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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Tim Allen
276 Osborn Street
Philadelphia, PA 19128,

Maura Dwyer
2010 Federal Street
Philadelphia, PA 19146,

Christianne Kapps
5457 Morse Street
Philadelphia, PA 19131,

Robin Roberts
7013 Cresheim Road
Philadelphia, PA 19119,

Christine Plush
8222 Coleax Street
Philadelphia, PA 19136,

Shirley Johnson
12609 Ramer Road
Philadelphia, PA 19154,

Bianca Eberhardt
1409 Greeby Street
Philadelphia, PA 19111,

Parents United for Public Education
1207 Chestnut Street
Philadelphia, PA 19107,

Petitioners,

v.

Docket No. _____

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

Respondent.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within thirty (30) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

**Dauphin County Bar Association
Lawyer Referral Service
213 North Front Street
Harrisburg, PA 17101
(717)232-7536**

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene treinta (30) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascantar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

**Colegio de Abogados de Condado de Dauphin
Abogado Servicio de Referencia
213 North Front Street
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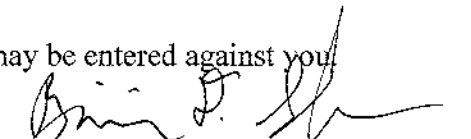
TO:

Pennsylvania Department of Education
Office of Chief Counsel
Ninth Floor, Harrisstown 2
333 Market Street,
Harrisburg, PA 17126-0333

Office of the Attorney General
Strawberry Square
Harrisburg, PA 17120

NOTICE TO PLEAD

You are hereby notified to file a written response to the enclosed Petition for Review
within thirty (30) days from service hereof or a judgment may be entered against you.



Benjamin D. Geffen, Esquire
Attorney for the Petitioners

Date: September 9, 2014

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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 myphillyphschools.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
- c. 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.

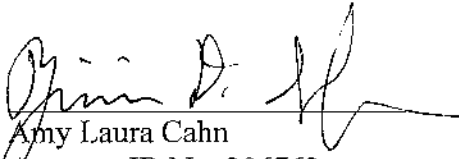
94. Without a judgment declaring that the Secretary must investigate allegations of curriculum deficiencies, Petitioners will have no relief from uncertainty and insecurity with respect to their right to have the Secretary investigate their allegations, to notify the District's superintendent of the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



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

Public Interest Law Center of Philadelphia
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103
Tel: 215-627-7100
Fax: 215-627-3183
Email: acahn@pilcop.org
bgeffen@pilcop.org

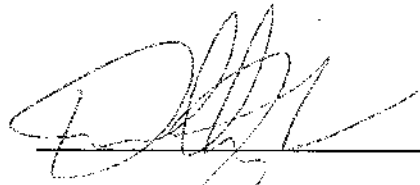
Counsel for Petitioners

Dated: September 9, 2014

VERIFICATION

I, Timothy Allen, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



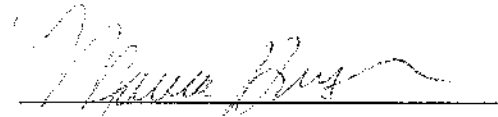
Timothy Allen
Petitioner

DATED: 8/20/2014

VERIFICATION

I, Maura Dwyer, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, appearing to read "Maura Dwyer", is written over a horizontal line.

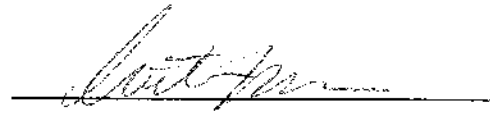
Maura Dwyer
Petitioner

DATED: 8/25/14

VERIFICATION

I, Christianne Kapps, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



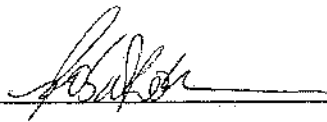
Christianne Kapps
Petitioner

DATED: 8/22/14

VERIFICATION

I, Robin Roberts hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Robin Roberts
Petitioner

DATED: _____

9/7/14

VERIFICATION

I, Christine Plush, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



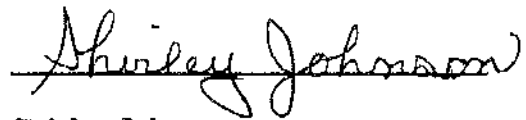
Christine Plush
Petitioner

DATED: 8/11/14

VERIFICATION

I, Shirley Johnson, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Shirley Johnson
Petitioner

DATED: 8/28/2014

VERIFICATION

I, Bianca Eberhardt, hereby state:

1. I am a petitioner in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Bianca Eberhardt

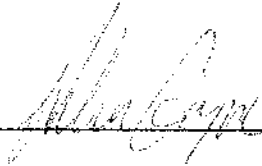
Bianca Eberhardt
Petitioner

DATED: 9/4/14

VERIFICATION

I, Helen Gym, hereby state:

1. I am a representative of Parents United for Public Education, which is a petitioner in this action;
2. I verify that the statements made in the foregoing complaint are true and correct to the best of my knowledge, information, and belief; and
3. I understand that the statements in said complaint are subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



Helen Gym

DATED: 8/2/2014



PUBLIC INTEREST LAW
CENTER OF PHILADELPHIA

AFFILIATED WITH THE LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

October 22, 2013

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Sonja D. Kess
Director, Disabilities Rights Project

Edwin D. Wolf
*Executive Director
1974-1976*

VIA EMAIL AND OVERNIGHT MAIL

Caroline Dumaresq.
Acting Secretary of Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-003

Re: Philadelphia School District Lack of Nurses Group Complaint

Dear Acting Secretary Dumaresq:

One child has died already. Others are at risk. On behalf of Parents United for Public Education and the thousands of children in the City of Philadelphia who need to be safe in their schools, we write to request that the Pennsylvania Department of Education and other leaders take **immediate action** to ensure that there are sufficient nurses in all Philadelphia schools. In brief, the School District of Philadelphia ("District") has effectively created a situation where the majority of nursing care in the schools is half-time or less despite the fact and the legal reality, as one Pennsylvania court has already found, "...there is no such thing as half a nurse in the real world."¹

The Children At Risk.

The Pennsylvania Department of Education reports an enrollment in Philadelphia County for public and charter schools of 200,268 children.² This number does **not**, however, include an estimated 22,913 children who attend parochial schools within Philadelphia.³ By state law, the District is responsible to provide nursing care to public, parochial and charter schools.⁴ Assuming the best numbers presently known, there are just 179 full-time nurses for 223,181 students, who are distributed primarily on a part-time basis throughout the schools and who are responsible for the care of children in more than one school. This is simply not enough.

¹ *Battaglia, Musari v. Lakeland School District*, 677 A.2d 1294 (Pa. Commonwealth, 1996).

² www.portal.state.pa.us/portal/server.pt/community/enrollment/7407/public_school_enrollment_reports/620541.

³ Number based upon oral report from Archdiocese, October 22, 2013.

⁴ The District receives reimbursement for the care to non-public schools.



The Nursing Shortage Is Well-Documented and the SRC is Aware of It.

In February of 2012, the Law Center wrote the School Reform Commission ("SRC") and attended an SRC meeting to express concern about an insufficient number of nurses.⁵ Specifically, we stated:

"Second, we are concerned about the reduction in nursing services within the SDP. For many children with disabilities, nursing services are a critical service that enables them to attend school. Children with diabetes, asthma, and other serious health problems need nursing care to remain in school uninterrupted. Without proper nursing services, children will be at risk of harm and injury which is unacceptable."⁶

On June 21, 2012, the Law Center wrote the SRC again and requested that they ensure that there were sufficient nurses in the school district.⁷

In March, 2013, the Public Interest Law Center's Executive Director, Jennifer Clarke wrote and asked Superintendent Hite to ensure appropriate services for all children including children with disabilities in light of the District's announced closures of schools.⁸ In response, Superintendent Hite wrote and assured us that all would be well for children with disabilities as the School District of Philadelphia ("District") closed schools and reduced and redistributed staff.⁹ All is not well.

In May, 2013, the Education Law Center ("ELC") published *"The School Nurse Shortage in Philadelphia: Prognosis and Prescription for Change."*¹⁰ In a review of the shortage that included a survey of school nurses and others, interviews and published research, ELC confirmed that as of that time, the District had just 195 nurses serving approximately 200,000 students in public, parochial, and private schools, including approximately 150,000 students in the District's public schools.¹¹ ELC concluded: "This is clearly insufficient to address the health and education needs of students."¹² The ELC found that full-time nurses are 6-12 times more likely than part-time nurses to be involved in activities such as responses to critical incidents and trauma, asthma visits, mental health counseling and health education

⁵ Letter from Kerr to SRC, February 16, 2012.

⁶ Id.

⁷ Letter from Kerr to SRC, June 21, 2012.

⁸ Letter to Hite from Clarke, Kerr, and others, March, 2013.

⁹ Letter from Hite to Clarke, March 28, 2013.

¹⁰ School Nurse Shortage in Philadelphia, May 2013, www.elc-pa.org, accessed 13.10.16

¹¹ Id, at 7.

¹² Id. at 7.

activities; in short, students attending schools with part-time nurses may not have adequate access to health services.

From what we can estimate based upon newspaper accounts, there appear to presently be the equivalent of 179 nurses in the District. However, only about 81 schools have a full-time nurse. Not only is this unpractical, it is also actually contrary to law.

Legal Analysis.

Under state law, and federal law, the District must ensure sufficient nursing services as explained below. We are specifically requesting that the Pennsylvania Department of Education, as well as the Bureau of Special Education and any and all other state entities responsible for the safety of children in our schools investigate this complaint.

Pennsylvania School Code requires Philadelphia to have school nurses. 24 P.S. §14-1402(a.1) requires that "each child of school age shall be provided with school nurse services; provided, however, that the number of pupils under the care of each school nurse shall not exceed 1,500." The Code which was passed in 1949 preceded by some twenty plus years the attendance of children with disabilities in Pennsylvania public schools.¹³ Consequently, the outmoded ratio of 1:1500 was passed by a state legislature that could not have taken into account the specific school nurse responsibilities for children with disabilities which certainly adds substantially to the duties of school nurses. Because of student need, the National Association of School Nurses (NASN) presently recommends a ratio of 1:750 for healthy students and for students with special health care needs, it recommends a nurse-to-student ratio of 1:250 and a ratio of 1:125 for medically complex students. Some students may even need a full-time 1:1 nurse.¹⁴ Pennsylvania's code regarding the nurse-to-student ratio does not currently take into account the higher level of care required for students with special health needs and those students with medically complex needs.

But just as significantly, in the current configuration, even applying a 1:1500 ratio, the District is now largely out of compliance because the statute states that "each child of school age shall be provided with school nurse services." *Id.* The creators of the statute could not have possibly envisioned the present configuration of school nurse services where, as here, the District employs 179 nurses to try to provide

¹³ *PARC v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa., 1971), 343 F. Supp. 279 (E.D. Pa. 1972) (contesting Pennsylvania's statutory exclusion of children with disabilities).

¹⁴ Caseload Assignments Position Statement 2010, www.nasn.org.

school nurse services to “each child of school age” in excess of 200,000 students in approximately 200+ schools.

In a June 2012 listing of school nurses assignments, schools have a nurse assigned, but the amount of care time is minimal.¹⁵ Assignments range from just “.01, .02, .05, .10, .15, .40” to 1.00 of a Full Time Equivalency (“FTE”) position. Many are very limited in time, and a full-time position is spread over more than one school. As an example:

Nurse A	Nebinger	Acad-Palumbo	Girard	Total
1.00 FTE (32 hrs)	.20 (6.4 hours)	.40 (12.8 hours)	.40 (12.8 hours)	
Total Students ¹⁶	267	718	599	1584 Students
Special Education Students ¹⁷	18.7%	3.9%	9.7%	
Medical Condition Students ¹⁸	Unknown	Unknown	Unknown	

The only court to consider the ratio, *Battaglia, Musari v. Lakeland School District*, 677 A.2d 1294 (Pa. Commonwealth, 1996) soundly rejected the concept of a “part-time nurse.” In examining a situation where a district reduced a nurse from full-time to part-time due to reduced enrollment, the Court explained that in reality there is no such thing as a part-time school nurse because health incidents of children simply cannot be scheduled. The District has essentially tried to extrapolate the numbers so that relying on 179 nurses for in excess of 200,000 students in public, parochial and charter schools seems to be in compliance. Assuming a total of 223,181 (all schools), the nurse-to-student ratio would be 1,246.

The problem is that students, and particularly those with disabilities, cannot neatly time their medical needs with the schedules of the part-time nurses who now

¹⁵ June 21, 2012, OSIS/School Health Services, Nurses Names Redacted.

¹⁶ Enrollment figures are based on 2012-2013 figures from the District’s website under each school’s enrollment data.

¹⁷ The number of students with IEPs who have health services in their IEP is unknown.

¹⁸ The number of students with medical conditions not on IEPs is unknown; some would be on Section 504 plans and some would not.

routinely cover more than one school, thus leaving the majority of schools without a full-time nurse. Moreover, children in Philadelphia have a high rate of asthma and Type I diabetes, both of which necessitate a full-time nurse on duty at school.¹⁹

The sad case of ██████████, a 12 year old with asthma, who died following an asthma attack at Bryant Elementary on Wednesday, September 25th is exemplary of the problem. The Bryant nurse is scheduled only for Tuesdays and Thursdays. It is simply not possible, as at least one court has found, to have a "part-time nurse" in a school setting. Childrens' serious medical concerns know no schedule.

In addition, for children with identified disabilities who are receiving special education services, the Individuals with Disabilities Education Improvement Act, ("IDEA")²⁰, et seq requires that school districts have staff available to provide all services that children with disabilities need, including school nurses and nursing services. 34 C.F.R. §300.34 describes related services as including supportive services required to assist a child with a disability to benefit from special education and includes "school health services and school nurse services." The regulations explain that "School health services and school nurse services means health services that are designed to enable a child with a disability to receive a free appropriate public education as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person." 34 C.F.R. 300.34(c)(14). See, e.g. *American Nurses Association v. Torlakson*, 304 P.3d 1038 (Cal. Supreme Court, 2013) (finding that school districts could train unlicensed personnel to administer insulin injections but only if they received approval of the child's physicians and parents). The number of students whose IEPs require nursing services is not known at this time but it is likely that while some have nursing services listed in their IEPs, many more do not simply because of the well-known shortage.

Moreover, one of the most common disabilities identified pursuant to the IDEA is autism. Latest statistics show that as of December, 2012, the District reported about 8% of its children with disabilities as having autism.²¹ Children with autism are frequently prescribed and take psychotropic medications which may have side effects and should be monitored in a school setting by a nurse. In fact, a recent

¹⁹ ELC reported an estimated 20-25 percent of children screen positive for asthma, and the incidence rate of Type 1 diabetes has increased almost 30 percent since 1985. ELC report at p. 8.

²⁰ 20 U.S.C. §1400, et seq; and see, especially §1401(26). Federal regulations at 34 C.F.R. 300.34(a) and 300.34(c)(14) describe the services in more detail.

²¹ www.pennadata.com, accessed 2013/10/21.

Drexel University study found that some 64% of children with autism are prescribed and take such medication.²²

Certainly many children not identified by the District as needing special education may still have legally cognizable disabilities, including asthma, Type I diabetes and ADHD/ADD, all of which require the District to ensure that they are provided assistance under Section 504 of the Rehabilitation Act and Chapter 15 of state law. These children may need nurses depending upon the particular aspects of the child's situation, especially in the area of medication. The failure of a nurse to implement a child's Section 504 plan can subject a district to liability. *Nixon v. Greenup County School District*, 10-67-HRW (E.D. KY Sept. 12, 2012). At the time of the filing of this complaint, the number of children in the District who receive or are to receive Section 504 services, and who may be receiving medication in school is unknown to us. We request you to investigate the number of such children and review their Section 504 plans to determine which plans include nursing assistance.

The Impact

We have forwarded to you already a number of complaints about the lack of services in Philadelphia this year. We received approximately 100 concerning the lack of nursing services at schools in the District. We have compiled all of these and all of them have been forwarded to you already and more are being forwarded through MyPhillySchools.com. But to help you understand the extremely serious situation, here are some examples:

1. Fox Chase School. A number of parents from Fox Chase have reported concerns about the lack of nursing services. A nurse is assigned to the school but the report of her schedule there varies from one ½ day per week to one and ½ day per week. The lack of a nurse has real consequences to real children.

- [REDACTED] filed a complaint concerning her son [REDACTED]. [REDACTED] is 6 years old and has asthma; [REDACTED] was under the impression there would be a nurse at Fox Chase for 2 days a week, Tuesday (part-time) and Thursday. On October 10, 2013, a Thursday, Samir was dropped off and complained of a headache. [REDACTED] directed him to go to the nurse if he didn't feel better. Unbeknownst to [REDACTED], no nurse was in the school that day. Samir was ill all day, vomited more than once, complained to three staff members and his parent was never called. After retrieving [REDACTED] at the end of the day, [REDACTED] took him to the hospital where he stayed for a three day period.

²² www.disabilitycoop.com/2013/10/21/nearly-two-thirds-meds/18822/

- [REDACTED] and [REDACTED] both parents of children at Fox Chase reported a concern that there is a lack of nursing services for their children. One child has seizures, cerebral palsy and asthma and the other two children have asthma.
- Another parent at Fox Chase reports her child has ADD and is on medication for that.
- There are apparently about 8-10 children with medical needs at Fox Chase whose parents have expressly complained, including 7-8 with asthma.
- Another parent, [REDACTED] has complained that Fox Chase staff who are there when the nurse is not, are not trained in first aid or CPR.

2. C.W. Henry. [REDACTED], has a seven year old child who attends C.W. Henry. He uses an inhaler on a PRN basis once evaluated but because he is only seven, he cannot yet evaluate himself. No nurse is regularly available and as his mother points out, "asthma attacks cannot be scheduled to occur when she [the nurse] is on site."

3. Feltonville School of Arts and Sciences. [REDACTED], a parent volunteer who is in the school every day but Friday, reports that Feltonville School of Arts and Sciences needs a full-time nurse. She explains that as a parent volunteer, students constantly come to her seeking help that should be provided by a nurse for example, a student who had a sprain sought ice, another student had feminine issues, and another student experienced nausea. [REDACTED] has a background as a medic in the Air Force; directions to her as a volunteer have been to have the student call the parent for a ride home. She cannot dispense aspirin or provide any real medical assistance.

4. Willard School. [REDACTED] has a daughter with ADHD who has to be picked up from school more often now that there isn't a nurse every day. [REDACTED] reported that because of the staff shortage, students aren't allowed to go to the bathroom every time they need to and that her daughter ended up urinating on herself as a result.

6. Nebinger Elementary School. [REDACTED], whose child attends Nebinger Elementary School, filed a complaint concerning the lack of nursing services. She noted that there had been some "really hairy moments" in the school, citing to an online article in which she was interviewed called "Slight Care." There are about 30 children with autism in Nebinger, and several of them are on medication. There has been an incident of a child taking another child's medication when no nurse was present resulting in the child being rushed to the hospital.

7. Hill-Freedman, [REDACTED] reports that the school has a very high population of students with special needs and severe medical issues who are not safe on the days that the nurse is not there. She notes, for example, that one day the nurse had to leave a student with a head injury at another school to administer medication to a student at Hill-Freedman.

Several complaints have expressed concern about whether nurses are keeping up with immunization records; one parent has indicated a child coming home with pink eye with no nurse to handle same.

Suggested Resolution/Solutions

Children must be safe in their schools and they must have school nurses to be safe. The Commonwealth owes a duty to children in Philadelphia to ensure that they receive the school nurses as required by state law and federal law. Towards that end, the Commonwealth should:

1. Immediately provide whatever additional funding is required to place a certified school nurse in every school on a full-time basis for the remainder of the 2013-2014 school year.
2. Hire sufficient staff to ensure immunizations are up to date and reported as required.
3. Launch an investigation into the number of nurses, the configuration of services and the delivery of services to determine if state law should be changed or better enforced to ensure that all children actually do have access to a nurse when in school.

Conclusion

The Commonwealth and the District have responsibilities to ensure that children with disabilities and with medical conditions as well as healthy children have access to nurses. The Commonwealth and the District cannot shirk these responsibilities in the name of lack of funding. We encourage you to find a solution to this situation which appears to be a medical crisis.

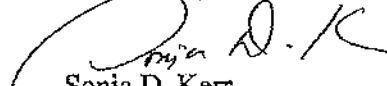
We will continue to update you with additional complaints on this issue as they are forwarded to us.

Should you have any questions, please do not hesitate to contact me at 267-546-1319. We are happy to discuss this matter with you if you would like to do so. We

Letter to Caroline Dumaresq
October 22, 2013
Page 9

implore you to take firm, immediate action to protect the lives and well-being of the children in Philadelphia.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sonja D. Kerr". The signature is fluid and cursive, with a large initial "S" and "D".

Sonja D. Kerr
Director, Disability Rights

Encs.

cc: Bureau of Special Education
Mayor Nutter, Lori Shorr
Members of the City Council
Members of the School Reform Commission
Helen Gym, Parents United



Redacted

STAFF

October 17, 2013

Jennifer E. Clarke
Executive Director

Amy Laura Cahn
Skadden Fellow/Staff Attorney

Michael Churchill
Of Counsel

James Eisenart, Jr.
Senior Attorney

Benjamin D. Geffen
Staff Attorney

Swoja D. Kerr
Director, Disabilities Rights Project

Edwin D. Wolf
Executive Director
1974-1976

Via Email to cdumaresq@pa.gov, and Overnight Mail
Carolyn Dumaresq, Ed.D., Acting Secretary of Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, Pennsylvania 17126-0333

**RE: Curriculum and Student Services Deficiencies Complaint –
Lack of Counselors**

Dear Dr. Dumaresq:

Pursuant to 22 Pa. Code 4.81(a-c), the Secretary of Education is required to receive and investigate allegations of curriculum deficiencies. "Curriculum deficiencies" appears to include not only a failure to include appropriate instructional units in planned courses but also the failure to actually implement such instructional units, either because of delivery failures, untrained instructors, or insufficient personnel. We note that in conducting an investigation the Secretary is directed to obtain information on staff assignments. The Public Interest Law Center, on behalf of Parents United for Public Education and Philly School Counselors United, hereby files this complaint with the Department concerning violations of the legal rights of children in the School District of Philadelphia ("District"), a state-operated school district and requests urgent intervention because the District is presently completely under-staffed for counselors and is deficient in providing counseling services.

As you know, counseling is an important component of the curriculum delivery system. The District is legally required to provide a comprehensive and



integrated K-12 program of student services which includes "guidance counseling services." Those counseling services "shall be provided in each school entity" and "must be an integral part of the instructional program at all levels of the school system." 22 Pa. Code 12.41. Districts are also required to "employ the necessary professional employees to keep the public schools open ...in compliance with the provisions" of state law, 24 PS 11-1106. The lack of counselors impedes the ability of teachers to deliver as effectively their instructional services; teachers spend more time with students with emotional behavior issues, more students have un-addressed emotional issues which teachers must deal with, teachers end up doing paper work counselors formerly did and the behavioral health component of the State's required Response to Intervention (RtI) program is left undone without the support and professional expertise of the counselor which teachers need.

Equally influential on a child's educational outcome is the lack of guidance counseling for transfers from elementary school to middle schools, from elementary or middle schools to high schools, and the need for assistance in taking the right courses and applying to colleges. Unique to Philadelphia is an extremely complicated system of school options available to students once their K-4 or K-8 neighborhood school is completed. Particularly at the high school level, a number of schools are special admission with detailed requirements, many other schools offer limited programs or programs oriented to particular careers and types of courses. Compared to districts with only a couple of high school options, the selection process facing 8th graders and their parents with over 40 high school options (plus charters) is daunting and extremely difficult without the assistance of counselors. A child's future, including his/her ability to get into college or the appropriate technical school can ride upon getting into the high school which is right for that child. There are approximately 14,000 students making that transition every year.

Further, there are approximately 12,000 high school seniors who rely on guidance counselors for assistance in post high school choices, for signing the "common application" form required by many schools, for writing recommendations and helping them to understand the complicated scholarship application forms. Because of other cutbacks on personnel in the District, when counselors are not available to attend to any of these matters there either is no one to do it or it again takes instructional preparation time away from teachers.

To meet these needs, Philadelphia this year has assigned one counselor to any school with at least 600 students. It has assigned itinerant counselors to smaller schools, with a work load of six or seven schools attended by up to 3,000 students. A few large high schools have been assigned a second counselor, but in all cases they have well over 600 students on their caseload. By contrast, the District's contract with the PFT union sets the "Parties' goals of a maximum caseload" for elementary counselors at 400, for middle school counselors at 150, and for high school counselors at 200.

The lack of counselors has produced a crisis for parents of students facing a transition year which is widespread and pressing. Deadlines are approaching or have passed – parents who know about them have repeatedly asked for assistance to no avail. Many are frightened and feeling desperate. Many other parents don't know about the deadlines because of the absence of the counselors and will be denied the opportunity to make informed choices and their right to participate in the school selection process.

Counselors also provide critical emotional supports to students within schools. The shortage of counselors is already producing incidences of students without adequate support to participate effectively in classes, who have articulated emotional needs arising from family deaths and neighborhood violence going unattended, and who therefore may upset classrooms, or participate

in unruly behavior, bullying, and turmoil—exactly what would be expected from the absence of counseling services. Interference with the instructional process is the inevitable outcome of the insufficient number of counselors.

To date, at least 198 individuals from 35 different schools¹ have filed complaints about the lack of guidance counselors in their individual schools and paint the picture of the impact on the children in Philadelphia:

- [REDACTED], whose child attends Samuel Powel Elementary, a K-4 school, filed a complaint on September 15, 2013 alerting your office to the counseling deficiencies at this elementary school. The school has about 300 children and it has a “roving” counselor who provides services on Tuesdays from 8:30-12:30. In the case of this child, the parent is concerned that her child has not been able to access counseling services for anxiety which causes her to freeze up and results in her having difficulty breathing. In addition, even basic services -- such as paperwork for fifth grade applications cannot be done adequately. The Secretary should also be aware that this school has within its boundaries, two homeless shelters, whose children may need counseling assistance -- as required under federal McKinney-Vento law. Many other Powel parents, like [REDACTED], have reported they “need help navigating the system” to select a middle school for next year and have not received assistance.
- [REDACTED], parent of a child in the Wagner School, has complained to you that her son engages “in self damaging behaviors such as hitting himself or banging his head on

¹ Please note that the filing of complaints is an ongoing process through MyPhillySchools.com as well as hard copy complaints. This number is only an estimate based on a current review of the filings.

tables” and has written and stated “If my house gets called I am going to kill myself. I am serious.” She has been told the school has a counselor only three hours every 9 days.

- [REDACTED], a school staff person writing on behalf of a homeless child attending [REDACTED] [REDACTED] filed a complaint with Parents United for Public Education that a third grade child who is homeless has no support. The child lives in a shelter and the child commutes to school by public transportation. The principal, and other staff have had to assist the child to obtain transportation, a uniform, and school supplies, all of which is normally the responsibility of the counselor. However, even though staff have stepped in on these needs, there is a lack of counseling services available to the child to help him emotionally process and cope with the stressful situation. There is to be a “roving” counselor. But a full-time counselor is needed because there is no one to provide emotional support and guidance for this child and others, including connecting the student’s family with a caseworker. And, of course, there is no one to handle the paperwork for Title I money to assist in the purchase of school supplies, work with the District’s Homeless Children Initiative, to assist in purchase of school uniforms and acquire transportation tokens or a transpass.
- [REDACTED], a parent of a child in the Kearny Elementary School reported to you that the school has a 1st grade student who has just been orphaned and is acting out. The school has a counselor once every eight days who as of the filing to the complaint had not yet been able to see the student.
- [REDACTED], parent of a girl at Houston Elementary School, has also reported to you that her daughter had an issue with bullying and there was no counselor available to help.

- Name Withheld, a school staff person from E.W. Rhodes, reported to Parents United for Public Education about a concern about the lack of counseling assistance which is affecting the children at Rhodes in three ways. Rhodes has received students from five other schools (Whittier, Pratt, Pierce, Hill and Wright). The school has one "roving" counselor who visits one time a week and is responsible for 6 other schools. The childrens' school records cannot be found or are misplaced. (This has been verified by discussion with a parent whose child was not allowed to attend Rhodes for 8 school days because of a lack of adequate record keeping.) Teachers are not certain who is or is not on their roster or even in their class or who should be in their class. Children are not receiving any meaningful counseling services, given the limited lack of time that the counselor is present.
- [REDACTED] has a daughter in Frances Hopkinson School. She reported that there is insufficient counseling services, with 7th and 8th graders "doing drugs" in the school.
- [REDACTED] complained that her daughter in the 8th grade at E.M. Stanton School has been unable to submit the form for her high school application as the counselor, who must submit the form along with transcripts and other documentation, is there every 7th day and has a workload of almost 3,000 students.
- [REDACTED], a parent of an 8th grade girl at McKinley Elementary School also reported the lack of counselors to help with the high school application process. As a consequence, other employees substituting for the counselors are giving out misleading information, telling her that a transcript was not necessary.
- Several parents from Central High School reported concerns about lack of counseling services where there are only 2 counselors for 2,000 students and long delays for students

seeking help. [REDACTED] filed a complaint on behalf of her brother who she reported has been counting on getting the help of a counselor to get him through the school application process—he not only lost both parents several years ago, but has an IEP and has fought to overcome dyslexia. His college applications require a recommendation by his counselor, but the counselor he had been working with for three years has been let go. [REDACTED], a parent whose child attends Central, filed a complaint expressing concern about the lack of sufficient counseling services there. Her daughter had become physically ill because of the stress and anxiety and there was literally no one available to assist her. [REDACTED], another parent whose child attends Central High School, filed a complaint expressing concern that last year even when the school was fully staffed for counseling, children were reported as engaging in “cutting,” and now there is no one to adequately address those issues.

- A parent, [REDACTED], from John Bartram High School reported one counselor for 1200 students unable to handle the college application load, much less attend to needs of student victims of several fights which have occurred at the school.
- Several parents from Girard Academic Music Program have complained to you about the lack of assistance to seniors. The school has had two different itinerant counselors, both of whom have left the school. A third guidance counselor is supposed to be assigned but parents do not have a name, phone number or schedule for this individual. [REDACTED] stated her son “has not had success with finishing the Common College Application Process due to the lack of support from a permanent Counselor.”

Our records show you have received complaints about lack of counseling services from the following additional schools: Lincoln High School ; A.S. Jenks ; Brown School; Baldi Middle School; Henry School; Cook-Wissahickon; Creative and Performing Arts; Decatur School; Feltonville Intermediate; Feltonville Arts and Sciences; Forrest Elementary School; Fox Chase; Franklin Learning Center; Furness High; Nebinger School; Lingelbach Elementary School; Masterman; McCloskey E. School; Olney High School; B. Rush Arts Academy; Science Leadership Academy; Samuel Gompers; and Willard Elementary School. Clearly counseling services are a problem throughout the District.

On behalf of Parents United for Public Education and Philly School Counselors United we ask that the Acting Secretary investigate these allegations of deficiencies, since the District is required to have adequate professional employees to meet state law.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Michael Churchill
Public Interest Law Center of Philadelphia

cc: Helen Gym, Parents United for Public Education
Ninoska Wong Shing, Philly School Counselors United



pennsylvania
DEPARTMENT OF EDUCATION

November 8, 2013

Sonja D. Kerr, Esquire
Director, Disability Rights
Public Interest Law Center of Philadelphia
United Way Building
1709 Benjamin Franklin Parkway
2nd Floor
Philadelphia, PA 19103

Dear Ms. Kerr:

This letter confirms the Pennsylvania Department of Education's (Department) receipt of your letter related to multiple children in the School District of Philadelphia (SDP), which was received on October 25, 2013. Your letter was referred to the Department's Bureau of Special Education (Bureau) to determine whether you raise allegations related to the education of students with disabilities.

Based upon the information you have provided in your letter we identified the following allegation as related to the education of students with disabilities, which the Bureau is treating as a complaint and will investigate pursuant to the Individuals with Disabilities Education Act (IDEA) and Chapters 14 and 15 of the State Board of Education's regulations:

The School District of Philadelphia (SDP) failed to provide nursing services to those students whose Individualized Education Programs (IEPs) or Chapter 15 504 Service Plan Agreements require nursing services.

Ruth Furman is the Special Education Adviser assigned to investigate this matter. In your letter, you have given an assurance that you have provided a copy of the letter to the District as required by 34 C.F.R. §300.153(d). If you have not done so, please contact Ms. Furman at (610) 642-1237 or rfurman@pa.gov.

The local education agency (LEA) is to provide you a copy of the Procedural Safeguards Notice upon receipt of a complaint when it is the first complaint filed by you for the school year. If you do not receive a copy of the Procedural Safeguards Notice in a timely manner, please contact Ms. Furman.

The federal regulations also provide the LEA an opportunity to respond to you with a proposal to resolve the complaint, or to voluntarily engage in mediation. If you and the LEA reach an agreement to resolve the complaint, you and the LEA must complete the enclosed Report of Complaint Resolution, the original of which the LEA will mail to Ms. Furman at the Bureau.

If additional information is needed, we will contact you. If you desire to provide additional information, you may do so by writing to Ms. Furman.

Your letter included information and/or copies of letters written by parents about individual schools located in the SDP and students attending those schools. Please know that these letters were also submitted separately to the Bureau and will be investigated individually. Some of these letters, however,

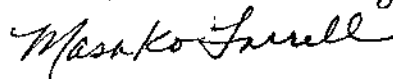


did not involve students with disabilities and have been forwarded to the Department's Office of Students Services to be addressed in accordance with their procedures.

Your letter also included information that falls under the purview of the Pennsylvania Department of Health. Accordingly, we will refer to the Department of Health the allegation that the SDP failed to provide nursing services to students, including students with disabilities or other serious health needs, as required by section 1402 of the Public School Code, 24 P.S. § 14-1402.

We anticipate that the Bureau's investigation regarding the provision of school nurses for students in the SDP with IEPs and 504 Service Agreements will involve a review of IEPs and 504 Plans for all students containing nursing services. The Bureau will conduct an onsite visit to those schools housing these students and their programs to find out if the nursing services required by IEPs and 504 Plans are being provided. Following the investigation, a report of findings and conclusions will be sent to you within 60 days.

Sincerely,

 ^{LD}

Masako Farrell, Chief
Division of Monitoring & Improvement - East

Enclosure: Report of Complaint Resolution

cc: Carolyn Dumaresq, Acting Secretary of Education
Michael Wolf, Secretary of Health
Dr. William Hite, Jr., Executive Director, Intermediate Unit 26
Kim Caputo, Deputy Chief, Office of Specialized Instructional Services
Ruth Furman, Special Education Adviser
Central File

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA DEPARTMENT OF EDUCATION
BUREAU OF SPECIAL EDUCATION**

Subject: Complaint Management System - Report of Complaint Resolution
To: Masako Farrell, Chief, Division of Monitoring & Improvement - East
From: Kim Caputo, Deputy Chief, Office of Specialized Instructional Services
Cc: Ruth Furman, Special Education Adviser

Complainant Name: Sonja D. Kerr, Esquire **Student Name:** Multiple Students
School: School District of Philadelphia **Complaint Date:** October 25, 2013

The Code of Federal Regulations, 34 C.F.R. §300.152 (a)(3), requires that state complaint procedures provide public agencies with the opportunity to respond to a complaint, including, at a minimum –

- (i) At the discretion of the public agency, a proposal to resolve the complaint, and
- (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506.

Therefore, if the LEA and the parent have resolved all issue(s) asserted in the above referenced complaint, please complete the sections below and return a copy of the completed, signed form to the Bureau.

The School District of Philadelphia (SDP) failed to provide nursing services to those Students whose Individualized Education Programs (IEPs) or Chapter 15 504 Service Plan Agreements require nursing services.

Resolution Summary:

These issues have been resolved to my satisfaction, and my signature indicates agreement that the Bureau may cease any further activity regarding the investigation of these issues in the complaint.

Complainant Signature _____ Date _____

School/LEA Representative _____ Date _____

PENNSYLVANIA DEPARTMENT OF EDUCATION
BUREAU OF SPECIAL EDUCATION
COMPLAINT INVESTIGATION REPORT

LOCAL EDUCATION AGENCY: School District of Philadelphia

DATE RECEIVED: October 25, 2013

DATE OF REPORT: December 24, 2013

COMPLAINANT: Attorney Advocate

NAME: Sonja D. Kerr, Esquire
ADDRESS: Public Interest Law Center of Philadelphia
United Way Building
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103

RE: Multiple Children - School District of Philadelphia

SPECIFIC COMPLAINT(S):

Issue: The School District of Philadelphia (SDP) failed to provide nursing services to those students whose Individualized Education Programs (IEPs) or Chapter 15 504 Service Plan Agreements require nursing services.

APPLICABLE REGULATORY AUTHORITY:

Individuals with Disabilities Education Act (IDEA) Code of Federal Regulations. 34 CFR Part 300 Section 300.323. When IEPs must be in effect.

(c) Initial IEPs; provision of services.

Each public agency must ensure that—

- (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
- (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

Chapter 14 of the State Board of Education Regulations for Special Education Programs and Service

Section 14.131. IEP.

- (a) In addition to the requirements incorporated by reference (see 34 CFR 300.320–300.324), ...
 - (6) The IEP of each student shall be implemented as soon as possible, but no later than 10 school days after its completion.



SOURCES OF INFORMATION:

This Adviser:

- A. Reviewed the complaint letter sent to the Bureau of Special Education (BSE), which was signed by Sonja Kerr of the Public Interest Law Center of Philadelphia (the Complainant) and received October 25, 2013
- B. Corresponded by e-mail with [REDACTED], Esquire, Deputy Chief, Office of Specialized Instructional Services (Deputy Chief) on November 8, 2013, December 14, 2013, and December 15, 2013.
- C. Corresponded by e-mail with [REDACTED], Esquire, General Counsel for the SDP (General Counsel) on November 20, 2013.
- D. Spoke with [REDACTED], Special Education Liaison (SEL) for the Bridesburg Elementary School, by phone on November 22, 2013.
- E. Spoke with [REDACTED], Nurse for the Bridesburg Elementary School, by phone on November 22, 2013.
- F. Spoke with [REDACTED], SEL for the Delaplaine McDaniel School, by phone on November 27, 2013.
- G. Spoke with [REDACTED], Principal for the James G. Blaine School, by phone on December 2, 2013.
- H. Spoke with [REDACTED], Principal for the Hill-Freedman High School (HFHS) by phone on December 2, 2013.
- I. Spoke with [REDACTED], SEL for the Feltonville School of Arts and Sciences, by phone on December 2, 2013.
- J. Spoke with [REDACTED], Nurse for the Feltonville School of Arts and Sciences, by phone on December 2, 2013.
- K. Spoke with Ms. [REDACTED], HFHS Nurse by phone on December 3, 2013, and received a faxed transmission on December 3, 2013.
- L. Spoke with [REDACTED], SEL for the William H. Ziegler School, by phone on December 6, 2013, and December 16, 2013.
- M. Spoke with [REDACTED], SEL for the John Marshall School, by phone on December 16, 2013.
- N. Spoke with [REDACTED], Principal for Crossroads at Hunting Park, on December 16, 2013.
- O. Interviewed the following educators during an on-site investigation at the Fox Chase School on December 6, 2013:
 - [REDACTED], Principal

- [REDACTED] SEL
- [REDACTED] Nurse

P. Corresponded by e-mail with the following SDP personnel:

<u>Date</u>	<u>School</u>	<u>Name/Position</u>
November 27, 2013, and December 10, 2013	General Phillip Kearny School	[REDACTED]/Principal
December 2, 2013	AMY Northwest Middle School	[REDACTED] Principal
December 2, 2013	Feltonville School of Arts and Sciences	[REDACTED] SEL
December 3, 2013	A. S. Jerks School	[REDACTED]/Principal
December 3, 2013	Robert Morris School	[REDACTED]/Nurse
December 3, 2013	Chester A. Arthur School	[REDACTED]/Principal
December 3, 2013	Tilden Middle School	[REDACTED] SEL
December 3, 2013	Frances E. Willard School	[REDACTED] Nurse
December 4, 2013	Constitution High School	[REDACTED] Principal
December 4, 2013	E. W. Rhodes School	[REDACTED] SEL
December 4, 2013	Lankenau High School	[REDACTED] Principal
December 4, 2013	Camelot Academy at Boone	[REDACTED] Special Education Director
December 4, 2013	F. Amedee Bregy School	[REDACTED] Principal
December 4, 2013	Wagner Middle School	[REDACTED] Principal
December 4, 2013	General J. Harry La Brum Middle School	[REDACTED] Principal
December 4, 2013	Leeds Middle School	[REDACTED] Principal
December 4, 2013	Thomas Mifflin School	[REDACTED] Principal
December 4, 2013, and December 5, 2013	Woodrow Wilson Middle School	[REDACTED] Principal
December 4, 2013	George W. Sharswood School	[REDACTED] Nurse
December 4, 2013	George W. Nebinger School	[REDACTED] Nurse
December 4, 2013	Delaplaine McDaniel School	[REDACTED] Nurse
December 4, 2013, and December 5, 2013	William H. Ziegler School	[REDACTED] SEL
December 4, 2013	W. B. Saul High School of Agricultural Sciences	[REDACTED] Principal
December 4, 2013	B. B. Comegys School	[REDACTED] Principal
December 5, 2013	Francis Scott Key School	[REDACTED] Principal
December 5, 2013	High School for Creative and Performing Arts	[REDACTED] Interim Principal
December 5, 2013	John Welsh School	[REDACTED] Principal
December 5, 2013	Wagner Middle School	[REDACTED] Principal
December 6, 2013	Prince Hall School	[REDACTED] Nurse
December 6, 2013	Science Leadership Academy	[REDACTED] Principal
December 6, 2013	Ethan Allen School	[REDACTED] Principal
December 6, 2013	Bridesburg Elementary School	[REDACTED] Principal
December 6, 2013, and December 11, 2013	S. Weir Mitchell School	[REDACTED] Principal
December 8, 2013	Theodore Roosevelt School	[REDACTED] SEL

December 9, 2013, and December 12, 2013	Alexander K. McClure School	[REDACTED] Principal
December 9, 2013	James J. Sullivan School	[REDACTED]/Principal
December 9, 2013, and December 11, 2013	John B. Kelly School	[REDACTED]y/Nurse
December 10, 2013	Murrell Dobbins High School	[REDACTED]SEL
December 10, 2013	Lewis Elkin Elementary School	[REDACTED]SEL
December 10, 2013	John S. Jenks School	[REDACTED]SEL [REDACTED]Nurse
December 10, 2013, and December 13, 2013	Joseph Pennell Elementary School	[REDACTED]SEL
December 10, 2013	F. S. Edmonds School	[REDACTED]Principal
December 13, 2013, and December 17, 2013	A. B. Day School	[REDACTED]Principal
December 16, 2013, and December 17, 2013	Allen M. Stearne School	[REDACTED]SEL
December 16, 2013	William Cramp Elementary School	[REDACTED]Principal
December 16, 2013	Olney Elementary School	[REDACTED]Principal
December 16, 2013	Thomas Holme School	[REDACTED]Principal
December 16, 2013, and December 17, 2013	Philadelphia Military Academy	[REDACTED]Principal
December 16, 2013	Penn Alexander School	[REDACTED]Principal
December 16, 2013, and December 17, 2013	John Wister Elementary School	[REDACTED]Principal
December 16, 2013	Charles W. Henry School	[REDACTED]Nurse
December 16, 2013	Cayuga Elementary School	[REDACTED]Principal
December 16, 2013	John Marshall Elementary School	[REDACTED]SEL
December 16, 2013	Bache-Martin Elementary School	[REDACTED]SEL
December 16, 2013	John M. Patterson School	[REDACTED]Principal
December 16, 2013, and December 17, 2013	Feltonville Intermediate School	[REDACTED]Principal
December 16, 2013, and December 17, 2013	James Dobson School	[REDACTED]Nurse
December 16, 2013	William McKinley School	[REDACTED]Principal

Q. Reviewed the following numbered documents:

Ref.	Document	Date	Source
1.	Complaint Letter	Received October 25, 2013	Complainant
2.	SDP School Nursing Allocation Spreadsheet	November 18, 2013	District
3.	SDP 504 Service Agreement by School reports: a. The total number of students receiving 504 services by school; and b. Name of students receiving 504 services by school.	November 18, 2013	District
4.	SDP IEP Students with Nursing Services by School	November 20, 2013	District
5.	BSE Data Summary Spreadsheet	December 2013	BSE
6.	BSE Nursing Complaint Investigation Survey (Nursing Survey)	November 27, 2013	BSE
7.	E-mail from BSE Adviser to SDP Principals	November 27, 2013	BSE

8.	SDP Request for Administration of Medication, Treatments or Use of Equipment in School Form (MED-1 Form)	April 2012	District
9.	SDP Medication Log	December 6, 2013	District

INTRODUCTION:

The School District of Philadelphia consists of 214 public schools, including 149 elementary schools, 16 middle schools, and 49 high schools with an enrollment of 131,262 students. Thirteen point eight percent of the student population (18,114 students) receives special education services. Point 6 percent of the student population (796 students) receives services through a 504/Chapter 15 Service Agreements.

FINDINGS:

The Complainant alleges:

Issue: The School District of Philadelphia (SDP) failed to provide nursing services to those students whose Individualized Education Programs (IEPs) or Chapter 15 504 Service Plan Agreements require nursing services.

1. The SDP General Counsel provided the BSE with a list of schools and their nursing allocations for the 2013-14 school year. BSE focused its investigation on those schools that do not have a nurse assigned to be at the school every day.
2. The SDP General Counsel provided the BSE with 2 lists of students with Chapter 15 504 Service Plan Agreements in each school: a. The total number of students receiving 504 Services by school; and b. Name of students receiving 504 services by school. There are 796 students who have 504 Service Agreement. Not all of them have nursing services in the agreement. The SDP did not provide a list of students receiving specifically nursing services through 504 Service Agreements by school. The Deputy Chief explained that the SDP did not have a database that would be able to query the number of students whose 504 Service Plan Agreements required nursing services.
3. The SDP General Counsel provided the BSE with a list of student names whose IEPs required nursing services. The list was categorized by the school which the students attend.
4. This BSE Adviser compiled the data provided by the SDP, and developed a spreadsheet regarding the number of students in each school with 504 plans and IEPs which require nursing services and the number of days a week that a nurse was assigned to the school.
5. This BSE Adviser sent out a survey to the principal of each school where there was at least one student with a 504 plan, or an IEP indicating nursing services, and where the nurse was not on-site five days a week. The survey, which requested information about how nurse services were provided to students with a 504 plan or an IEP requiring such services, was sent out to 98 school principals. Ninety schools returned the survey.
6. The HFHS Principal explained that the SDP issues a MED-1 Form to the parents of all students who require the administration of medication at school.
7. The MED-1 Form explains to the student's physician and parent or guardian that "[i]deally the administration of medication or utilization of equipment should take place at home. However, for students who require medication/treatment during the school day in order to

function in the classroom, School District Policy does permit selected school staff to administer medication. In some cases, students may self-administer their medication." If the student's medication or treatment schedule cannot be altered so that all are received at home, the parent and physician are required to complete the MED-1 Form.

8. The MED-1 Form must be signed and completed by the Student's Physician with regards to:
 - The reason the medication/equipment must be given in school.
 - The name of the medication/equipment.
 - The dose to be administered.
 - The time the medication/equipment needs to be administered at school.
 - Instructions for the administration of the medication/equipment.
 - Contraindications.
 - Side-effects.
 - Treatment of side effects/action to be taken.
 - Restriction on activity.
9. The MED-1 Form must also be signed by the student's parent authorizing that the medication may be administered or the equipment may be used by the Principal, his/her designee, or the student himself/herself in the absence of the Certified School Nurse.
10. A School Nurse from an elementary school reported that if a nurse is not available, the principal or school secretary administers the student's medication, and that every medication administered is logged into the nursing file and coded as to who administers the medication. A Nurse from another school provided a sample of one student's medication log which indicates the name of the medication administered, the dosage that was administered, and who administered the medication if the nurse was not present.
11. The Principal from a school reported, and a Nurse from another school confirmed, that if a parent does not sign the MED-1 Form authorizing the principal or his/her designee to administer the medication in the absence of the nurse, then the medication is not administered at school. School personnel throughout the District indicated that this is common practice in the SDP. When a parent or guardian does not sign the MED-1 Form, the parent is responsible for administering the student's medication at home.
12. In review of the surveys, this BSE Adviser followed-up by e-mail to inquire if those students who were receiving medication in school had provided the school with a signed MED-1 Form. Every school responded that they received signed MED-1 Forms for every student who was receiving medication at school.
13. If a student who had an IEP with nursing services was indicated on the SDP's IEP Students with Nursing Services list but was not noted on the school's survey response, this BSE Adviser followed up by e-mail with each school to confirm whether or not the student was enrolled in their building and whether or not the student had an IEP which required nursing services. In this way all of the students attending schools which were sent surveys and who were listed on the SDP's IEP Students with Nursing Services List were accounted for.
14. The results of the survey indicate that nurses provide the following services for students with IEPs and 504 plans:

- Administer medication.
 - Check sugar levels.
 - Test blood glucose and monitor an insulin pump.
 - Monitor for neurological symptoms including seizure disorders.
 - Assist with tube feedings.
 - Check for gastrointestinal symptoms.
 - Train staff on how to respond to various conditions including asthma attacks, seizures, and allergic reactions.
 - Monitor weight.
 - Monitor scoliosis progression.
15. The results of the survey indicate that some students have a private duty or 1:1 nurse in school with them each day who are responsible for implementing the nursing duties required in the individual student's IEP. These students received the nursing services as provided in their IEPs.
16. The results of the survey indicated that there are two schools that have not been providing nursing services as required in individual student's IEPs or 504 Service Plan Agreements.
17. The final finding from the result of the survey deals with discrepancies between the master list provided by the SDP and the responses received from schools. Many schools indicated that they did not have students attending the respective schools that were listed in the master chart provided by SDP's General Counsel. Although the BSE Adviser sought additional information to reconcile the discrepancies between General Counsel's list and the schools' response to the survey, 36 schools failed to respond.

CONCLUSION:

The SDP is out of compliance with the regulation cited above for not providing nursing services as indicated in the individual students' IEP or 504 plans in two schools. The 2 schools did not implement the nursing services when the parent did not sign the MED-1 Form. Also, 8 schools did not respond to the original survey, and 36 schools did not respond to the follow up inquiry. Based on these findings, the SDP did not provide information necessary to show that students received the nursing services as indicated in the students' respective IEPs, or 504 plans.

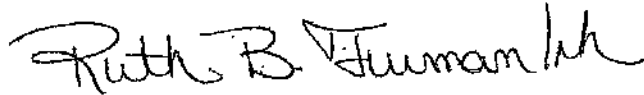
CLOSURE/CORRECTIVE ACTION:

The Superintendent or his designee is ordered to provide nursing services for those students whose IEPs and 504 plans require nursing services by **January 23, 2014**. To maintain confidentiality of students, a list of schools and students will be provided to the SDP upon issuance of this Complaint Investigation Report.

VERIFICATION OF COMPLETION OF CORRECTIVE ACTION:

The Superintendent or his designee is required forward a list of schools and student names with dates that the students began receiving nursing services to this Adviser at: Pennsylvania Department of Education, Bureau of Special Education, Division of Monitoring and Improvement - East, 333 Market

Street, 7th Floor, Harrisburg, PA 17126, on or before **January 30, 2014**. The local educational agency (LEA) may use the attached compensatory education plan agreement format for the corrective action.



Ruth B. Furman
Special Education Adviser
Division of Monitoring and Improvement - East
(610) 642-1237

NOTICE: In accordance with federal regulations, this report constitutes the Pennsylvania Department of Education's final decision with regard to this complaint.

If either party disagrees with the conclusions in the complaint investigation report (CIR), the party has the right to submit a written request for reconsideration with additional information *either not considered or not available at the time of the investigation*. The written request for reconsideration must be submitted within ten (10) calendar days of the date of the CIR. BSE will determine if the additional information is sufficient to warrant a review of the conclusions reached as a result of the investigation. Upon determining the sufficiency of the information, the BSE will notify the parties in writing of its decision to reconsider the conclusions reached. The BSE will issue its decision on the request for reconsideration within 30 calendar days from BSE's receipt of the request.

An LEA must implement any corrective actions ordered in the CIR without waiting for the BSE's decision on the request for reconsideration.

Enclosure: Completion of Corrective Action
Basic Education Circular – Special Education Compliance

cc: Carolyn Dumaresq, Acting Secretary of Education
Michael Wolf, Secretary of Health
Dr. William Hite, Jr., Executive Director, Intermediate Unit 26
Kimberly Caputo, Esquire, Deputy Chief, Office of Specialized Instructional Services
Helen Gym, Founder, Parents United for Public Education
Masako Farrell, Chief, Division of Monitoring and Improvement – East
Central File

Completion of Corrective Action

Dear Complainant:

This form provides you with the opportunity to notify Bureau of Special Education staff if you believe that the corrective action specified in the complaint investigation report was not completed. If you believe that the corrective action was not completed, please complete the form and return it to the Bureau of Special Education. This form must be received in the Bureau of Special of Education no later than 10 calendar days after the due date of the corrective action. Please address and send this form to:

Attn: **Ruth Furman**
Corrective Action Verification Form
Bureau of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

1. Child's name: **Multiple Children -- School District of Philadelphia**
2. Name of complainant: **Sonja D. Kerr, Esquire**
3. Name of school district/charter school: **School District of Philadelphia**
4. Date of complaint investigation report (CIR): **December 24, 2013**
5. Date of corrective action

Issue: **January 30, 2014**

Other Issues

6. Specifically for each issue, what part of the corrective action was not completed?

Signature _____ Date _____

Special Education Compliance

22 Pa. Code §14.102. (a)(4)

22 Pa. Code §711.4

DATE OF ISSUE: Sept. 1, 1997 (formerly 22 Pa. Code §14.8)

DATE OF REVIEW: Nov., 30, 2009

June, 2002 (revised)

Oct. 27, 2011 (Revised)

PURPOSE

The Pennsylvania Department of Education (PDE) is responsible for developing and maintaining a system that ensures that each child with a disability receives a free appropriate public education (FAPE) and that each family has access to a system of procedural safeguards. While Local Education Agencies (LEA) (including charter and cyber charter schools) and Mutually Agreed Upon Written Arrangement (MAWA) holders have the primary and direct responsibility for providing FAPE, federal law places upon the PDE a general supervision responsibility; as well as an obligation to directly provide special education and related services to children with disabilities when it has determined that the LEA is unable to establish or maintain FAPE.

State and federal laws call upon the Secretary to oversee the system and enforce the special education requirements. To accomplish this oversight, the PDE created a comprehensive system that coordinates various planning, monitoring, funding and compliance elements. The PDE makes determinations annually about the performance of each LEA, MAWA holder, or other public agency using the following categories: meets requirements; needs assistance; needs intervention; needs substantial intervention. The PDE also reports the performance of each LEA, MAWA holder, or other public agency annually, and enforces the one-year timeline for correction of any identified noncompliance issues.

LEA or MAWA Holder Compliance with Special Education Statutes and Regulation

The PDE recognizes that the creation of quality programming and successful outcomes for students with disabilities requires more than technical compliance with procedural rules. The PDE believes, however, that legal compliance is the base on which high quality programs are built. Conflict between parents and LEAs, MAWA holders, or other public agencies over unresolved compliance issues diverts energy from other educational tasks that deserve our attention. Similarly, the need to provide compensatory education, to reimburse parent expenses, and to pay attorney's fees at the end of a long conflict divert resources from direct educational services. In an attempt to avoid these diversions of resources, the PDE promotes and ensures compliance with special education statutes and regulations through its coordinated program of plan review, complaint management, monitoring, technical assistance and funding decisions.

When compliance issues arise, they are almost always resolved amicably and without undue

delay. Thus, the main task for the PDE is to address compliance issues clearly and promptly, to take action to ensure compliance and to enforce the one-year correction timeline.

PDE RESPONSE

Noncompliance Issues

In particular, the following will be treated as compliance problems that warrant a prompt response:

- failure to submit an acceptable local plan, or in the case of a charter school, an acceptable annual report;
- failure to implement any component of the corrective action required through the complaint process of the Bureau of Special Education (BSE) within applicable times; (including, but not limited to, the failure to submit compliant procedures and protocols or the failure to provide compensatory education services as directed) as per 34 CFR § 300.151-153;
- failure to implement the corrective action required through BSE monitoring;
- failure to submit required reports, including the reports regarding a need for intensive interagency coordination; and
- failure to comply with due process decisions.

PDE's General Procedures for Addressing Noncompliance

In an effort to expedite compliance with the applicable regulations, if corrective action required by targeted, focused or cyclical monitoring, through BSE's complaint process, or by court order has not been implemented in a timely manner, BSE in collaboration with the PDE's Office of Chief Counsel will implement the following procedures:

- Within 10 calendar days after the due date for completing corrective action, the Special Education Advisor will contact the LEA, MAWA holder, or other public agency to determine the status of any incomplete corrective action and forward a summary to BSE's Division Chief.
- The Division Chief will contact the Superintendent, Chief Executive Officer or Executive Director to determine the actions needed to implement the required corrective action and assign a due date for reaching compliance.
- Continued noncompliance will result in a recommendation to the Bureau Director to schedule a meeting in the PDE which the Superintendent, Chief Executive Officer, or Executive Director will be required to attend to address the noncompliance and, if necessary, the enforcement mechanisms that will be utilized to obtain compliance.
- Within 10 calendar days of this meeting, the PDE will issue a letter summarizing the results of the meeting (i. e., either confirming the LEA's, MAWA holder's, or other public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the PDE has decided is appropriate for the noncompliance).

The specific action chosen by the PDE will vary from case to case. This process is intended to ensure compliance rather than to be punitive. The main features of the PDE's efforts will be to explain the problem, call upon the LEA, MAWA holder, or other public agency to implement the corrective action, including corrective action specified in a CIR, and assist the LEA, MAWA holder, or other public agency in achieving compliance. If compliance is not obtained within 30 calendar days of the deadline for the corrective action specified in a CIR, the PDE will take enforcement action.

PDE's Procedures for Addressing Noncompliance Related to the State Complaint System.

The PDE, through the BSE and Office of Child Development and Early Learning (OCDEL), Bureau of Early Intervention, administers a complaint system in which it investigates allegations of noncompliance by LEAs, MAWA holders, or other public agencies and orders corrective action to address the needs of the child and the future provision of services for all children with disabilities. BSE/OCDEL orders corrective action, if appropriate, in the Complaint Investigation Report (CIR). The complainant and/or LEA, MAWA holder, or other public agency may seek reconsideration of the CIR with BSE/OCDEL within 10 calendar days of the CIR. The CIR, or amended CIR if a timely request for reconsideration is made, is the PDE's final decision regarding the complaint and will be enforced. Final CIRs will not be revised or amended by the PDE and are not appealable.

- Ten calendar days prior to the due date of corrective action, BSE will send a letter to the LEA, MAWA holder, or other public agency reminding them of the deadline.
- Within five calendar days after the due date for corrective action, the Special Education Advisor will contact the complainant (by telephone and in writing) and the LEA, MAWA holder, or public agency to verify completion of the corrective action and to obtain written assurance and documentation from the LEA, MAWA holder, or public agency. This documentation will be described in a letter to the complainant and the complainant will be provided with information about how to contact BSE if the complainant believes the corrective action has not been implemented.
- Within 10 calendar days after the due date of corrective action, the Division Chief will contact the Superintendent, Chief Executive Officer, or Executive Director of the LEA, MAWA holder, or other public agency in writing to determine the actions needed to implement the required corrective action and assign a due date for finalizing corrective action. Proposals made by the LEA, MAWA holder, or other public agency related to compliance with corrective action mandated by a CIR will be shared with the complainant.

Within 20 calendar days after the due date of corrective action, the Bureau Director will schedule a meeting in PDE, which the Superintendent, Chief Executive Officer, or Executive Director will be required to attend to address the noncompliance and, if necessary, the enforcement mechanisms that will be utilized to obtain compliance. Bureau personnel in attendance at this meeting will include the Bureau Director (or designee), Special Education Advisor, Division Chief, and if requested, an attorney from the Office of Chief Counsel. At the discretion of the Bureau Director, other individuals may be required or invited to attend, including the complainant. The complainant will be informed of this meeting.

- Within 10 calendar days of this meeting, the PDE will issue a letter summarizing the results of the meeting (i. e., either confirming the LEA's, MAWA holder's, or other

public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the PDE intends to impose). The PDE will send a copy of the letter to the complainant.

- If compliance is not obtained within 30 calendar days of the deadline for the corrective action specified in the CIR, the PDE will take enforcement action.

PDE Resolution if Noncompliance Continues and Enforcement Actions

If, however, the PDE does not succeed in obtaining prompt compliance, the PDE takes more rigorous steps to ensure that the compliance issue is resolved within 30 calendar days of the deadline specified for the corrective action. Such enforcement action may include, but is not limited to, the following measures:

- a local special education plan or annual report may be disapproved and, in the case of a charter school, the chartering entity will be notified of the noncompliance;
- consistent with state and federal law, the disbursement of funds, including basic education funding, may be deferred pending resolution of the issue, and, in the case of a charter school, the PDE may direct the chartering entity to take appropriate action;
- action consistent with state and federal law may be taken to reduce the amount of funds paid to the LEA, MAWA holder, or other public agency to offset the amount of money needed to provide an education to a particular child or children if an LEA, MAWA holder, or other public agency is unwilling or unable to provide services;
- the PDE may seek court action against the LEA, MAWA holder, or other public agency to obtain an order requiring it to take specific actions consistent with state and federal law;
- the PDE may join in legal action initiated by parents; or
- The PDE may take action affecting the commission of the superintendent or other commissioned officer responsible for administering the educational program.

Prior to imposing sanctions upon an LEA, MAWA holder, or other public agency for failure to implement corrective action resulting from cyclical or target monitoring regarding a child with a disability whom the LEA, MAWA holder, or other public agency is responsible to educate, the PDE will provide the LEA, MAWA holder, or other public agency the opportunity to request a hearing under the *Administrative Agency Law*, 2 Pa.C.S. §§501-508. A hearing under the *Administrative Agency Law*, 2 Pa.C.S. §§501-508 is not available to either party to challenge the corrective action ordered via a CIR.

Violations of federal laws and regulations governing children with disabilities can form the basis of the nonrenewal or termination of a charter.

None of these steps is desirable, and none should be necessary if each LEA, MAWA holder, or other public agency is familiar with and attentive to the laws governing special education and complies with corrective action within set time periods. It is PDE's goal that consultation between the PDE and LEAs, MAWA holders, or other public agencies will avoid the need to

take any of the compliance and enforcement actions described above. It is the obligation and the policy of the PDE however, to use these compliance and enforcement measures whenever necessary to ensure that the rights of Pennsylvania's children with disabilities are met in accordance with the state's obligations.

Direct Services to Students Pending Enforcement Procedures

If necessary, the PDE may take additional steps to ensure that student services are provided during the appeal, enforcement or reconsideration process, which may include the PDE providing and/or arranging for student services at the expense of the LEA, MAWA holder, or other public agency.

REFERENCES:

Purdon's Statutes

24 P.S. Section §13-1357
24 P.S. Section §13-1372
24 P.S. Section §17-1729-A(a)(5)
24 P.S. Section 17-1728-A(b)
24 P.S. Section 17-1732-A(c)(1)-(2)
24 P.S. Section §25-2552

State Board of Education Regulations

22 Pa. Code Chapter 14
<http://www.pacode.com/secure/data/022/chapter14/chap14toc.html>

22 Pa. Code Chapter 711
<http://www.pacode.com/secure/data/022/chapter711/chap711toc.html>

Federal Statute

20 U.S.C. Section 1412
20 U.S.C. Section 1416
20 U.S.C. Section 1232d

Federal Regulation

34 CFR Part 300

CONTACT BUREAU/OFFICE:

Bureau of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Voice 717.783.6134
TTY 717.787.7367



pennsylvania
DEPARTMENT OF EDUCATION

January 31, 2014

Sonja D. Kerr,
Director
Disability Rights
Public Interest Law Center of Philadelphia
United Way Building
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103

Dear Ms. Kerr:

This is in response to your January 10, 2014, request for reconsideration of the Complaint Investigation Report (CIR) dated December 24, 2014, regarding Multiple Children in the School District of Philadelphia. As explained at the end of the CIR, reconsideration is a mechanism by which the Department may alter the conclusions in a CIR if warranted by additional information. As discussed below, we considered the five items described in your request for reconsideration and based on the information in the CIR, information submitted by you, and a review of documents provided during the investigation, we have determined the conclusions of the original CIR stand as written.

Item 1: The nine individual complaints (items 7 through 15 of the Index to Enclosures) that were enclosed with your complaint were reviewed separately and handled individually. As explained in my November 8, 2013, letter, the individual complaints that you enclosed were also submitted to the Department separate and apart from your complaint. The individual complaints that did not identify special education issues were forwarded to the Department's Office of School Services. For the individual complaints which identified special education issues, the complainants were interviewed, including:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Ms. Gym was not identified as a complainant on the Complaint Form and the complaint did not specifically request or otherwise suggest that we interview Ms. Gym.

Item 2: The request for the source data is respectfully denied. As you know, the Family Educational Rights and Privacy Act (FERPA) states that we may not share



confidential student records. Additionally, as recognized by the United States Department of Education, the state complaint procedures do not require a state to allow parties to review the submissions of the other party. See the August 14, 2006 Federal Register (71 FR at 46605).

Item 3: The immunization issue is not within the scope of the Bureau of Special Education's investigation. The Bureau's investigation was limited to the issue identified in my November 8, 2013, letter and the remaining issues raised in your complaint were forwarded to the Pennsylvania Department of Health.

Item 4: The allegation that parents are not informed that an Individualized Education Program (IEP) or 504 plan might possibly include nursing services is beyond the scope of the issues identified in my November 8, 2013, letter for investigation. The stated allegation is, at best, speculative, and the information provided does not identify a single student that might have been impacted as suggested in your letter. Therefore, there is no basis to revise the conclusions in the CIR. If you are able to identify a student or students falling within the parameters of your allegation; a new complaint may be filed.

Item 5: Due to the number of special education students with IEPs or 504 plans requiring nursing services that are assigned to the schools, the request for a list of the schools considered to be out of compliance is respectfully declined per the FERPA requirements. Even if student information is redacted, however, the requested information is not a basis for the Bureau to reconsider the conclusions in the CIR.

Sincerely,


Masako Farrell, Chief

Division of Monitoring & Improvement - East

cc: Dr. William Hite, Jr., Executive Director, Intermediate Unit 26
Kimberly Caputo, Esquire, Deputy Chief, Office of Specialized Instructional Services
Helen Gym, Founder, Parents United for Public Education
Patricia Fullerton, Assistant Chief Counsel, Pennsylvania Department of Education
Ruth Furman, Special Education Adviser
Central File



pennsylvania
DEPARTMENT OF EDUCATION

November 13, 2013

Michael A. Davis, General Counsel
School District of Philadelphia
440 North Broad Street
Suite 313
Philadelphia, PA 19130

Dear Mr. Davis,

The Department is forwarding the enclosed October 17, 2013, letter from Michael Churchill of the Public Interest Law Center of Philadelphia raising allegations related to the adequacy of guidance counseling services within the School District of Philadelphia ("District") for response pursuant to the General Rules of Administrative Practice and Procedure ("GRAPP"). 1 Pa. Code Chapters 31, 33, and 35. As further explained below, the Department is treating the October 17, 2013 letter as subject to the provisions related to formal complaints.

The October 17 letter states that "[p]ursuant to 22 Pa. Code 4.81(a-c), the Secretary of Education is required to receive and investigate allegations of curriculum deficiencies" and claims that "curriculum deficiencies" encompass allegations related to the adequacy of guidance counseling services. Chapter 4, however, is not applicable to the allegations raised in the October 17 letter. Rather, the allegations raised in the October 17 letter are related to 22 Pa. Code Chapter 12, which provides that guidance counseling is a type of student service. 22 Pa. Code §§ 12.16 and 12.41(b)(1). Since Chapter 12 does not include a mechanism for addressing allegations related to the adequacy of guidance counseling services, the Department is proceeding pursuant to GRAPP; specifically, 1 Pa. Code section 35.9.

1 Pa. Code section 35.9 provides that the District "... will be called upon to satisfy the complaint or to answer the same in writing within the time specified in section 35.35..." Therefore, the District is required to submit a written answer to the Department admitting or denying "specifically and in detail each material allegation" of the letter stating "clearly and concisely the facts and matters of law relied upon" within 20 days of the date of this letter, which is also the date of PDE's mailing to the District. 1 Pa. Code § 35.35. Failure to submit a response within the 20 day timeline could result in the Department deeming factual allegations in the October 17 letter to be admitted.

Mr. Churchill's letter indicates that a number of individuals have raised concerns with the Department related to the District's guidance counseling services at various District schools and provides specific examples. We enclosed copies of all correspondence received by the Office of School Services as of October 30, 2013 which raise concerns about counseling services so that the individual concerns can



inform the District's response to the October 17 letter. For ease of reference, the copies are Bates Stamped 1 through 740. Please contact me if you have questions related to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Fisher".

Stephen Fisher, Director
School Services Office

Enclosures

cc: Michael Churchill
M. Patricia Fullerton



pennsylvania
DEPARTMENT OF EDUCATION

November 1, 2013

Tim Allen
276 Osborn St.
Philadelphia, PA 19128

Dear Tim Allen:

The Department of Education received your October 4, 2013 correspondence regarding your concerns about the School District of Philadelphia ("District"). We appreciate you taking the time to contact us. In reviewing your correspondence, we have determined that the concerns are entirely local matters that should be addressed by the District. Therefore, the Department is forwarding your correspondence to the District for review and response.

It is the Department's priority that every student in the Commonwealth is provided the necessary educational programs and services that are required by state and federal education laws and regulations. Pennsylvania education law, however, provides an overall framework of "local control" which places decision making authority related to your concerns with the District. The District, which has the legal authority to provide educational services directly to the children in the Philadelphia community, is therefore best positioned to address the concerns in your letter, as they are local matters. Please be aware that you may be contacted by District staff for additional information and clarification.

Thank you for sharing your concerns regarding the District with the Pennsylvania Department of Education.

Sincerely,

Stephen Fisher, Director



File a Complaint

Submission Date	2013-10-04 04:55:13
Full Name	Tim Allen
Address	Street Address: [REDACTED] City: Philadelphia State / Province: PA Postal / Zip Code: [REDACTED] Country: United States
Phone Number	[REDACTED]
E-mail	[REDACTED]
Relationship to Child	Parent
Date of complaint	10-04-2013
Student's Full Name	E. A. [REDACTED]
Student's Date of Birth	[REDACTED]
Student's Address	Street Address: [REDACTED] City: Philadelphia State / Province: Pa Postal / Zip Code: [REDACTED] Country: United States
Is the student currently in school?	Yes
If so, where is the student's current program?	Bodine High school of international affairs
Individualized Education Program (IEP) or gifted?	No
Is the student homeless?	No
Please select the problems you are experiencing (choose as many as apply):	Lack of instruction
Description of problem	1. Over crowded classrooms have become dangerous. 2. They cut foreign languages to just two years of Spanish. Considering the school is an international relations themed school. Isn't that a problem? This is going to affect students ability to get into good colleges that require 4 years of a foreign language to get admitted.
Specific facts supporting your complaint	The students are cramed into rooms with desks one foot apart. The teacher and kids can't move around the classroom.



This school used to have French, Persian and manderan Chinese.

Suggestions to fix the problem

Need to hire back more teachers to reduce the class sizes. Also need to hire back the language teachers. I

Signature



I affirm and agree that I have electronically signed this complaint by using the signature box above

Yes, I affirm and agree

I give permission for Public Interest Law Center of Philadelphia and its partners to access this information for use in potential group complaints. My information will remain confidential and will not be used without my permission.

I agree

File a Complaint

Submission Date 2013-10-05 13:30:56

Full Name Maura Dwyer

Address Street Address: [REDACTED]
City: Philadelphia
State / Province: PA
Postal / Zip Code: [REDACTED]
Country: United States

Phone Number [REDACTED]

E-mail [REDACTED]

Relationship to Child Parent

Date of complaint 10-05-2013

Student's Full Name [REDACTED]

Student's Date of Birth [REDACTED]

Student's Address Street Address: [REDACTED]
City: Philadelphia
State / Province: PA
Postal / Zip Code: [REDACTED]
Country: United States

Is the student currently in school? Yes

If so, where is the student's current program? Andrew Jackson Elementary

Individualized Education Program (IEP) or gifted? No

Is the student homeless? No

Please select the problems you are experiencing (choose as many as apply): Lack of guidance counseling services
Lack of teaching staff (overcrowded classrooms, split grades)
Lack of other staff (Nurses, Bi-Lingual instructors, Librarians, etc.)

Description of problem -overcrowding in first grade; all other grades at maximum capacity
-no guidance counselor

Specific facts supporting your complaint There are two first grade classrooms, both over the contractual 30 student size limit with 31 and 32 students respectively, and still growing. Out of those 63 first graders, 15 are English Language Learners who need extra support in the classroom. The classrooms are so physically crowded with all the students' desks that it's difficult to walk.



We have wonderful teachers but it is not possible for them to teach effectively in these circumstances.

Suggestions to fix the problem

We would simply like the school district to provide another first grade teacher in a timely manner, bringing class sizes within stated legal limits.

We would also ask that the district consider reinstating our guidance counselor, an absolutely essential position given the multicultural nature of the school, and the high percentage of students who live in poverty.

Signature



I affirm and agree that I have electronically signed this complaint by using the signature box above

Yes, I affirm and agree

I give permission for Public Interest Law Center of Philadelphia and its partners to access this information for use in potential group complaints. My information will remain confidential and will not be used without my permission.

I agree

File a Complaint

Submission Date 2013-10-12 03:01:43

Full Name Christianne Kapps

Address Street Address: [REDACTED]
City: Philadelphia
State / Province: PA
Postal / Zip Code: [REDACTED]
Country: United States

Phone Number [REDACTED]

E-mail [REDACTED]

Relationship to Child Parent

Date of complaint 10-11-2013

Student's Full Name C. [REDACTED] K. [REDACTED]

Student's Date of Birth [REDACTED]

Student's Address Country: United States

Is the student currently in school? Yes

If so, where is the student's current program? CAPA/Philadelphia

Individualized Education Program (IEP) or gifted? No

Is the student homeless? No

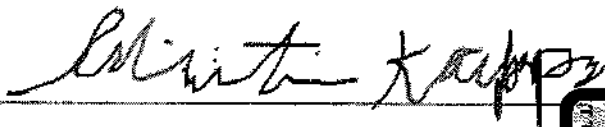
Please select the problems you are experiencing (choose as many as apply): Lack of instruction

Description of problem My daughter has no Phys Ed classes. As I understand the curriculum you have to have a some credits of Phys Ed to graduate from High School. How can she graduate if she has no Phys Ed Classes?

Specific facts supporting your complaint There are no Phys Ed teachers at her school!

Suggestions to fix the problem Re-hire the phys Ed teachers and teach the kids Phys Ed.

Signature





I affirm and agree that I have electronically signed this complaint by using the signature box above

Yes, I affirm and agree

I give permission for Public Interest Law Center of Philadelphia and its partners to access this information for use in potential group complaints. My information will remain confidential and will not be used without my permission.

I agree

File a Complaint

Submission Date 2013-10-12 03:09:17

Full Name Christianne Kapps

Address Street Address: [REDACTED]
City: Philadelphia
State / Province: PA
Postal / Zip Code: [REDACTED]
Country: United States

Phone Number [REDACTED]

E-mail [REDACTED]

Relationship to Child Parent

Date of complaint 10-11-2013

Student's Full Name C [REDACTED] K [REDACTED]

Student's Date of Birth [REDACTED]

Student's Address Country: United States

Is the student currently in school? Yes

If so, where is the student's current program? CAPA/Philadelphia

Individualized Education Program (IEP) or gifted? No

Is the student homeless? No

Please select the problems you are experiencing (choose as many as apply): Lack of relevant student assessment information
Lack of teaching staff (overcrowded classrooms, split grades)

Description of problem My 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.

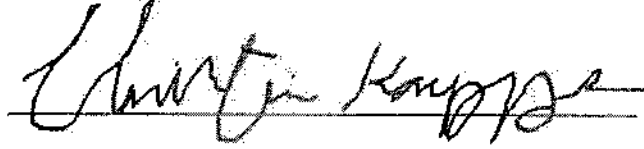
Specific facts supporting your complaint There are over 30 students in her Honors classes, and new students enter the class on an on-going basis. The course work is watered down to accomodate the extra students and she doesn't receive the accelerated education she has earned.

Suggestions to fix the problem Maintain standards for Honors class placement so the education can be geared towards student who have earned the status and can handle the advanced coursework. Otherwise I think the coursework will be reduced to



accommodate the lowest achieving students, not the highest achieving.

Signature



I affirm and agree that I have electronically signed this complaint by using the signature box above

Yes, I affirm and agree

I give permission for Public Interest Law Center of Philadelphia and its partners to access this information for use in potential group complaints. My information will remain confidential and will not be used without my permission.

I agree

COMPLAINT FORM

Send to: Caroline Dumaresq
Acting Secretary of Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
cdumaresq@pa.gov

Michael Churchill
Public Interest Law Center of Philadelphia
United Way Building, 2nd Floor
1709 Benjamin Franklin Parkway
Philadelphia, PA 19103
mchurchill@pilcop.org or skerr@pilcop.org

Contact Information

Name: Alan Kish
Address: [REDACTED]
Phone Numbers: [REDACTED] Home [REDACTED] Work [REDACTED] Cell [REDACTED]

Relationship to Child:

Parent Attorney Advocate Other

Signature: [Signature] Date: _____

Student's School Information

Student's Name: C. H. [REDACTED] Date of Birth: [REDACTED]
Address: [REDACTED]

Is the student currently in school? Yes No
If so, where is the student's current program?

School/School District Philadelphia PA - C.W. Henry

Is student Homeless? Yes No IEP or gifted? Yes No

Statement of Alleged Curriculum Deficiencies

Please state the problem you are experiencing:

- Lack of instruction
- Lack of guidance counseling services
- Lack of relevant student assessment information
- Lack of teaching staff (overcrowded classrooms, split grades)
- Lack of other staff
- Lack of facilities which results in loss of instruction (i.e. closed school library)
- Other problems resulting in a deficient program of education

dedicated gifted education



Description of Problem

There is no one who can assist our children in choosing & applying to high schools.

Specific Facts Supporting Your Complaint

guidance counselors have been removed from the building replaced by threat counseling services. ~~the~~ placing 1 counselor in 7 schools. This is absolutely ~~un~~impossible to adequately serve 23,000 students

Suggestions for Resolution

Refer the guidance counselor to assist with 11th grade placement to High School.

Robert A. #
Signature

9/23/10
Date

Please keep a copy of this complaint for yourself. All copies of:

Carolyn Dumaresq, Ed.D, Acting Secretary of Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
cdumaresq@pa.gov

Is this still good?

File a Complaint

Submission Date	2013-11-18 19:46:21
Full Name	Robin Roberts
Address	Street Address: [REDACTED] City: Philadelphia State / Province: pa Postal / Zip Code: [REDACTED] Country: United States
Phone Number	[REDACTED]
E-mail	[REDACTED]
Relationship to Child	Parent
Date of complaint	11-18-2013
Student's Full Name	C [REDACTED] R [REDACTED]
Student's Date of Birth	[REDACTED]
Student's Address	Street Address: same Country: United States
Is the student currently in school?	Yes
If so, where is the student's current program?	C.W. Henry
Individualized Education Program (IEP) or gifted?	No
Is the student homeless?	No
Please select the problems you are experiencing (choose as many as apply):	Other problems resulting in a deficient program of education
Description of problem	There are not enough functional toilet facilities for the children at the school. B/c there are not enough staff people to provide coverage, children have to wait to go use the bathroom. Many times they say they have to wait too long.
Specific facts supporting your complaint	Bathrooms are locked in many areas of the schools. The existing bathrooms require maintenance to keep doors closed. Toilet do not flush. Supplies is frequently missing: soap, towels, toilet paper. overwhelming smell of feces and urine.
Suggestions to fix the problem	Need staff or more staff regularly check/clean bathrooms, fix the broken bathroom doors, toilets. fix any broken plumbing. There needs to be one person (at least) who can assure that the children have safe passage to the nearest toilet.



Signature

Robin R.

I affirm and agree that I have electronically signed this complaint by using the signature box above

Yes, I affirm and agree

I give permission for Public Interest Law Center of Philadelphia and its partners to access this information for use in potential group complaints. My information will remain confidential and will not be used without my permission.

I agree

2024/08/08 10:00 AM

2024/08/08 10:00 AM

COMPLAINT FORM

Send to: Caroline Dumaresq
Acting Secretary of Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
cdumaresq@pa.gov

Michael Churchill
Public Interest Law Center of Philadelphia
United Way Building, 2nd Floor
1709 Benjamin Franklin Parkway
Philadelphia, PA 19103
mchurchill@pilcop.org or skerr@pilcop.org

Contact Information

Name: CHRISTINE RUSH
Address: [REDACTED], PHILA, PA [REDACTED]
Phone Numbers: [REDACTED] Home [REDACTED] Work [REDACTED] Cell [REDACTED]

Relationship to Child:

Parent Attorney Advocate Other

[Signature]
Signature

Date: 9/23/13

Student's School Information

Student's Name: [REDACTED] Date of Birth: [REDACTED]
Address: [REDACTED]

Is the student currently in school? Yes No
If so, where is the student's current program?

School/School District the ARTS ACADEMY AT BENJAMIN RUSH

Is student Homeless? Yes No IEP or gifted? Yes No

Statement of Alleged Curriculum Deficiencies
Please state the problem you are experiencing:

- Lack of instruction
- Lack of guidance counseling services
- Lack of relevant student assessment information
- Lack of teaching staff (overcrowded classrooms, split grades)
- Lack of other staff
- Lack of facilities which results in loss of instruction (i.e. closed school library)
- Other problems resulting in a deficient program of education



Description of Problem

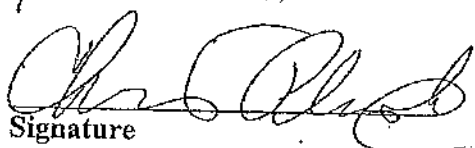
The school DOES NOT HAVE A FULL TIME GUIDANCE COUNSELOR. ONLY HAS A ROVING COUNSELOR 1 DAY PER WEEK.

Specific Facts Supporting Your Complaint

WITHOUT A FULL-TIME ^{GUIDANCE} COUNSELOR, STUDENTS DO NOT HAVE THE INTEGRAL SUPPORTS NEEDED TO BE SUCCESSFUL ~~AS~~ AS WELL AS PREPARE FOR COLLEGE. IN ADDITION, STUDENTS WHO ARE IN ADDITION CRISIS ARE NEGLECTED OR OTHER

Suggestions for Resolution

STAFF ARE SPREAD THIN IN AN EFFORT TO SUPPORT THEM. FURTHER, OTHER NECESSARY STAFF HAVE ALSO BEEN CUT, FURTHER REDUCING AVAILABLE SUPPORTS & REDUCING THE CURRENT STAFF'S ABILITY TO DO THEIR JOB EFFECTIVELY.



Signature

2/23/13

Date

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Re-install a full-time Counselor and other necessary staff.

COMPLAINT FORM

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Michael Churchill
Public Interest Law Center of Philadelphia
United Way Building, 2nd Floor
1709 Benjamin Franklin Parkway
Philadelphia, PA 19103
mchurchill@pilcop.org or skerr@pilcop.org

Contact Information

Name: Shirley Johnson
Address: [REDACTED]
Phone Numbers: [REDACTED] Home [REDACTED] Work [REDACTED] Cell [REDACTED]

Relationship to Child:

Parent Attorney Advocate Other

Shirley Johnson
Signature

Date: 9/23/13

Student's School Information

Student's Name: m [REDACTED] J [REDACTED] Date of Birth: [REDACTED]
Address: [REDACTED]

Is the student currently in school? Yes No
If so, where is the student's current program?

School/School District Philadelphia Benjamin Bush for the Performing Arts H.S.

Is student Homeless? Yes No IEP or gifted? Yes No

Statement of Alleged Curriculum Deficiencies
Please state the problem you are experiencing:

- Lack of instruction
- Lack of guidance counseling services
- Lack of relevant student assessment information
- Lack of teaching staff (overcrowded classrooms, split grades)
- Lack of other staff
- Lack of facilities which results in loss of instruction (i.e. closed school library)
- Other problems resulting in a deficient program of education



Description of Problem

No Full time counselor (only 1 day a wk), How can my Junior know where to go for her PSAT's or any help with any problems she has. Last yr. we had 2 counselors & our 12th grade graduating class had 98% college acceptance. What is going to happen with our children. My daughter wants to go to college so bad, but there is no help with any of this. Please help our kids. I'm sure your children had counselors in there schools.

Specific Facts Supporting Your Complaint

No Counselors (1 day a wk is not good enough)
Bring back teachers, secretaries, nurses to our schools & assistant principals.)

Suggestions for Resolution

Show us where the money is going !!!

Shirley Johnson
Signature

9/23/13
Date

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COMPLAINT FORM

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Michael Churchill
Public Interest Law Center of Philadelphia
United Way Building, 2nd Floor
1709 Benjamin Franklin Parkway
Philadelphia, PA 19103
mchurchill@pilcep.org or skerr@pilcep.org

Contact Information

Name: Bianca Eberhardt
Address: [REDACTED]
Phone Numbers: [REDACTED] Home [REDACTED] Work [REDACTED] Cell [REDACTED]

Relationship to Child:

Parent Attorney Advocate Other

Bianca Eberhardt
Signature

Date: 9/19/13

Student's School Information

Student's Name: D. R. Date of Birth: [REDACTED]
Address: [REDACTED]

Is the student currently in school? Yes No
If so, where is the student's current program?

School/School District FLC / Phila

Is student Homeless? Yes No

Statement of Alleged Curriculum Deficiencies

Please state the problem you are experiencing:

- Lack of instruction
- Lack of guidance counseling services
- Lack of relevant student assessment information
- Lack of teaching staff (overcrowded classrooms, split grades)
- Lack of other staff
- Lack of facilities which results in loss of instruction (i.e. closed school library)
- Other problems resulting in a deficient program of education



Description of Problem

Specific Facts Supporting Your Complaint

my child ~~is~~ is in a class that has
HS children which prevents the teacher
from providing additional attention to
the students

Suggestions for Resolution

more teaching & counseling staffing

Bianca Eberhart
Signature

2/19/13
Date

Please keep a copy of this complaint for yourself.