meetings with parents in the District on a regular basis. They report similar experiences in schools throughout the District when working with non-English speaking families. In their experiences, qualified interpreters are rarely provided to non-English speaking families. Even when a parent specifically requests an interpreter in advance, the school often still does not make an interpreter available, or else the person provided is not a qualified interpreter, but rather is someone at the school who just

¹ Please note that these concerns are regarding not just Spanish-speaking parents, but *all* families for whom English is not their native language.

happens to speak the parents' native language, such as a secretary or janitor. At times, a person who is supposed to be an IEP Team member, such as the child's classroom teacher or speech therapist, is used as the interpreter. As such, the parent is either afraid to speak freely or the "interpreter" does not interpret the parent's statements accurately or completely. One advocate reports that she attended a meeting where the "interpreter" started substantively challenging what the parent was saying instead of just providing interpretation services.

In addition, these advocates have observed a nearly complete failure by schools to translate Evaluation Reports, IEPs, and other important documents into the parents' native language, even when a school is on notice that a parent is a non-English speaker and the parent requests a translation. They report that schools routinely come to meetings with Evaluation Reports and draft IEPs prepared in English only. Since parents usually are asked to waive the 10-day period between receiving the ER and IEP Team meeting, parents do not even have a chance to have an English-speaker read the ER and explain it to them. Only when an advocate repeatedly requests translation of documents will a school sometimes provide translated forms. However, the version the school wants the parent to sign is the English version. One advocate who speaks both English and Spanish also has observed that there can be discrepancies between what is written on the English and Spanish versions of a form which change the meaning of what is stated on the form.

In their experiences, schools virtually never inform parents that documents can be translated into their native language. One advocate reports that in the seven years she has attended IEP Team meetings with families in Philadelphia, a school staff person has never offered to translate documents into a family's native language. The only document that families do occasionally receive in their native language is the Procedural Safeguards Notice.

Due to the issues identified above, we are asking to meet with the appropriate staff within the District to discuss these concerns and talk about possible solutions to these problems. In particular, we would like to discuss: 1) what steps the District is taking proactively to inform families of their right to interpretation services and the availability of translation services; 2) the District's procedures for assigning interpreters; 3) the District's standards for determining if an interpreter is qualified; and 4) the District's process for translating ERs, IEPs, and other documents into a parent's native language.

Please contact Becky Español, Program Supervisor at Parents Involved Network of Philadelphia (PIN), at 267-507-3868 and bespanol@mhasp.org to schedule a meeting. We look forward to hearing from you soon.

Very truly yours,

Becky Español

Parents Involved Network of Philadelphia

On Behalf of our coalition:

The Arc of Philadelphia
Autism Sharing and Parenting
Disability Rights Network of Pennsylvania (DRN)
Education Law Center (ELC)
Hispanos Unidos Para Niños Excepcionales (HUNE)
Local Task Force on the Right to Education – IU 26
Mental Health Association of Southeastern
Pennsylvania
Public Interest Law Center of Philadelphia (PILCOP)
Vision for Equality

Cc: Dr. Arlene C. Ackerman, Superintendent
Robert L. Archie, Jr., Esq., Chairman, School Reform Commission
Kimberly Caputo, Esq., Assistant General Counsel
Michael A. Davis, Esq., General Counsel
Rachel Holzman, Esq., Assistant General Counsel
David Weiner, Associate Superintendent of Academics

EXHIBIT C



Education Law Center

September 13, 2012

Executive Director
Rhonda Brownstein, Esq.

Philadelphia
1315 Walnut St.
Suite 400
Philadelphia, PA
19107-4717

T 215-238-6970
F 215-772-3125

Pittsburgh
429 Fourth Ave.
Suite 702
Pittsburgh, PA
15219

T 412-258-2120
F 412-391-4496

elc@elc-pa.org
www.elc-pa.org

Penny Nixon
Chief Academic Officer
School District of Philadelphia
440 N. Broad Street
2nd Floor
Philadelphia, PA 19130

Re: *Y.S., et al., v. Sch. Dist. of Philadelphia*, C.A. 85-6924

Dear Ms. Nixon:

We write once again to address the language access needs of limited English proficient (LEP) families of children in the School District of Philadelphia which are addressed in the Amended Stipulation in the above-referenced case. According to that decree, entered by the court on October 19, 2010, the District must, among other things, comply with the following obligations: "All parents will be offered the bilingual and translation services they need in order to effectively understand notices provide to other parents and to participate effectively in all important issues for their children." See Amended Stipulation, *Y.S., et al., v. Sch. Dist. of Philadelphia* (Oct. 19, 2010) (attached). See generally 34 C.F.R. Part 100 (Title VI implementing regulations).

Over the past two years¹, the Coalition of Philadelphia Special Education Advocates, which includes counsel for plaintiffs in this case, has repeatedly engaged the District in an attempt to resolve extensive language access problems experienced by LEP families in the District. Notwithstanding our discussions and correspondence, the problems remain. In short, many LEP families (including families whose children have disabilities and who have IEPs or 504 plans) are not able to receive reliable, consistent, informed communication with District

¹ We wrote to the District in April 2011 (see attached), and there was a follow-up meeting a few months later with Cathy Rocchia-Meier from the Local Task Force and Autism Sharing and Parenting, Becky Español from the Parents Involved Network of Philadelphia, and Linda Williams, then Deputy Chief of OSIS. We next had some meetings with the District staff, but we still had no solution to this situation. We next communicated about this issue in January 2012, at which time we were advised the District representatives were not prepared to address it. We also met in March 2012 where, once again, the District representatives could not address the concerns.

personnel about their children's education. This cannot continue as we begin yet another school year.

We propose to meet with the District to discuss necessary steps to ensure that LEP families are afforded translation and interpretation services consistent with full parental participation. A meeting within the next **thirty days** that includes the Translation and Interpretation Center ("T & I Center"), as well as representatives from the Office of Multilingual Family Support and Office of Multilingual Curriculum & Programs ("Multilingual") and the Office of Specialized Instructional Services ("OSIS") would be appropriate. However, we place the District on notice that we will take legal action if we cannot work together to rapidly solve these issues.

We believe that the District needs to take more overt steps to ensure translation and interpreter services, rather than "waiting for the phone to ring" for a request from a school for a translation or an interpreter. Given that the District is in the process of major reorganization and as schools are closed down or moved, it will be even more critical to have an affirmative outreach approach for these services, rather than a reactive response process, as is apparently presently the case.

The types of changes in the translation and interpreter services that are needed include:

A. Translation Services

1. The District will establish a process whereby translation services are offered on a regular basis to each school, as opposed to the translation office awaiting requests from each school. In other words, the T & I Center will have a means by which there is a documented monthly contact with every school about needed translations, whether they are discipline notices, parent/teacher conference information, school calendars/handbooks, etc.
2. The District will organize a system by which the T & I Center contacts school-level special education providers on at least a monthly basis to inquire of the need for translation services for LEP families who need them, including IEP Team Meeting Invitations/504 Plan invitations, Evaluation Reports/Reevaluation Reports, Permission to Evaluate/Reevaluate - Consent Forms, NOREPs, 504 Plans, and Individual Education Programs (IEPs).
3. The District will contact the developers of the Easy IEP system to discuss with them the efficacy of technological ways to resolve translation of some special education documents.

B. Interpreter Services

The District will develop a system by which qualified interpreters are offered to schools, rather than the interpreters awaiting calls from schools. To do this, the District will:

1. Identify all LEP families and schools of attendance.
2. Appoint someone with requisite interpretation skills to contact the school, visit the school, ascertain estimated interpreter needs for the year, assign an interpreter(s) per school, and inform the school of the contact information for the interpreter(s).
3. Offer interpreter services for parent/conference dates and for any disciplinary meetings.
4. Ensure that all special education staff at school sites are instructed that they must contact the T & I Center by no later than one month before any annual IEP Team meeting and no later than one week before any other type of meeting to request an interpreter.

C. Information Request

Pursuant to paragraph 5 of the Amended Stipulation, please provide the following information concerning the District's compliance with and implementation of the Stipulation:

1. Identify the office(s) charged with the responsibility for providing translation and interpreter services for students with disabilities and their families. If different from the T & I Center, please explain whether and how such office procures services from T & I.
2. Describe the steps the District has or is taking to proactively inform families of their right to interpretation services and the availability of translation services, including any written instructions, checklists or other guidance provided to building personnel.
3. Provide the number of available interpreters or interpreter services for each language and the District's procedures, particularly at the school level, for assigning interpreters.
4. Provide the number of interpretation services that have actually been provided during the past (2011-12) school year.
5. Provide the District's standards for determining if an interpreter is qualified.
6. Provide the number of translators available for each of the eight major languages.
7. State the District's procedures for securing translations of special education documents, including NOREPs, Evaluation Reports and Reevaluation Reports, Individual Education Programs, and other documents into a parent's native language prior to the parent attending meetings at which these documents are discussed.

8. State the District's procedures for translating academic and disciplinary information (i.e. RTI, report cards, suspension notices, expulsion notices) and transfer information into a parent's native language prior to the parent attending meetings (such as parent-teacher conferences, reinstatement meetings) and hearings about their student.
9. For the 2011-12 school year, please provide a list of all documents that were translated and the language into which it was translated.
10. For the 2011-12 school year, please provide a list of all interpreter services that were requested and provided, including the date of the service, the nature of the service and the language involved.
11. For the 2011-12 school year, please provide all documents, surveys, or other data regarding the number of LEP parents in the District.

We have been patient. We have tried to work with the School District. We are now over two years without a solution and this simply cannot continue. It is unacceptable.

Please provide us the above information (1-11) in writing within two weeks. And, as stated above, we would like to schedule a meeting as soon as possible with the key District personnel necessary to resolve these issues. We can be reached at rbrownstein@elc-pa.org and 215-238-6970, ext. 304.

Thank you.

Sincerely,



Rhonda Brownstein
Jennifer Lowman
Counsel for Plaintiffs in *Y.S. v. Sch. Dist. of Philadelphia*

Sonja Kerr
Public Interest Law Center of Philadelphia

Attachments

Cc: Karren Dunkley
Kim Caputo, Esquire
Belinda Miller
Debbie Wei
Rachel Holzman, Esquire
Ludy Soderman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PHILADELPHIA

Y. S., et al.,)

v.)

C. A. 85-6924

SCHOOL DISTRICT OF
PHILADELPHIA.)

AMENDED STIPULATION

1. *Rights of student and parent class members.* The School District shall provide services to each student and parent class member in accordance with the attached *Program Standards for Services to English Language Learners* (hereafter "*Program Standards*"), which are incorporated by reference herein.

2. *Evaluation and reporting.*

a. *Internal.* On an annual basis, the District shall perform an internal evaluation of the implementation of the *Program Standards* with respect to the plaintiff class to assess the effectiveness of programs, both as conceived and as implemented. Through its internal evaluation, the District shall identify schools in which class members are not performing at acceptable levels in relation to State and District standards or are not receiving services consistent with the Program Standards; and, if necessary, the District shall modify the services at those schools so as to improve class members' performance or the schools' compliance with the *Program Standards*. Reports of the results of the evaluations shall be promptly disseminated to the Chief Academic Officer, the School Reform Commission, the public (including organizations known to the District to be representing or providing services to English Language Learners), and counsel for plaintiffs.

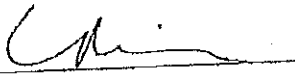
- b. *External.* At least every three years, beginning in school year 2010-2011, the District, with input from plaintiffs' counsel, shall conduct a thorough evaluation, directed by external experts selected by the School District and approved by plaintiffs' counsel, which approval shall not unreasonably be withheld, in the education of English Language Learners, of the adequacy of the District's programs for and services to class members as measured against each of the Program Standards. Prior to engaging an expert(s) for the external evaluation process, the District shall consult with plaintiffs' counsel. A written report of the results of the external evaluation shall be promptly disseminated to the Chief Academic Officer, School Reform Commission, the public (including organizations known to the District to be representing or providing services to English Language Learners), and counsel for plaintiffs.
- c. *Performance data.* The District shall, at least annually, publish school-by-school and district-wide data concerning the performance of English Language Learners as measured on District and state assessments. The data shall be disaggregated by grade.
- d. *Reporting to the public.* The District will develop a summary of each report required by this section, translate it into at least the six major languages spoken by English Language Learners in the District, and make it available to the public via the district's website. The District will also send copies of the report to those organizations known to the District to represent and/or provide services to immigrant and refugee populations in Philadelphia.

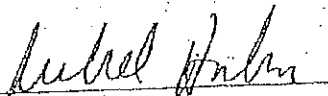
3. *Problem-solving Process.* The District's Multilingual Department in the Office of Teaching and Learning shall, by September 30 of each year, notify parent class members, in their native languages, that the District will provide services to them and their child(ren) in accordance with the Program Standards (which may be summarized). The notice shall also state that, if parents are dissatisfied with the services provided, they may (a) contact their principal and (b) if still dissatisfied, contact a staff member outside their child's school, whose name and

the Office of the Chief Academic Officer who will be responsible for promptly addressing parent concerns not resolved at lower levels. All staff participating in this process shall speak the parents' native language or have access to adequate translation services. The District shall ensure that the process functions properly and that all relevant staff and offices are aware of the existence of the process.

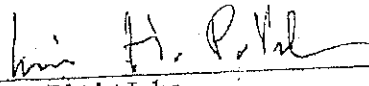
4. *Term of Stipulation.* This Stipulation will remain in effect until further Order of Court on motion by either party pursuant to Rule 60(b), F.R.Civ.P.

5. *Miscellaneous.* Plaintiffs, their attorneys and their consultants shall have the right promptly to obtain, on request, copies of all documents generated or maintained in connection with the implementation of this Stipulation, as well as meetings with District officials concerning the District's compliance with this Stipulation.


Leonard Rieser
Counsel for Plaintiffs
Education Law Center
1315 Walnut St., Room 400
Philadelphia, PA 19107
(215) 238-6970, ext. 307


Rachel Holzman
Counsel for School District
Office of General Counsel
School District of Philadelphia
440 N. Broad St.
Philadelphia, PA 19130
(215) 400-5120

SO ORDERED this 19 day of October 2010.


United States District Judge

Program Standards for Services to English Language Learners

Best Practices

Students will be assessed, initially and on an ongoing basis, to determine their levels of English proficiency, using assessment methods of demonstrated effectiveness.

Students will be assessed, using multiple measures over time, to determine their school performance as measured against District and state academic standards. Accommodations will be made in the assessment process, and in the use of assessments in relation to such matters as promotion and graduation, to ensure that students are not unfairly penalized for lack of English proficiency.

Students will have access to a program of ESOL or bilingual instruction that uses instructional methods of demonstrated effectiveness and to programs of content area instruction that are communicated in language the students can understand and in modalities appropriate to the students' English proficiency.

A variety of program models will be available to meet differing students' needs, but all will be designed to enable students to acquire social and academic English proficiency and attain District and state academic standards. Programs will be available for adequate time to enable students to develop proficiency, will provide appropriate materials for a literacy-rich environment and will offer instructional support in the native language if necessary to attain standards.

Students will have equitable access to all other instructional programs and services available to peers who are native speakers of English (e.g., small learning communities, magnet schools, special programs, extracurricular activities); and receive the bilingual assistance, translation and other services necessary to ensure that they participate meaningfully in such programs and activities.

Students will have equal access to all support services provided to other students (including, e.g., counseling services). Bilingual assistance will be provided to the extent necessary to ensure that students can benefit from such support services as readily as their peers.

These standards also apply to services to students with disabilities, except to the extent that an IEP team (including an ESOL teacher or supervisor) decides that a particular student requires a departure from these requirements.

Program effectiveness will be reviewed and addressed through ongoing analysis of disaggregated data, identification and replication of successes, and intervention when school programs and models do not demonstrate progress.

Communication with Parents

Notices to parents regarding district-wide activities will be translated into the native languages spoken by at least the six most populous student groups.

All parents will be offered the bilingual and translation services they need in order to

effectively understand notices provided to other parents and to participate effectively in all important issues for their children. Examples are notices and meetings concerning school rules and procedures, report card conferences, testing and promotion requirements, extracurricular activities and school governance.

Parents and families will be encouraged to support students' first language literacy development.

Parents will receive notice at least annually of these Program Standards, and of the existence of a process that parents can use if they are dissatisfied with the services provided to them or their child. The process will include the right to present concerns to the principal; if dissatisfied, to present those concerns to a designated person outside their child's school; and, if still dissatisfied, to take the concerns to a designated person in the Office of the Chief Academic Officer. District personnel participating in this process will speak the parents' native language or have access to adequate translation services.

Personnel

The District, its schools and its administrative units will make maximum possible efforts to recruit, employ and retain sufficient qualified personnel, including bilingual personnel, to ensure that these rights can be fulfilled for all students and parents who are English Language Learners.

The District, its schools and its administrative units will define the skill sets and knowledge needed by each category of personnel (including, e.g., paraprofessionals, teachers, counselors, administrators, instructional leaders, central office and Board members) who are involved in serving English Language Learners; and define the types and amounts of professional development activities required in order to develop, maintain and upgrade these skills.

The District, its schools and its administrative units will provide professional development programs sufficient to ensure that all such personnel do, in fact, possess the necessary knowledge and skills on an ongoing basis.

April 19th, 2011

Linda Y. Williams
Interim Deputy Chief
Office of Specialized Instructional Services
School District of Philadelphia
440 N. Broad Street
2nd Floor
Philadelphia, PA 19130

Dear Ms. Williams:

I am writing to you on behalf of a coalition of organizations which advocates for families of children with special needs in Philadelphia. Our coalition has identified a number of critical issues regarding the provision of special education services in Philadelphia which we are committed to addressing to ensure that all children with disabilities in the School District of Philadelphia receive a free appropriate public education.

We are initially writing to express our concern that the School District of Philadelphia is not ensuring equal access to the IEP Team process for families for whom English is not their first language.¹ In particular, we are concerned about the inability of non-English speaking parents to participate meaningfully in IEP Team discussions because qualified interpreters are routinely not provided for them, and important documents, including Evaluation Reports and IEPs, are not translated into their native languages. See, e.g., 34 C.F.R. § 300.322(e) ("The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents...whose native language is other than English."); 34 C.F.R. § 300.503(c)(1)(ii) (requiring that prior written notice be provided in the native language of the parent unless it is clearly not feasible to do so). In addition, the Y.S. consent decree, with which the District still must comply, requires that: "All parents will be offered the bilingual and translation services they need in order to effectively understand notices provide to other parents and to participate effectively in all important issues for their children." See Amended Stipulation, *Y.S., et al., v. Sch. Dist. of Philadelphia* (Oct. 19, 2010). See generally 34 C.F.R. Part 100 (Title VI implementing regulations).

Several of the organizations which raise these concerns have advocates who attend IEP Team meetings with parents in the District on a regular basis. They report similar experiences in schools throughout the District when working with non-English speaking families. In their experiences, qualified interpreters are rarely provided to non-English speaking families. Even when a parent specifically requests an interpreter in advance, the school often still does not make an interpreter available, or else the person provided is not a qualified interpreter, but rather is someone at the school who just

¹ Please note that these concerns are regarding not just Spanish-speaking parents, but *all* families for whom English is not their native language.

happens to speak the parents' native language, such as a secretary or janitor. At times, a person who is supposed to be an IEP Team member, such as the child's classroom teacher or speech therapist, is used as the interpreter. As such, the parent is either afraid to speak freely or the "interpreter" does not interpret the parent's statements accurately or completely. One advocate reports that she attended a meeting where the "interpreter" started substantively challenging what the parent was saying instead of just providing interpretation services.

In addition, these advocates have observed a nearly complete failure by schools to translate Evaluation Reports, IEPs, and other important documents into the parents' native language, even when a school is on notice that a parent is a non-English speaker and the parent requests a translation. They report that schools routinely come to meetings with Evaluation Reports and draft IEPs prepared in English only. Since parents usually are asked to waive the 10-day period between receiving the ER and IEP Team meeting, parents do not even have a chance to have an English-speaker read the ER and explain it to them. Only when an advocate repeatedly requests translation of documents will a school sometimes provide translated forms. However, the version the school wants the parent to sign is the English version. One advocate who speaks both English and Spanish also has observed that there can be discrepancies between what is written on the English and Spanish versions of a form which change the meaning of what is stated on the form.

In their experiences, schools virtually never inform parents that documents can be translated into their native language. One advocate reports that in the seven years she has attended IEP Team meetings with families in Philadelphia, a school staff person has never offered to translate documents into a family's native language. The only document that families do occasionally receive in their native language is the Procedural Safeguards Notice.

Due to the issues identified above, we are asking to meet with the appropriate staff within the District to discuss these concerns and talk about possible solutions to these problems. In particular, we would like to discuss: 1) what steps the District is taking proactively to inform families of their right to interpretation services and the availability of translation services; 2) the District's procedures for assigning interpreters; 3) the District's standards for determining if an interpreter is qualified; and 4) the District's process for translating ERs, IEPs, and other documents into a parent's native language.

Please contact Becky Español, Program Supervisor at Parents Involved Network of Philadelphia (PIN), at 267-507-3868 and bespanol@mhasp.org to schedule a meeting. We look forward to hearing from you soon.

Very truly yours,

Becky Español

Parents Involved Network of Philadelphia

On Behalf of our coalition:

The Arc of Philadelphia
Autism Sharing and Parenting
Disability Rights Network of Pennsylvania (DRN)
Education Law Center (ELC)
Hispanos Unidos Para Niños Excepcionales (HUNE)
Local Task Force on the Right to Education – IU 26
Mental Health Association of Southeastern
Pennsylvania
Public Interest Law Center of Philadelphia (PILCOP)
Vision for Equality

Cc: Dr. Arlene C. Ackerman, Superintendent
Robert L. Archie, Jr., Esq., Chairman, School Reform Commission
Kimberly Caputo, Esq., Assistant General Counsel
Michael A. Davis, Esq., General Counsel
Rachel Holzman, Esq., Assistant General Counsel
David Weiner, Associate Superintendent of Academics

EXHIBIT D

THE SCHOOL DISTRICT OF PHILADELPHIA

CHIEF ACADEMIC OFFICE

440 N. BROAD STREET, SUITE 210
PHILADELPHIA, PENNSYLVANIA 19130

PENNY NIXON
CHIEF ACADEMIC OFFICER

OFFICE (215) 400-4200
FAX (215) 400-4201

November 8, 2012

Rhonda Brownstein, Esquire
Education Law Center
1315 Walnut Street, Suite 400
Philadelphia, PA 19130

Dear Ms. Brownstein:

This letter is in response to your correspondence of September 13, 2012, concerning *Y.S. et al., v. School District of Philadelphia, C.A. 85-6924*. Please be assured that The School District of Philadelphia is strongly committed to providing the necessary language services to all our Limited English Proficient (*LEP*) students and their families. Listed below are some of the initiatives we have implemented to address the needs of our parent population, whose first language is not English.

A. Translation Services

1. From its inception, the Translation and Interpretation Center (T&I Center) has actively communicated with administrative offices and schools to emphasize the importance of language services and resources provided by their department. The T&I Center is continuously expanding its scope of services to provide and support District-wide translation requests. The Center is currently working to update its technology, which will enable them to provide greater access to translated documents for District offices and schools.

The T&I Center utilizes a variety of methods to communicate, educate and inform school administrators and school-based staff about its services and resources. For example, at the beginning of this school year, written notification was sent to all principals, secretaries, counselors, school police and school nurses directing them to assess their translation needs, informing them of the T&I Center's online services of translated documents and encouraging them to subscribe to weekly updates through the T&I Center's website. The T&I Center also hosts a weekly open house at which they provide information and facilitate sessions related to the language services and resources that are available to all District administrative and school staff.

2. On November 5, 2012, a memorandum was sent to all principals explaining the requirements of the *Y.S. Stipulation* regarding interpretation and translation services. Included in this memorandum were specific directives to principals that required them to complete the following:

- Develop a list of all students in their building whose parents'/caregivers' first language is not English, and submit the list to the Office of Accountability, Equity and Compliance;
- Develop a list of all staff in their building who speak a second language, and who are or can be certified by the District as interpreters, and submit the list to the Office of Accountability, Equity and Compliance;

Additionally, the District assembled a cross-functional team to research other large cities' policies to determine how they provide translation services for special education documents. One of the outcomes is that our team is currently developing a Request for Proposal (*RFP*) for translation services for special education documents. We hope to have this *RFP* posted by November 13, 2012.

In the meantime, as an intermediate step to provide parents with information for *IEP* conferences, the District is creating a document that summarizes the present level of performance, *IEP* goals, *ESY* status, Related Services, Transition Planning, and Specially Designed Instruction. Preliminary data reflects Spanish as the highest occurring language in the District. More school-specific data will be collected to ascertain remaining languages. This document will also be translated into the other languages based on data provided by schools concerning home languages.

3. The School District of Philadelphia is cognizant of its responsibility to ensure the rights of every parent to be able to participate meaningfully in his or her child's educational program. The Office of Specialized Services worked with the vendor of the EasySystem to have hard coded language for all confidential documents in the system translated into the eight most prevalent languages in the District. However, the vendor has informed us that they do not have the capacity for document translation, and this prompted the development of the *RFP* described in the preceding response.

B. Interpretation Services

1. By November 30, 2012, schools will have submitted the required documentation concerning home languages, and the Office of Accountability, Equity and Compliance will have compiled a master list of families who require interpretation and translation services, and the required languages.

2. As part of the memorandum distributed to principals on November 5, 2012, a directive was given concerning specific guidelines that schools must adhere to for utilizing interpretation services. Also, in recognition of the importance of educating families of their legal rights to interpretation services, the T&I Center, in partnership with the Multilingual Family Support Office, produced and printed the "Language Service Request Card" in multiple languages. One side of the card contains a message in the

non-English language stating that the District is obligated to provide interpretation services, and that the card should be presented to school staff. The other side of the card identifies the language spoken by the presenter and references District-wide access to telephonic interpretation service. Promotional posters were widely distributed through community partners and Bilingual Counselor Assistants (BCAs). Information concerning the right to access language services is presented at "Welcome Wagon" events for multilingual families.

Schools will be required to maintain a log of the interpretation services that are requested and provided. Assistant Superintendents, Multilingual Managers and Special Education Directors will be responsible for auditing this log, and for participating in meetings to ensure that the appropriate and required services are being provided.

3. This was answered in number 2 above and is clearly delineated in the attachment, "Guide for School Personnel."

4. While advance notice for interpretation requests is a stated policy, every effort to respond to requests is and will continue to be made. Please see the "Guide for School Personnel" attachment.

C. Information Request

1. The Translation and Interpretation Center is charged with the responsibility for translation and the Multilingual Family Support Office is responsible for interpretation services for the District. The newly created Office of Accountability, Equity and Compliance supports the T&I Center in ensuring that the appropriate services and resources are available to meet the requirements of the Amended Stipulation.

2. The following initiatives serve, or have served, to increase awareness to parents, advocates, practitioners and service providers of interpretation services:

- *Welcome Wagon Activities* – training sessions for immigrant/ refugee/ migrant parents that include a workshop titled, "Know your Rights," in which parents learn about Title VI;
- Philadelphia Refugee Collaborative meetings;
- Presentations at local immigrant/refugee-serving organizations;
- Collaboration with Migrant Education Program by making presentations to parents;
- Participation (2010-2011) in a weekly Spanish-radio program addressing language access and educational issues;
- Developing and disseminating Language Request Cards and Posters;

- Preparing a brochure with a list of services available to multilingual families and practitioners that was given to District staff and advocates (see sample);
- Professional Development for school administrators and school staff in accessing District services and/or telephonic interpretation services;
- Pacific Interpreter training to 1,094 school secretaries in November 2010;
- Training for secretaries in enrollment processes and translation and Interpretation services in Spring 2011; posting a webinar on this process.

3. There are 59 Bilingual Counselor Assistants (BCAs) assigned to schools, based on one or more of the following criteria:

- Number of speakers per language per school (Ratio of 1 day *BCA* service for 15 *ELL* students);
- Parents /families who indicate that their documented language preference is one other than English (this information is available in the District's Data Warehouse);
- Close collaboration with immigrant/refugee-serving organizations that provide information of demographic changes in the city.

The BCAs, though listed by the language for which they were hired, generally speak more than two languages. To date, we have the following languages represented (see attachment with *BCA Assignments AY 2011-2012*):

- African Languages (Fulani, Pular, Bambara, Wolof, Soninke, French): 1
- Albanian /Greek: 2
- Arabic: 2
- Bengali: 1
- Burmese/Karen: 1
- Chinese Mandarin/Cantonese: 8
- Haitian Creole: 2
- Indian Languages (Gujarati/Hindi: 1 and Malayalam: 1)
- Indonesian: 1
- Khmer: 5
- Lao: 1
- Nepali: 1
- Portuguese: 1

- Russian: 3
- Spanish: 23
- Vietnamese: 5

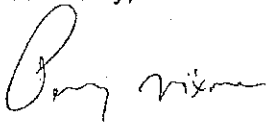
4. See attachment
5. See attachment
6. Number of translators (12):

- Albanian: 2
- Arabic: 1
- Chinese: 2
- French: 1
- Khmer: 2
- Spanish: 2
- Russian: 1
- Vietnamese: 1

7. Please see A2
8. Please see A2
9. See attachment
10. See attachment
11. See attachment

We look forward to collaborating with you as we strive to continuously improve the important services we provide to our Limited English Proficient families.

Sincerely,



Penny Nixon
Chief Academic Officer

c: Jennifer Lowman, Esquire
Sonja Kerr, Esquire

Enclosures

EXHIBIT E



Education Law Center

November 29, 2012

Executive Director
Rhonda Brownstein

Philadelphia
1315 Walnut St.
Suite 400
Philadelphia, PA
19107-4717

T 215-238-6970
F 215-772-3125

Pittsburgh
429 Fourth Ave.
Suite 702
Pittsburgh, PA
15219

T 412-258-2120
F 412-391-4496

elc@elc-pa.org
www.elc-pa.org

By First Class Mail Only

Penny Nixon
School District of Philadelphia
Chief Academic Office
440 N. Broad Street, Suite 210
Philadelphia, PA 19130

Re: Response to the District's Letter about Translation and Interpretation Services for Families

Dear Ms. Nixon:

Thank you for your November 8, 2012 letter outlining the steps that the District will take to improve language access for families who are Limited English Proficient (LEP). We appreciate the District's willingness to improve in this crucial area. However, at this point, we believe that the District's intended actions fall short of ensuring language access such that parents can participate effectively in all important school-related matters for their children as required by the Y.S. Amended Stipulation and federal law.

In particular, we still believe that the District needs to be much more proactive in ensuring that the necessary translations occur and legitimate interpretation services are provided to families. The District cannot continue to rely almost solely on the staff at the building level to make sure families receive these services, which is essentially what the District continues to propose with some modifications. The District's own data indicate this approach is clearly not working; for instance, the fact that only 350 parents out of over 14,000 LEP families in the District were provided with interpretation services last school year is deeply distressing to us.

In any event, we have outlined our specific responses to your November 8th letter below.

A. Translation Services

1. We requested that the District establish a monthly process by which the Translation and Interpretation Center (T&I Center) has *regular* contact with each school to ensure that translations occur, rather than depending on school staff to ensure services, and monitoring to see if schools are complying with legal requirements. While we understand that the T&I staff is responsive to translation requests that are made, and attempts to encourage such requests from the schools, we believe that the impetus must come from the other direction. Advocates who have worked with the T&I staff and the Multilingual Family Support Office (MFSO) believe them to understand the importance of translation to LEP families; thus the T&I and MFSO staff must have a process and the authority to make sure that translations occur, rather than waiting for school staff to make such requests.
2. Thank you for sharing the memorandum that has recently been sent out to principals regarding language access requirements for schools. Such a memorandum does not, however, in our view ensure compliance with the Y.S. Amended Stipulation. Even if each individual school has a contact person responsible for securing translation services, there needs to be a centralized office ensuring that necessary translations are in fact requested. Again, the T & I Center or MFSO must have the authority and specific responsibility to make sure translations are happening at the building level, and we do not see anything in your proposal that gives those offices that ability. Having schools keep a log of translation services that is reviewed by central office staff once a year seems inadequate to ensure that compliance is happening on a regular and ongoing basis.

In addition, if, as the law requires and the District's policies direct, families complete Home Language Surveys upon a child's enrollment in the District, the District should already know which students have parents/caregivers whose first language is not English and who might be in need of translation. In fact, your attachments so indicate. As such, it is unclear to us why the District is requiring principals to collect this information again.

We are glad the District is developing a RFP to provide translation services for special education documents. We would like a copy of the finalized RFP.

We need explicit and specific timelines for when the RFP will result in available qualified translators. This should, of course, be sooner rather than later but minimally we believe the translation services RFP should result in a signed contract no later than January 1, 2013 since various school meetings continue with parents unable to have the legally required language.

We cannot agree that creating an additional "summary document" to communicate portions of an IEP is an acceptable intermediate step. We believe this to be counterproductive and confusing. Parents will then have a "summary" IEP and the school staff will have the complete IEP. The point is to ensure parents have the same information that school staff have.

3. Please provide us with documentation from the Public Consulting Group (PCG) that the EasyIEP system does not have the technological capability to translate individual special education documents. If the EasyIEP system cannot do this, then perhaps the District ought not to use it and should find an alternative as it is clearly a systemic denial of language access for thousands of parents.

B. Interpretation Services

1. We requested that the District "develop a system by which qualified interpreters are offered to schools, rather than the interpreters awaiting calls from schools." The District knows which families need or may need such services based on the attachments you provided already. We assume this information is derived from the Home Language Surveys. Why have the principals collect them again? It is grossly inefficient to depend upon busy school staff to re-gather this information rather than having someone from the central office: 1) electronically keep Home Language Surveys that are provided upon enrollment; 2) call each school and update them regularly; 3) analyze the surveys for interpretation needs; and 4) assign interpreters to specific schools or areas. Having a "master list" may be a step forward, but unless someone is consistently reviewing the Home Language Surveys as they are completed, there is no way to keep the list updated and it will quickly become out of date.
2. The District's guidance in its November 5, 2012 memo to principals about who should be used as interpreters is confusing at best. While the November 5th memo states that "it is incumbent upon the District to provide a certified interpreter who is either a District employee or a District

contractor," the accompanying "School Roster of Staff Eligible to Provide Interpretation Services for Parents/Caregivers" appears to allow principals to determine on their own which staff members are qualified to provide interpretation (and translation) services to families. The memo does state that T&I Center staff will then review the submitted rosters, and staff eligible to be certified as interpreters will be contacted by the T&I Center, but it is unclear how the T&I Center will be able to determine if staff are eligible to become certified as interpreters if the principals place do not know if someone on staff might be so qualified in the first place.

3. Utilizing a log of whether interpretation is provided or not, may assist the District in monitoring interpretation services but it does not ensure that necessary interpretation services are actually provided. We are requesting that the District appoint someone with requisite interpretation skills to contact the schools, visit the schools, ascertain estimated interpreter needs for the year, assign an interpreter(s) or interpreter service for the school year and give that information to the school staff. Depending upon requests is not a sufficient solution; the District administration through the T&I office or the OFMS must have the ability and authority to make sure that the services are actually provided, not just "available" awaiting the phone to ring.
4. The Language Service Request Card has been in use for some period of time so while we appreciate its existence, it obviously has not resolved the problem of language access. We have heard repeatedly from advocates that, even when the Card is presented to school staff, interpretation services are still usually not provided. The District must take ownership of the program by doing on-site monitoring on a regular basis.
5. The District could be proactive in initiating at least some interpretation requests. For instance, the District has all IEPs maintained electronically. The District should be able to determine electronically any upcoming annual IEP review dates, and provide those dates to the schools, the special education director for those schools, and the T&I Center so that there is a coordinated formal request on the first of each month for IEP Team meetings that must be scheduled. At least annual IEP reviews would then have interpreters assigned. See attached suggestion of outline of such a process.

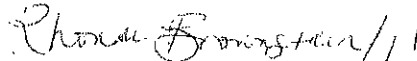
C. Other Issues

School secretaries, who are usually the first people a family encounters in the a school building and who often wield quite a bit of power in their “gatekeeper” role, need to be trained much more frequently than once or twice a year ever other year on the rights of LEP families to access school information in their native language. Sporadic training of school secretaries (i.e. November 2010 and Spring 2011), is not going to solve the problem. School secretaries have turn over and change jobs. Minimally, this training should occur monthly. In addition, principals and counselors such also be training on these issues much more frequently – at least twice a school year – and such training must be mandatory.

In conclusion, to reiterate our initial point, staff from the T&I Center, the MFSSO, or some other District office must make periodic visits to schools, and those visits should include an on-site inquiry into the school's practices regarding translation/interpretation and any problems they are having. It is important to see what is happening at the “output” end, not just focus solely on the inputs. While advocates can be checking on that, we firmly believe that the District should be doing it too. In addition, whether principals have ensured language access for parents needs to be factored into their evaluation process to underscore the importance of this issue.

Finally, we remain willing to meet with all relevant District staff to discuss our reactions to the proposals outlined in your letter. Some of our concerns could be more easily addressed if we could meet in person to explain them. We look forward to hearing from you again soon.

Very truly yours,



Rhonda Brownstein
Jennifer Lowman
Counsel for Plaintiffs in *Y.S. v. Sch. Dist. of Philadelphia*

Sonja Kerr
Public Interest Law Center of Philadelphia

Cc: Karren Dunkley
Kimberly Caputo, Esq.
Rachel Holzman, Esq.
Lissa S. Johnson
Paul Kihn
Belinda Miller
Ludy Soderman
Cong Wang
Debbie Wei

**PROCESS TO ENSURE TRANSLATED SPECIAL EDUCATION DOCUMENTS
&
AVAILABILITY OF INTERPRETERS AT IEP TEAM MEETINGS**

1. Home languages obtained from Home Language Surveys are entered into EasyIEP system.
2. Computer searches are done each month to identify students with IEPs whose parents indicated a home language other than English on the Home Language Survey.
3. A list of parents is sent to each principal with EasyIEP dates indicating next annual IEP due, next re-evaluation due, and offer of interpreter.
4. The principal sends e-mail response to T&I Center with copy of the invitation to the IEP Team meeting.
5. School staff are responsible to have IEP draft done and in EasyIEP system 10 days before date of IEP Team meeting (except in the case of emergency meetings).
6. T&I Center staff translates current IEP or draft (if available) three days before IEP Team meeting date and sends to Principal and parent simultaneously.
7. T& I Center staff arranges for interpreter services unless the principal informs the staff in writing that such services are not necessary.