

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

<b>TIM ALLEN, <i>et al.</i></b>	:	
<i>Petitioners,</i>	:	
	:	
v.	:	<b>No. 474 M.D. 2014</b>
	:	
<b>CAROLYN DUMARESQ,</b>	:	
	:	
<i>Respondent.</i>	:	

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**RESPONDENT’S ANSWER TO PETITIONERS’ PETITION  
FOR REVIEW IN THE NATURE OF MANDAMUS  
AND FOR DECLARATORY JUDGMENT AND NEW MATTER**

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TIM ALLEN, *et al.* :  
 :  
 *Petitioners,* :  
 :  
 v. : **Docket No. 474 M.D. 2014**  
 :  
 CAROLYN DUMARESQ, :  
 :  
 :  
 *Respondent.* :

**NOTICE TO PLEAD**

You are hereby notified to file a written reply to Respondent's New Matter filed in response to Petitioners' Petition for Review in the Nature of Mandamus within twenty (20) days from service hereof.

/s/ Kevin Bradford  
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Date: July 17, 2015

## ANSWER

Respondent, Carolyn Dumaresq, in her capacity as the former Acting Secretary of Education hereby answers Petitioners' Petition for Review in the Nature of Mandamus and Declaratory Relief as follows.<sup>1</sup>

### **I. SUMMARY OF THE LAWSUIT**

1. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

2. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

3. The first averment in this paragraph is a conclusion of law to which no response is required. The remaining averments in this paragraph are denied. In further answer, individuals submitted complaints containing allegations of what they purported to be curriculum deficiencies in various School District of Philadelphia (SDP) schools to Respondent, but did not specifically request that Respondent investigate the allegations.

4. It is admitted that Respondent received 825 complaints containing allegations of purported curriculum deficiencies. The averments of this paragraph that refer to allegations in complaints require no response because the complaints

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<sup>1</sup> The Petition for Review in the above-referenced matter contains a caption that names Carolyn Dumaresq, in her capacity as Acting Secretary of the Pennsylvania Department of Education, as Respondent. Dr. Dumaresq no longer serves as the Acting Secretary of Education and has not acted in that capacity since January 20, 2015.

are documents that speak for themselves, and any characterization thereof is denied. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph, and they are therefore denied.

5. The averments of this paragraph refer to allegations in complaints, which are documents that speak for themselves, and any characterization thereof is denied.

6. The averment in this paragraph is a conclusion of law to which no response is required. To the extent an answer is required, it is denied that Respondent failed to comply with 22 Pa. Code § 4.81 or any other relevant provision of law.

7. The averment in this paragraph that references a letter sent to PDE, attempts to characterize a document, which speaks for itself, and this characterization is denied. It is admitted only that PDE declined to investigate allegations related to staffing shortages. In further answer, in its June 19, 2015 Opinion and Order (June 19 Order), this Honorable Court held that Petitioners' allegations relating to staff, including counselors and nurses, are not curricular deficiencies and that Respondent was under no duty to receive or investigate such allegations under section 4.81. *See* June 19 Order at page 12.

8. It is admitted only that the original Petitioners in this action included

seven SDP parents and that they filed this suit. The remaining averments of this paragraph are denied. In further response, it is specifically denied that Petitioners include two organizations working on behalf of SDP families. The averment of this paragraph regarding alleged failures by the former Acting Secretary constitute a conclusion of law to which no response is required.

9. It is admitted only that the seven individual Petitioners in this lawsuit each submitted complaints to the Respondent, which Petitioners couched as “curriculum deficiencies.” In further answer, in its June 19 Order, this Honorable Court held that Petitioners’ allegations relating to the facilities and staff are not curricular deficiencies and that Respondent was under no duty to receive or investigate such allegations under section 4.81. As a result, Petitioners Dwyer, Johnson, Eberhardt and Parents United for Public Education (Parents United) — whose complaints included only allegations related to facilities and/or staffing matters—should be dismissed from this matter, as they have no active claim before the Court. *See* June 19 Order at page 12.

10. The averments of this paragraph refer to complaints filed by Petitioners, which are documents that speak for themselves, and any characterization thereof is denied. In further answer, many of the Petitioners’ allegations pertain to overcrowding, lack of facilities, facility conditions and lack of guidance counselors, which this Court has held to be non-curricular issues. *See*

June 19 Order at page 12.

a. It is admitted only that at least one Petitioner—in his complaint to the Respondent—included allegations related to 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. In further answer, however, this Court has determined allegations related to facilities to be non-curricular in nature. *See* June 19 Order at page 12.

b. It is admitted only that at least one Petitioner alleged that there were K-8 schools without a full-time guidance counselor. In further answer, however, this Court has determined allegations related to staffing are non-curricular in nature. *See* June 19 Order at page 12. It is denied that any Petitioner included—in a complaint filed with the Secretary—allegations that a school had no gifted programming.

c. Admitted.

d. It is admitted that at least one Petitioner—in his complaint to Respondent—included allegations related to the condition of school facilities. In further answer, however, this Court has determined allegations related to facilities to be non-curricular in nature. *See* June 19 Order at page 12.

11. The averments of this paragraph refer to complaints filed by Petitioners, which are documents that speak for themselves, and any characterization thereof is denied.

12. The averments of this paragraph constitute a conclusion of law to which no response is required.

13. The averments in this paragraph constitute a conclusion of law to which no response is required. In further response, it is denied that Respondent failed to comply with 22 Pa. Code § 4.81 or any other relevant provision of law.

14. It is admitted only that the Secretary did not conduct interviews or request documents. It is denied that Respondent failed to comply with 22 Pa. Code § 4.81 or any other relevant provision of law. In further response, the Court noted in its June 19 Order that the manner in which the Secretary investigates allegations of curriculum deficiencies is within her discretion. *See* June 19 Order at pages 13-14.

15. It is admitted only that some parents did not receive individual responses. In further response, in its June 19 Order, this Court stated that the Secretary is not required to acknowledge receipt or provide notice to the persons making the allegations of curriculum deficiencies. *See* June 19 Order at page 16.

16. The averments in paragraph set for Petitioners' request for relief to which no response is required. In further response, the remaining averments of this

paragraph constitute conclusions of law to which no response is required.

17. The averments in this paragraph set forth Petitioners' request for relief to which no response is required.

18. The averments in this paragraph set forth Petitioners' request for relief to which no response is required.

## **II. JURISDICTION**

19. The averments in this paragraph constitute a conclusion of law to which no response is required.

## **III. PARTIES**

### **Tim Allen**

20. Admitted, upon information and belief.

21. Admitted, upon information and belief.

22. It is admitted only that Petitioner Allen submitted allegations of deficiencies in a document, which speaks for itself, and any characterization thereof is denied.

23. The averments in this paragraph refer to the complaint submitted by Petitioner Allen, which is a document that speaks for itself, and any characterization thereof is denied.

24. Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore



denied.

25. Respondent is without knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

26. The averments in this paragraph constitute a conclusion of law to which no response is required.

27. The averments in this paragraph refer to the complaint submitted by Petitioner Allen, which is a document that speaks for itself, and any characterization thereof is denied.

28. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

29. The averments of this paragraph refer to a letter from the Pennsylvania Department of Education (PDE) to Petitioner Allen, which is a document that speaks for itself, and any characterization thereof is denied.

**Maura Dwyer**

30. Admitted, upon information and belief.

31. Admitted, upon information and belief.

32. The averment regarding the complaint filed by Petitioner Dwyer, refers to a writing, which speaks for itself, and any characterization thereof is denied. Respondent lacks knowledge or information sufficient to form a belief as

to the truth of the remaining averments of this paragraph, and they are therefore denied.

33. The averments in this paragraph refer to the complaint filed by Petitioner Dwyer, which is a document that speaks for itself, and any characterization thereof is denied. In further answer, Petitioner Dwyer's complaint included only allegations related to staffing and facilities, two matters this Court has held to be non-curricular in nature and that Respondent was under no duty to receive or investigate such allegations under section 4.81. *See* June 19 Order at page 12. Thus, Ms. Maura Dwyer should be dismissed as a Petitioner in this matter.

34. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

35. The averments in this paragraph refer to the complaint filed by Petitioner Dwyer, which is a document that speaks for itself, and any characterization thereof is denied. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments concerning the death of two students or the sharing of a counselor with another school, and these averments are therefore denied.

36. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

37. The averments of this paragraph refer to a letter sent from PDE to Petitioner Dwyer, which is a document that speaks for itself, and any characterization thereof is denied. In further response, it is specifically denied that PDE declined to investigate her complaint. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the remaining averments of this paragraph, and they are therefore denied.

**Christianne Kapps**

38. Admitted, upon information and belief.

39. Admitted, upon information and belief.

40. The averments in this paragraph refer to complaints filed by Petitioner Kapps, which are documents that speak for themselves, and any characterization thereof is denied.

41. The averments in this paragraph refer to complaints filed by Petitioner Kapps, which are documents that speak for themselves, and any characterization thereof is denied.

42. The averments in this paragraph constitute a conclusion of law to which no response is required.

43. The averments in this paragraph refer to complaints filed by Petitioner Kapps, which are documents that speak for themselves, and any characterization thereof is denied.

44. The averments in this paragraph refer to complaints filed by Petitioner Kapps, which are documents that speak for themselves, and any characterization thereof is denied. In further response, Petitioner Kapps's allegations of deficiencies relate to facilities, which this Court has not found to be curricular in nature.

45. The averments in this paragraph refer to complaints filed by Petitioner Kapps, which are documents that speak for themselves, and any characterization thereof is denied. In further response, Petitioner Kapps's allegations of deficiencies relate to staffing issues, which this Court has not found to be curricular in nature.

46. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments related to C.K.'s feelings, and these averments are therefore denied. In further response, Respondent specifically denies that Petitioner Kapps's allegations relate to curriculum deficiencies.

47. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph related to Petitioner Kapps's state of mind, intentions, or feelings, and whether Petitioner Kapps received a response from SDP, and these averments are therefore denied. The averments of this paragraph related to the letter from PDE to Petitioner Kapps refer to a document that speaks for itself, and any characterization thereof is denied. In further

response, it is denied that PDE declined to investigate her complaint. In fact, the letter states that PDE forwarded Kapps's complaint to SDP for review and response.

**Robin Roberts**

48. Admitted, upon information and belief.

49. Admitted, upon information and belief.

50. The averments in this paragraph refer to complaints filed by Petitioner Roberts, which are documents that speak for themselves, and any characterization thereof is denied.

51. The averments in this paragraph refer to complaints filed by Petitioner Roberts, which are documents that speak for themselves, and any characterization thereof is denied. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments related to M.R.'s gifted individualized education plan (GIEP) and the changes in his GIEP during the 2013-2014 school year, and these allegations are therefore denied. The remaining averments of this paragraph constitute a conclusion of law to which no response is required.

52. The averments in this paragraph refer to complaints filed by Petitioner Roberts, which are documents that speak for themselves, and any characterization thereof is denied.

53. The averments in this paragraph refer to complaints filed by Petitioner

Roberts, which are documents that speak for themselves, and any characterization thereof is denied.

54. The averments in this paragraph refer to complaints filed by Petitioner Roberts, which are documents that speak for themselves, and any characterization thereof is denied. In further response, in its June 19 Order, this Court held that Petitioners' allegations relating to the school facilities are not curricular deficiencies and that Respondent was under no duty to receive or investigate such allegations under section 4.81. *See* June 19 Order at page 12.

55. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph concerning Petitioner Roberts's state of mind, and they are therefore denied.

56. Respondent admits only that no acknowledgment or notification correspondence was sent to Petitioner Roberts. In further response, in its June 19 Order, this Court noted that the Secretary is not required to acknowledge receipt or provide notice to the persons making the allegations of curriculum deficiencies. *See* June 19 Order at page 16.

**Christine Plush**

57. Admitted, upon information and belief.

58. The averments in this paragraph refer to the complaint filed by Petitioner Plush, which is a document that speaks for itself, and any

characterization thereof is denied.

59. Admitted, upon information and belief.

60. The averments in this paragraph refer to the complaint filed by Petitioner Plush, which is a document that speaks for itself, and any characterization thereof is denied.

61. The averments in this paragraph refer to the complaint filed by Petitioner Plush, which is a document that speaks for itself, and any characterization thereof is denied. In further response, the averments in this paragraph related to state curriculum requirements constitute a conclusion of law to which no response is required.

62. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph related to Petitioner Plush's state of mind and whether Petitioner Plush received a response from SDP, and these averments are therefore denied. The averments related to the letter from PDE to Petitioner Plush, refer to a document that speaks for itself, and any characterization thereof is denied.

**Shirley Johnson**

63. Admitted, upon information and belief.

64. The averments in this paragraph refer to the complaint filed by Petitioner Johnson, which is a document that speaks for itself, and any

characterization thereof is denied.

65. The averments in this paragraph refer to the complaint filed by Petitioner Johnson, which is a document that speaks for itself, and any characterization thereof is denied. In further response, Petitioner Johnson's complaint included only allegations related to staffing and facilities, two areas this Court has held to be non-curricular in nature and that Respondent was under no duty to receive or investigate such allegations under section 4.81. *See* June 19 Order at page 12. Thus, Ms. Shirley Johnson should be dismissed as a Petitioner in this matter.

66. The averments in this paragraph refer to the complaint filed by Petitioner Johnson, which is a document that speaks for itself, and any characterization thereof is denied.

67. The averments in this paragraph refer to the complaint filed by Petitioner Johnson, which is a document that speaks for itself, and any characterization thereof is denied. In further response, Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments concerning M.J.'s feelings or intentions, or what Petitioner Johnson has experienced, and these averments are therefore denied.

68. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.



**Bianca Eberhardt**

69. Admitted, upon information and belief.

70. Admitted, upon information and belief.

71. The averments in this paragraph refer to the complaint filed by Petitioner Eberhardt, which is a document that speaks for itself, and any characterization thereof is denied.

72. The averments in this paragraph refer to the complaint filed by Petitioner Eberhardt, which is a document that speaks for itself, and any characterization thereof is denied. In further response, Petitioner Eberhardt's complaint included only allegations related to staffing and facilities, two areas this Court has held to be non-curricular in nature and that Respondent was under no duty to receive or investigate such allegations under section 4.81. *See* June 19, 2015 Order at page 12. Thus, Ms. Bianca Eberhardt should be dismissed as a Petitioner in this matter.

73. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

**Parents United for Public Education**

74. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

75. Respondent lacks knowledge or information sufficient to form a belief

as to the truth of the averments of this paragraph, and they are therefore denied.

76. Respondent denies that Parents United submitted the October 17, 2013 complaint to Respondent. To the contrary, Public Interest Law Center of Philadelphia submitted the October 17, 2013 complaint to Respondent. The averments of this paragraph concerning the substance of that complaint refer to a document that speaks for itself, and any characterization thereof is denied. In further response, Petitioner Parents United included in its complaint allegations only related to staffing and facilities, two areas this Court has held to be non-curricular in nature and that Respondent was under no duty to receive or investigate such allegations under section 4.81. *See* June 19, 2015 Order at page 12. Thus, Parents United should be dismissed as a Petitioner in this matter.

77. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

78. Respondent lacks knowledge or information sufficient to form a belief as to the truth of the averments of this paragraph, and they are therefore denied.

**Acting Secretary Carolyn Dumaresq**

79. Respondent denies that Dr. Carolyn C. Dumaresq is the current Acting Secretary of Education. To the contrary, Dr. Dumaresq no longer serves as the Acting Secretary of Education and has not acted in that capacity since January 20, 2015. Pedro A. Rivera is the current Secretary of Education. The averments in

this paragraph related to the status of the Secretary of Education as the chief executive officer of the State Board of Education and the responsibilities of the Secretary of Education constitute conclusions of law to which no response is required.

#### **IV. STATEMENT OF LAW AND FACTS**

##### **A. Chapter 4**

80. The averments in this paragraph constitute conclusions of law to which no response is required.

81. The averments in this paragraph and subparagraphs constitute a conclusion of law to which no response is required.

##### **B. Related Curricular Provisions**

82. The averments in this paragraph constitute a conclusion of law to which no response is required.

83. The averments in this paragraph constitute a conclusion of law to which no response is required.

84. The averments in this paragraph constitute conclusions of law to which no response is required.

##### **C. The Secretary's Duties and Her Response**

85. The averments in this paragraph constitute a conclusion of law to which no response is required. It is specifically denied that Respondent failed to

comply with 22 Pa. Code § 4.81 or any other relevant provisions of law.

86. It is admitted only that Respondent did not provide individualized responses to every individual who submitted a complaint. In further response, the Court noted in its June 19 Order that the Secretary is not required to acknowledge receipt or provide notice to persons making allegations of curriculum deficiencies. *See* June 15, 2015 Opinion at page 16.

87. The averments of this paragraph refer to written correspondence from PDE, which are documents that speak for themselves, and any characterization thereof is denied. In further response, it is specifically denied that PDE sent responses declining to conduct an investigation.

88. It is admitted only that Petitioners Allen, Dwyer, and Kapps received written correspondence from PDE, which are documents that speak for themselves, and any characterization thereof is denied.

89. It is admitted only that approximately 200 of the total 825 complaints addressed counseling deficiencies and that Petitioners Dwyer, Roberts, Plush, Johnson, and Eberhardt submitted such complaints. These complaints are documents that speak for themselves, and any characterization thereof is denied. In further response, the remaining averments of this paragraph refer to PDE's written correspondence, which is a document that speaks for itself, and any characterization thereof is denied. In further response, in its June 19 Order, this

Court held that Petitioners' allegations relating to staff, including counselors, are not curricular deficiencies and that Respondent was under no duty to receive or investigate such allegations under section 4.81. *See* June 19 Order at page 12.

## COUNT I

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

90. Respondent incorporates its responses to the preceding paragraphs as if set forth more fully here.

91. The averments in this paragraph constitute conclusions of law to which no response is required. It is specifically denied that Respondent failed to comply with 22 Pa. Code § 4.81 or any other relevant provision of law.

92. The averments in this paragraph constitute conclusions of law to which no response is required.

93. The averments in this paragraph constitute conclusions of law to which no response is required.

94. The averments in this paragraph constitute conclusions of law to which no response is required.

WHEREFORE, Respondent respectfully requests that the Court enter judgment in her favor, together with such further relief, as the Court deems just and appropriate.

## NEW MATTER

In further answer to the Petition filed by Petitioners, Respondent avers the following new matter.

1. Petitioner Kapps's and Petitioner Plush's allegations relating to writing, art and foreign language should be dismissed for failure to exhaust a statutory remedy pursuant to Pa.R.C.P. 1028(a)(7).
2. Petitioner Kapps did not allege a decrease in writing programs offered in either of her complaints submitted to Respondent.
3. Petitioner Plush did not allege that only a small number of art classes are available outside of the theater program in her complaint submitted to Respondent.
4. Petitioner Plush did not allege that a school cut its Latin program, which limited her child's ability to take four consecutive years in a foreign language in her complaint submitted to Respondent.
5. Petitioners Dwyer, Plush, Johnson, Eberhardt and Parents United should be dismissed from this matter as improper parties.
6. The complaints of Petitioners Dwyer, Plush, Johnson, Eberhardt, and Parents United included only allegations related to staffing and facilities, which are not "curriculum deficiencies" under the law.
7. In its June 19 Order, this Honorable Court held that concerns related

to staffing and facilities are not curricular deficiencies and that Respondent was under no duty to receive or investigate such allegations under section 4.81.

8. Petitioner Parents United lacks standing to bring complaints on behalf of individual complainants.

9. The Secretary is currently investigating the curriculum deficiencies identified in the Court's June 19, 2015 Opinion and Order. Upon conclusion of the investigation, the remaining Petitioners' claims will be moot and not justiciable before the Court.

10. To the extent that Petitioners seek relief in the form of an investigation or re-investigation of the 825 submissions identified in the Petition (§ 4), it would be impossible to do so.

WHEREFORE, Respondent respectfully requests that the Court enter judgment in her favor, together with such further relief, as the Court deems just and appropriate.

Respectfully submitted,

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Attorney General

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day the foregoing Respondents' Answer to Petitioners' Petition for Review in the Nature of Mandamus and Declaratory Relief is being served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Electronic Service via PACFile

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Date: July 17, 2015