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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tim Allen; Maura Dwyer; Christianne Kapps;
Robin Roberts; Christine Plush; Shirley
Johnson; Bianca Eberhardt; Parents United for
Public Education,

Petitioners,

v.

Carolyn Dumaresq, in her capacity as Acting
Secretary of the Pennsylvania Department of
Education,

Respondent.

Docket No. _____

**PETITION FOR REVIEW IN THE NATURE OF MANDAMUS AND FOR A
DECLARATORY JUDGMENT**

I. SUMMARY OF THE LAWSUIT

1. In September 2013, Philadelphia schools began operating on what School District of Philadelphia ("District") officials themselves described as a "Doomsday budget," with cuts to thousands of staff positions, especially counselors, librarians, and music, art, and

foreign language teachers. Adults in the schools were at an all-time low. Expenditures for books and supplies also suffered dramatic reductions.

2. Philadelphia parents, caregivers, students, and teachers observed that these reductions had a direct and devastating impact on the delivery of the curriculum and instructional practices.

3. State law mandates that the Commonwealth's Secretary of Education "receive and investigate allegations of curriculum deficiencies." 22 Pa. Code § 4.81. Accordingly, Philadelphians concerned about the ability of their District to deliver the state curriculum began filing allegations with the Pennsylvania Department of Education (PDE) asserting curriculum deficiencies and requesting departmental investigation.

4. During the 2013-2014 school year, mainly in September and October 2013, but continuing throughout the school year, Petitioner Parents United for Public Education ("Parents United") collected and forwarded to the Respondent, Carolyn C. Dumaresq (the "Secretary" or "Respondent"), Acting Secretary of PDE, some 825 allegations documenting curriculum deficiencies, as well as other crisis conditions, in the District. Parents of District students filed the large majority of the allegations; students, teachers, and caregivers filed the remainder. Some allegations came through myphillyschoools.com, a web site set up by Parents United and other groups and elected officials that directly transmits allegations to PDE; others came in hard copy, through the efforts of Parents United and other advocacy groups. These 825 allegations were exclusive of numerous other complaints concerning services for students with disabilities.

5. These allegations called attention to problems of overcrowded classrooms; the lack of classes such as art, music, foreign languages, and physical education; cancelled

programs for the mentally gifted; the absence of facilities such as libraries or school materials such as textbooks that resulted in loss of instruction for students; shortages of staff, such as teachers, guidance counselors, librarians, administrators, and aides, which impeded delivery of the curriculum; and unsafe or unsanitary conditions that interfered with students' ability to respond to the curriculum.

6. As of the filing of this lawsuit, the Secretary has wholly failed to conduct a meaningful investigation under 22 Pa. Code § 4.81 in response to any of the 825 individually submitted allegations.

7. Advocates also sent two letters to PDE grouping together subsets of the 825 allegations pertaining to shortages of two types of staff: school nurses and school counselors. Exhibits A-B. PDE declined to investigate these as allegations of curriculum deficiencies. Exhibits C-F.¹

8. Petitioners are seven District parents who filed such allegations and two organizations working on behalf of District families. They bring this lawsuit to challenge the wholesale failure of the Secretary to conduct mandated investigations of the hundreds of allegations of curriculum deficiencies from themselves and others concerning the District.

9. The seven individual Petitioners in this lawsuit each submitted written allegations of curriculum deficiencies, as detailed in paragraphs 20-73 *infra*.

10. Many of these allegations of curriculum deficiencies highlight instructional deprivations that resulted from staff layoffs and reductions of supplies. Allegations include:

¹ PDE performed a cursory investigation of the grouped allegations concerning the lack of nursing services for children with disabilities under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 *et seq.* See Exhibits C-E. PDE expressly declined to investigate the grouped counselor allegations, instead referring them to the District as non-curricular allegations under the General Rules of Administrative Practice and Procedure, 1 Pa. Code Chapters 31, 33, and 35. Exhibit F.

- a. classrooms housing up to 45 children and with desks packed in so tight as to make aisles impassable by students and teachers so that teachers could not adequately supervise work;
- b. K-8 schools without a single full-time guidance counselor and without programming for gifted students;
- c. high schools failing to offer physical education or four years of any foreign language; and
- d. conditions of school facilities interfering with instructional learning, most notably squalid toilet conditions.

11. Numerous allegations of curriculum deficiencies referenced the impact of the shortage of guidance counselors and other non-teaching staff on the quality of education throughout the District.

12. State law, including Chapter 4 of Title 22, sets forth numerous curriculum requirements for public schools. *See generally* 22 Pa. Code § 4.3 (defining “Curriculum” as “[a] series of planned instruction aligned with the academic standards in each subject that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students”).

13. Although state regulations require the Secretary to “receive and investigate allegations of curriculum deficiencies,” 22 Pa. Code § 4.81, she has declined to even acknowledge receipt of some of the allegations, much less undertake any steps necessary to investigate the allegations, with the exception of the allegations about counselors, which as noted she refused to treat as implicating curriculum deficiencies.

14. The Secretary has neither interviewed complainants and District personnel to clarify or confirm information, nor requested documents from the District. She has failed to make any findings of fact. She has taken no steps to render a determination as to whether the allegations of curriculum deficiencies are substantiated.²

15. In most if not all cases, parents did not receive individualized responses to their allegations. Some received a one-page form letter. *See* Exhibit G (example of the form letter received by some parents). Many received no response at all.

16. Petitioners move this Court to compel the Secretary to comply with those investigative requirements of the Pennsylvania Code that, among other things, are intended to ensure that districts comply with state law by mandating that PDE be responsive and accountable to the citizens of the Commonwealth in independently performing its supervisory duties rather than abdicating to local school district officials the determination of whether those officials are complying with state requirements. *See generally Dep't of Educ. v. Empowerment Bd. of Control of the Chester-Upland Sch. Dist.*, 595 Pa. 426, 438, 938 A.2d 1000, 1007 (2007) (PDE “has the power and duty ‘to administer all of the laws of this Commonwealth with regard to the establishment, maintenance, and conduct of the public schools....’”) (quoting 71 P.S. § 352(a)) (ellipsis in original).

17. Petitioners seek a writ of mandamus requiring the Secretary to properly and lawfully perform her nondiscretionary duties to investigate Petitioners’ allegations of curriculum deficiencies, to notify the District’s superintendent of the allegations, to

² PDE and other state agencies have complaint procedures that typically involve steps such as interviewing complainants, requesting responses from the local agency, and making site visits. *See, e.g.*, 22 Pa. Code § 73.185 (pertaining to private licensed schools). Notably, the allegations form used by parents and advocates here was modeled after the PDE’s complaint form for special education complaints. *See* <http://www.portal.state.pa.us/portal/server.pt?open=18&objID=356655&mode=2>.

determine whether curriculum deficiencies exist, and, if so, to require corrective action by the District.

18. Petitioners further seek a declaratory judgment that the Secretary has violated 22 Pa. Code § 4.81 by failing or refusing to receive and investigate allegations of curriculum deficiencies, to notify the District's superintendent of such allegations, to determine whether curriculum deficiencies exist, and, if so, to require corrective action by the District.

II. JURISDICTION

19. The Court has original jurisdiction over this Petition for Review pursuant to 42 Pa. C.S. § 761(a).

III. PARTIES

Tim Allen

20. Petitioner Tim Allen is a Philadelphia resident and the father of E.A., a student at Bodine High School for International Affairs ("Bodine"). E.A. was a sophomore during the 2013-2014 school year and has now begun his junior year at Bodine.

21. Bodine enrolled 500 students in grades 9-12 during the 2013-2014 school year. The population is 55% African American, 19% Latino, 12% Asian, 12% white, and 2% multiracial or other. Eighty-three percent of Bodine students are considered economically disadvantaged.

22. Mr. Allen submitted allegations of curriculum deficiencies, dated October 4, 2013, to the Secretary and PDE. Exhibit H.

23. Mr. Allen alleged a lack of instruction at Bodine. According to his written allegations, Bodine is "an international relations themed school" that previously offered

language instruction in French, Spanish, Persian, and Mandarin Chinese. He alleged, however, that “[t]hey cut foreign languages to just two years” of any language.

24. During the 2013-2014 school year, E.A. was placed in second-year French but was informed by his school that, as a result of the cuts, he would be unable to continue taking French after completing only two years of instruction.

25. Mr. Allen was recently informed that Bodine has hired an additional French teacher in anticipation of the 2014-2015 school year, but was also told that this teacher might be cut.

26. State curriculum requirements mandate that “[e]very school district shall provide planned instruction in at least two languages in addition to English, at least one of which shall be a modern language, and at least one of which shall be offered in a minimum 4-year sequence in the secondary program (middle level and high school).” 22 Pa. Code § 4.25(a).

27. Mr. Allen further alleged that classroom overcrowding has become “dangerous,” with students’ desks crammed “one foot apart.” E.A.’s classroom, designed to safely hold up to twenty-five people, had forty students packed in such a manner that no one could walk around the room. Because E.A.’s teacher was unable to walk between students’ desks, the teacher was unable to properly engage with students or even maintain order in the classroom, promoting an unruly atmosphere and preventing students from receiving individualized attention in class and effective delivery of the curriculum.

28. Mr. Allen expected the PDE to investigate his stated concerns and to assist his child.

29. Instead, Mr. Allen received a curt one-page form letter from PDE declining to investigate his serious concerns, stating they were “entirely local matters that should be

addressed by the District” and that “the Department is forwarding your correspondence to the District for review and response.” Exhibit G. He has not received any response from the District.

Maura Dwyer

30. Petitioner Maura Dwyer is a Philadelphia resident and the mother of C.D., a student at the Andrew Jackson School (“Jackson”). C.D. was a first-grader during the 2013-2014 school year and has now entered the second grade at Jackson.

31. In 2013-2014, Jackson enrolled approximately 450 students in grades K-8. The school’s population is 35% Latino, 29% African American, 16% white, 14% Asian, and 6% multiracial or other. Eighty-nine percent of Jackson’s population is considered economically disadvantaged, and 20% require English language learner services.

32. Ms. Dwyer submitted allegations of curriculum deficiencies, dated October 5, 2013, to the Secretary and PDE. Exhibit I. Ms. Dwyer is unaware of any individualized response to or investigation of her allegations.

33. Ms. Dwyer alleged a lack of guidance counseling services, a lack of teaching staff, and a lack of non-teaching staff at Jackson. According to her written allegations, the first-grade classrooms at Jackson, including C.D.’s, were overcrowded to the point that teachers had difficulty walking between the students’ desks in order to supervise and review their work.

34. At the beginning of the 2013-2014 school year, the District’s superintendent visited C.D.’s classroom, accompanied by reporters, and announced that the District would hire an additional first-grade teacher. No additional teacher was hired during the school year, and class size did not diminish.

35. Ms. Dwyer further alleged that Jackson had no full-time guidance counselor. She called this “an absolutely essential position given the multicultural nature of the school, and the high percentage of students who live in poverty.” In addition, two Jackson students died during the 2013-2014 school year, including a classmate of C.D.’s. For nearly all of the 2013-2014 school year, the only counselor available to Jackson students was shared with another school.

36. Ms. Dwyer expected PDE to investigate her allegations, such as by interviewing her for further information or by sending someone to the school to investigate.

37. Instead, Ms. Dwyer received a curt one-page form letter from PDE declining to investigate her serious concerns, stating they were local matters and that her allegations would be forwarded to the District. She has not received any response from the District.

Christianne Kapps

38. Petitioner Christianne Kapps is a Philadelphia resident and the mother of C.K., a student at the Philadelphia High School for Creative and Performing Arts (“CAPA”). C.K. was a sophomore during the 2013-2014 school year and has now begun her junior year at CAPA.

39. CAPA enrolled 700 students in grades 9-12 in the 2013-2014 school year. The school’s population is 54% African American, 28% white, 11% Latino, 5% Asian, and 2% multiracial or other. Sixty-two percent of CAPA’s student population is considered economically disadvantaged.

40. Ms. Kapps submitted two allegations of curriculum deficiencies, dated October 11, 2013, to the Secretary and PDE. Exhibits J-K.

41. In her first set of allegations, Ms. Kapps stated that C.K. “has no Phys Ed classes” and that CAPA had no physical education teachers.

42. State curriculum requirements mandate that all high school students be provided a curriculum that includes “[h]ealth, safety and physical education.” 22 Pa. Code § 4.23(c)(8).

43. In her second set of allegations, Ms. Kapps alleged a lack of teaching staff preventing delivery of honors-level curricula. She wrote that “[m]y daughter was placed in Honors English and Honors American History based on her grades and interest in the subjects. Now other students, who would not otherwise qualify for honors classes, have been placed in the honors classes due to scheduling issues and teacher shortages. There are over 30 students in her Honors classes, and new students enter the class on an ongoing basis. The course work is watered down to accom[m]odate the extra students and she doesn’t receive the accelerated education she has earned.”

44. According to Ms. Kapps, students were shuttled between different classrooms, and months went by before classes were made up of a consistent group of students. For at least a portion of the school year, there were insufficient chairs for the students in C.K.’s classes, and some students were forced to sit on the windowsill.

45. Because of staffing cuts, C.K., a student participating in CAPA’s Creative Writing Program, went from enrollment in four full-year English and writing classes during the 2012-2013 school year to enrollment in one full-year English class and two partial-year writing classes during the 2013-2014 school year.

46. As a result of the curriculum deficiencies at CAPA, C.K. has gone from loving school to dreading it, and she has become discouraged about having opportunities for obtaining an education able to prepare her for acceptance at many colleges.

47. Ms. Kapps filed her allegations with the intention of bringing to the attention of PDE the issues at C.K.'s school. The only response she received was a curt one-page form letter from PDE declining to investigate her serious concerns, stating they were local matters and that her allegations would be forwarded to the District. Ms. Kapps was shocked that PDE delegated its investigatory duties to the District, particularly given that the District was the subject of her allegations. She has not received any response from the District.

Robin Roberts

48. Petitioner Robin Roberts is a Philadelphia resident and the mother of C.R. and M.R., both students at Charles W. Henry Elementary School ("Henry") during the 2013-2014 school year. C.R., a third grader during the 2013-2014 school year, has entered the fourth grade at Henry for the 2014-2015 year. M.R., an eighth grader during the 2013-2014 school year, has recently entered the ninth grade at Carver High School of Engineering and Science.

49. Henry enrolled 476 students in grades K-8 during the 2013-2014 school year. The school's population is 3.1% Latino, 74.9% African American, 1.5% Asian, 10.7% white, and 9.8% multiracial and other. Seventy-five percent of Henry's student population is considered economically disadvantaged.

50. Ms. Roberts submitted allegations of curriculum deficiencies, including concerns about gifted education and serious health and safety concerns, on September 23, 2013 and November 11, 2013, to the Secretary and PDE. Exhibits L-M.

51. In her September 23 allegations, Ms. Roberts alleged "decreased gifted education." Ms. Roberts's older son, M.R., had been identified as mentally gifted and provided a gifted individualized education plan ("GIEP") in the third grade. He participated in gifted support classes from third through seventh grade. The District eliminated these

classes during the 2013-2014 school year, even though they are a mandated component of the curriculum, 22 Pa. Code § 16.2(d).

52. Ms. Roberts also alleged that “there is no one who can assist our children in choosing or applying to high schools,” stating that “guidance counselors have been removed from the building replaced by itinerant counseling services, placing [one] counselor in [seven] schools.” Ms. Roberts described the situation as “impossible to adequately serve” several thousand students.

53. From early summer until the first week in November 2013, Henry was served by an itinerant counselor who concurrently served six other schools. Without a full-time counselor, the situation was dire. Eighth graders preparing to apply for high school had no appropriate support, and students involved in conflicts were expelled and suspended because there were no resources to address their needs directly. The full-time counselor was restored at Henry in November 2013 but had to spend the rest of the school year clearing a backlog of problems that arose when the position was unfilled.

54. In her November 11 allegations, Ms. Roberts stated that certain “other problems [were] resulting in a deficient program of education, related to insufficient non-teacher staff and inadequate maintenance of school facilities.” Specifically, Ms. Roberts alleged that “[t]here are not enough functional toilet facilities for the children at the school[, because] there are not enough staff people to provide coverage . . . [b]athrooms are locked in many areas of the schools.” According to Ms. Robert’s statement to PDE, toilets did not flush; supplies such as soap, towels, and toilet paper were “frequently missing[;]” and students who used restrooms experienced the “overwhelming smell of feces and urine.” Students were often required to hold their bladders because, without adequate support staff, the only

opportunity to use the bathrooms was when teachers took time from class instruction to escort classrooms of students to the toilet.

55. When Ms. Roberts filed her allegation, she expected PDE to take notice of the problems in light of the large numbers of parents filing similar allegations.

56. Ms. Roberts has received no response to her allegations.

Christine Plush

57. Petitioner Christine Plush is a Philadelphia resident and the mother of E.P., a student at the Arts Academy at Benjamin Rush (“Rush”). E.P. was a sophomore during the 2013-2014 school year and has returned to Rush as a junior for the 2014-2015 school year.

58. Ms. Plush submitted allegations of curriculum deficiencies, dated September 23, 2013, to the Secretary and PDE. Exhibit N.

59. Rush enrolled 550 students in grades 9-12 in the 2013-2014 school year. The school’s population is 54% white, 23% African American, 14% Latino, 5% Asian, and 4% multiracial or other. Fifty-two percent of Rush’s students are considered economically disadvantaged.

60. Ms. Plush alleged a lack of guidance counseling services and a lack of non-teaching staff. She wrote that Rush has a guidance counselor only one day per week, and that “without a full-time guidance counselor, students do not have the integral supports needed to be successful as well as prepare for college.” She continued that “students who are in emotion[al] crisis are neglected or other staff are spread thin in an effort to support them. Further, other necessary staff have also been cut, . . . reducing available supports and reducing the current staff’s ability to do their job effectively.”

61. E.P., who decided to attend Rush for its advertised emphasis on classes in the fine arts, finds herself limited by the small number of available art classes outside of the theater program, despite state curriculum requirements that every high school provide every student planned instruction in “[t]he arts, including art, music, dance, theatre and humanities,” 22 Pa. Code § 4.23(c)(6). She was required to take Latin as a ninth grader, but since then Rush has cut the Latin program, further limiting her class choices and preventing her from taking four consecutive years of any foreign language. *See* 22 Pa. Code § 4.25. Although a full-time school counselor was re-hired partway through the 2013-2014 school year, the counselor had an excessive caseload that severely limited her ability to be readily available to meet with students.

62. When Ms. Plush filed her allegation, she expected PDE to take notice of the problems in light of the large numbers of parents filing similar allegations. The only response she has received from PDE, however, has been a curt one-page form letter announcing that her concerns are local matters, and that PDE would simply forward her allegations to the District. She has not received any response from the District.

Shirley Johnson

63. Petitioner Shirley Johnson is a Philadelphia resident and the mother of M.J., a student at Rush. M.J. was a junior during the 2013-2014 school year and is now entering her senior year at Rush.

64. Ms. Johnson submitted allegations of curriculum deficiencies, dated September 23, 2013, to the Secretary and PDE. Exhibit O.

65. Ms. Johnson alleged several problems: lack of guidance counseling services, lack of teaching staff, lack of non-teaching staff, and lack of facilities which results in loss of

instruction. Specifically, Ms. Johnson alleged that her daughter's school had a counselor available only one day per week, compared with two full-time counselors at the school the previous year. Ms. Johnson alleged that this lack of counselors interfered with her daughter's access to information needed to attend college and to address other problems.

66. Although a full-time school counselor was re-hired partway through the 2013-2014 school year, the counselor had such an overwhelming workload that eleventh-graders like M.J. could not access counseling services until April 2014.

67. It is extremely important to M.J. to do well in high school and to attend college. M.J. and her mother have sought guidance on how to assist M.J. in achieving that ambition, but they are at a disadvantage because of the severe staffing shortages at Rush. Ms. Johnson has witnessed a drop in college admissions that has coincided with the decreased counselor availability over the past three years.

68. Ms. Johnson is unaware of any individualized response to or investigation of her allegations.

Bianca Eberhardt

69. Petitioner Bianca Eberhardt is a Philadelphia resident and the mother of D.R., a student at Franklin Learning Center ("Franklin"). D.R. was a sophomore at Franklin in the 2013-2014 school year and has returned to Franklin as a junior for the 2014-2015 school year.

70. Franklin Learning Center enrolled about 800 students in grades 9-12 during the 2013-2014 school year. The school's population is 48% African American, 22% white, 19% Latino, 9% Asian, and 2% multiracial or other. Eighty-four percent of the student body is considered economically disadvantaged.

71. Ms. Eberhardt submitted allegations of curriculum deficiencies, dated September 19, 2013, to the Secretary and PDE. Exhibit P.

72. Ms. Eberhardt alleged numerous curriculum deficiencies: lack of guidance counseling services, lack of teaching staff, lack of non-teaching staff, and lack of facilities which results in loss of instruction. According to Ms. Eberhardt, D.R. was placed in a class that had 45 children, and this level of overcrowding “prevents the teacher from providing additional attention to the students.” Although class size was reduced later in the school year, the excessive class size interfered with the delivery of curriculum to D.R. for a significant fraction of the year.

73. Ms. Eberhardt is unaware of any individualized response to or investigation of her allegations of curriculum deficiencies.

Parents United for Public Education

74. Petitioner Parents United for Public Education (“Parents United”) is an organization founded in 2006 and housed under the Urban Affairs Coalition, a Pennsylvania not-for-profit organization. Parents United is a parent-led citywide organization focused on engaging parents with the budget process in order to ensure a baseline level of resources, services, and staffing providing every child in every school a stable, quality and nurturing school environment. Parents United is committed to providing information to parents about issues relevant to school budgets, mobilizing parents to take an active role in impacting district-wide budget issues, and engaging parents with civic and political processes at the local and state level to improve public school funding and to demand academic achievement, equity, accountability and public engagement.

75. Parents United participated in gathering and submitting the allegations of curriculum deficiencies at issue here, including by visiting parents in various neighborhoods of Philadelphia, hosting school forums and information sessions, and by helping to set up a web site for electronic submission of allegations of curriculum deficiencies. These activities required Parents United to expend resources, including money and time.

76. Among these activities was Parents United's submission on October 17, 2013 of a complaint to Respondent concerning the lack of counselors at 35 identified District schools, which cited specific parental allegations and significant problems occurring at 12 of those schools because of an insufficiency of counselors.

77. Parents United has been forced to expend resources throughout the 2013-2014 school year and into the 2014-2015 school year because of unremedied curriculum deficiencies in the District, including but not limited to the specific curriculum deficiencies described above.

78. Parents United has been further forced to expend resources in the form of responding to parents who submitted allegations of curriculum deficiencies and who were troubled by the lack of any meaningful response from the Secretary and PDE.

Acting Secretary Carolyn Dumaresq

79. Respondent Carolyn Dumaresq is the Acting Secretary of the Pennsylvania Department of Education and is sued in her official capacity only. In that capacity, Respondent Dumaresq is the chief executive officer of the Commonwealth's Board of Education and is charged with the general supervision and administration of Pennsylvania's education laws, including the implementation of 22 Pa. Code § 4.81.

IV. STATEMENT OF LAW AND FACTS

A. Chapter 4

80. Chapter 4 of Title 22 of the Pennsylvania Administrative Code, entitled “Academic Standards and Assessment,” has the purpose of “establish[ing] rigorous academic standards and assessments, applicable only to the public schools in this Commonwealth, to facilitate the improvement of student achievement and to provide parents and communities a measure by which school performance can be determined.” 22 Pa. Code § 4.2. It identifies the purpose of public education as to “prepare[] students for adult life by attending to their intellectual and developmental needs and challenging them to achieve at their highest level possible.” *Id.* § 4.11.

81. State law, including Chapter 4 of Title 22, sets forth numerous curriculum requirements for public schools. *See generally* 22 Pa. Code § 4.3 (defining “Curriculum” as “[a] series of planned instruction aligned with the academic standards in each subject that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students”). Among these legal requirements are:

- a. “employment of sufficient numbers of qualified professional employees . . . to enforce the curriculum requirements of State law,” *id.* § 4.4(b);
- b. that school districts offer “a minimum 4-year sequence in the secondary program (middle level and high school)” of at least one foreign language, *id.* § 4.25(a);

- c. that “[a] school entity’s curriculum shall be designed to provide students with planned instruction needed to attain the[] academic standards” set forth in § 4.12(a) and (c), *id.* § 4.12(d);
- d. that every student in every grade level be provided planned instruction in health, safety, and physical education, *id.* §§ 4.21(e)(6), 4.22(c)(7), 4.23(c)(8); and
- e. that school districts provide guidance services for K-12 students, *id.* §§ 339.31 - .32.

B. Related Curricular Provisions

82. While development of programs for students identified as “mentally gifted” is delegated to individual school districts under Chapter 16 of Title 22 of the Pennsylvania Code, “[e]ducational programs for gifted students” are under PDE’s general supervision, 22 Pa. Code §§ 16.1, 16.6(a), requiring the Secretary to “ensure that appropriate and responsible fiscal oversight and control is maintained over the development and provision of gifted education,” *id.* § 16.6(b). PDE is further required to “conduct onsite monitoring” to make certain that school districts are complying with legal mandates to provide programming for mentally gifted students, *id.* § 16.6(d), and to “establish a complaint process . . . for parents or guardians to file complaints,” which includes “[e]numeration of enforcement steps to be employed by the Department if the district does not implement the corrective action,” *id.* § 16.6(e).

83. In general, state law instructs that “[p]ublic education prepares students for adult life by attending to their intellectual and developmental needs and challenging them to achieve at their highest level possible.” *Id.* § 4.11(b). State law further requires that

“categories of services shall be provided by each school entity.” *Id.* § 12.41(a). These categories of services include “[d]evelopmental services for students that address their developmental needs throughout their enrollment in school[, including] guidance counseling, psychological services, health services, home and school visitor services and social work services that support students in addressing their academic, behavioral, health, personal and social development issues.” *Id.* § 12.41(b)(1).

84. State law mandates that these services “[b]e an integral part of the instructional program at all levels of the school system[;]” [p]rovide information to students and parents or guardians about educational opportunities of the school’s instructional program and how to access these opportunities[;]” and “[p]rovide career information and assessments” *Id.* § 12.41(c)(1)-(3). These requirements directly relate to the content and delivery of curriculum.

C. The Secretary’s Duties and Her Response

85. The Secretary is required to investigate allegations of curriculum deficiencies as against these and other legal requirements, but she has not done so. Chapter 4 requires the Secretary to “receive and investigate allegations of curriculum deficiencies from professional employees, commissioned officers, parents of students or other residents of a school entity.” 22 Pa. Code § 4.81(a). She is also obligated to “notify the school entity’s superintendent or chief executive of allegations.” *Id.* § 4.81(b). Following her investigation, the Secretary “may require the superintendent or chief executive to submit” a response, *id.*; and “[i]f the Secretary determines that a curriculum deficiency exists, the school entity shall be required to submit to the Secretary for approval a plan to correct the deficiency,” *id.* § 4.81(c). If a

district does not take appropriate actions to correct the deficiency after the notice of the deficiency is announced, the Secretary must take action under State law. *Id.* § 4.81(e).

86. The Secretary provided no response at all to many individuals who submitted allegations of curriculum deficiencies, including Petitioners Roberts, Plush, Johnson, and Eberhardt.

87. To certain submitters, PDE sent form-letter responses declining to conduct an investigation on the grounds that their allegations raised “concerns [that] are entirely local matters that should be addressed by the District.”

88. Those who received form-letter responses as described in the preceding paragraph include Petitioners Allen, Dwyer, and Kapps.

89. Nearly 200 of the 825 allegations, arising from thirty-five District schools, specifically addressed counseling deficiencies. Among the individuals who submitted allegations of curriculum deficiencies that in whole or in part arose out of inadequate counseling services are Petitioners Dwyer, Roberts, Plush, Johnson, and Eberhardt. PDE’s only response specific to counseling-related allegations has been that it will not conduct any investigation of them pursuant to 22 Pa. Code § 4.81. Exhibit F.

COUNT I

Violation of the Mandatory Duties of 22 Pa. Code § 4.81

90. Petitioners hereby incorporate and adopt each and every allegation set forth in Paragraphs 1 through 89 of the Petition for Review.

91. The Secretary’s failures or refusals to investigate allegations of curriculum deficiencies that she received, and to notify the District’s superintendent of the allegations, violate her mandatory duties under 22 Pa. Code § 4.81.

92. These failures or refusals have denied Petitioners their legal right to have their allegations of curriculum deficiencies investigated.

93. Apart from the relief sought herein, no appropriate or adequate remedy is available to Petitioners for the Secretary's failures or refusals to act.

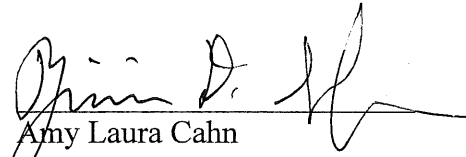
94. Without a judgment declaring that the Secretary must investigate allegations of curriculum deficiencies, Petitioners will have no relief from uncertainty and insecurity with respect to their right to have the Secretary investigate their allegations, to notify the District's superintendent of the allegations, and to require the District to take corrective action if and when deficiencies are confirmed.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court enter judgment in their favor and against Respondent, and:

- a. By means of an order in the nature of a writ of mandamus, direct Respondent immediately to receive and investigate, and refer to the Superintendent of the School District of Philadelphia, the allegations of curriculum deficiencies identified above, and to require the District to take corrective action if Respondent determines that curriculum deficiencies exist; and
- b. Declare that Respondent violated 22 Pa. Code § 4.81 by failing to follow her nondiscretionary duties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Amy Laura Cahn", with a long horizontal flourish extending to the right.

Amy Laura Cahn
Attorney ID No. 306762
Benjamin D. Geffen
Attorney ID No. 310134

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