

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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

*Petitioners,*

v.

Docket No. 474 MD 2014

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

*Respondent.*

**BRIEF IN OPPOSITION TO RESPONDENT'S PRELIMINARY  
OBJECTIONS TO PETITION FOR REVIEW**

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## I. PRELIMINARY STATEMENT

This case is about the wholesale failure of the Pennsylvania Department of Education (“PDE”) to respond to more than eight hundred Philadelphia parents, caregivers, teachers, and students who turned to that agency and its Secretary for assistance when the School District of Philadelphia failed to provide students from across the city the educational services to which they are entitled. Parents, caregivers, teachers, and students took the time to document and send written allegations to PDE, pursuant to PDE’s investigatory duties under Chapter 22 of the Pennsylvania Code. PDE and the Secretary of Education failed to help them or even to investigate their legitimate concerns.

PDE has recently acknowledged its supervisory role over the District and the disastrous consequences to instruction resulting from the District’s budgetary problems. Action for Declaratory Judgment in Case No. 518 M.D. 2014, dated Oct. 6, 2014 (“PDE Action”), attached as Ex. 1. In that pleading, PDE acknowledges that “[b]y statute, the General Assembly has assigned to the Department the responsibility, among other powers and duties, ‘[t]o administer all the laws of this Commonwealth with regard to the establishment, maintenance and conduct of the public schools,’” *id.* ¶ 8 (second alteration in original) (quoting 71 P.S. § 352(a)). PDE goes on to assert that it “has an important interest in seeing that public school students generally are provided with appropriate educational opportunities,” *id.*

¶ 20, and to admit that “the [District’s] staffing levels last year were, and at the present time still are, woefully inadequate,” *id.* ¶ 41. Insofar as the Secretary would disclaim in the instant case her Department’s ultimate responsibility for overseeing the delivery of education in the District, or would disclaim knowledge of the dire state of instruction in the District, the Court should heed PDE’s words in its Action for Declaratory Judgment.

Yet, when parents and others asked PDE to investigate whether state curriculum mandates were being complied with or evaded, all they received was silence or advice to ask the District. Here, the only question is: Did PDE fulfill its obligation to investigate the District’s failure to provide educational services required by State law? The answer is clearly: No. Thus, the State’s preliminary objections must be overruled.

## II. STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

Preliminary objections should be sustained only when it “appear[s] with certainty that the law will not permit recovery, and, where any doubt exists as to whether the preliminary objections should be sustained, the doubt must be resolved in favor of overruling the preliminary objections.” *McCord v. Pennsylvanians for Union Reform*, 100 A.3d 755, 758 (Pa. Commw. Ct. 2014) (quoting *Pa. State Lodge, FOP v. Dep’t of Conservation*, 909 A.2d 413, 416 (Pa. Commw. Ct. 2006)). “[This Court is] required to accept as true the well-pled averments set forth in the [petition for review], and all inferences reasonably deducible therefrom.” *Id.* (quoting *Pa. State Lodge*, 909 A.2d at 415-16) (first alteration in the original). The Court ought not accept as true legal conclusions, unwarranted inferences, argumentative allegations, or opinions. *See Ohio Cas. Grp. of Ins. Cos. v. Argonaut Ins. Co.*, 500 A.2d 191, 194 (Pa. Commw. Ct. 1985)

A preliminary objection in the nature of a demurrer “will be sustained only where it appears clear from the face of the pleading that the law will not permit the relief sought.” *Paratransit Ass’n of Delaware Valley, Inc. v. Yerusalim*, 538 A.2d 651, 654 (Pa. Commw. Ct. 1988). “When any doubt exists whether a demurrer should be sustained, the preliminary objection should be denied.” *Twp. of Derry v. Pa. Dep’t of Labor & Indus.*, 940 A.2d 1265, 1268 (Pa. Commw. Ct. 2008). “This Court’s review of preliminary objections is limited to the pleadings.”

*Commonwealth v. Seneca Res. Corp.*, 84 A.3d 1098, 1103 (Pa. Commw. Ct. 2014) (en banc). Therefore, at the preliminary objection stage, “[p]etitioners are under no burden to prove their cause of action.” *Marinari v. Dep’t of Env’tl. Res.*, 566 A.2d 385, 388 (Pa. Commw. Ct. 1989). Instead, “the only issue is . . . whether the facts in the complaint itself are sufficient to entitle the plaintiff to relief.” *Int’l Union of Operating Eng’rs, Local No. 66, AFL-CIO v. Linesville Const. Co.*, 322 A.2d 353, 356 (Pa. 1974). Here the facts in the complaint are sufficient to entitle Plaintiffs to relief or, at minimum, raise questions of fact as to whether PDE investigated as required. Thus, the preliminary objections must be denied.



### III. STATEMENT OF THE CASE

Pennsylvania’s Constitution assigns to the Commonwealth—not local school districts—the ultimate responsibility for defining, administering, and overseeing the quality of public education. Pa. Const. art. III, § 14 (“The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”). The Commonwealth has given content to that requirement through laws and regulations.

**A. The Secretary cannot turn a blind eye to the curricular problems in the School District of Philadelphia.**

In September 2013, District officials adopted and implemented what they described as a “Doomsday budget.” Petition for Review (“Pet.”), at ¶ 1. The District’s “dire financial situation” has precipitated “a one-third reduction in staff and the closing of 31 schools in recent years.” *Phila. Fed’n of Teachers v. Sch. Dist. of Phila.*, No. 1951 C.D. 2014, 2015 Pa. Commw. LEXIS 44, at \*56 (Pa. Commw. Ct. Jan. 22, 2015) (en banc). The 130,000-plus pupils in the District have borne the brunt of these cuts in their daily lives.

PDE itself has acknowledged to this Court that, “staffing levels were “at rock-bottom,” and some staffing levels were “not sustainable”:

[D]uring the 2013-2014 school year, the number of guidance counselors, school nurses, teachers and school police were at rock-bottom levels; the ranks of assistant principals had been thinned to

levels that are not sustainable; cutbacks to cleaning and facilities maintenance negatively affected school environments; budgets for books and school supplies also suffered; and advanced placement courses, career and technical education programs, as well as art classes all had to be curtailed.

PDE Action at ¶ 35.

The cuts had other consequences too, causing Philadelphia parents, caregivers, students, and teachers to experience direct and devastating impacts on the curriculum at schools across the city. When they turned for assistance to the Commonwealth officials who have the ultimate responsibility for public education in Pennsylvania, their complaints were completely ignored, in derogation of the explicit obligations on Respondent, the Secretary of Education, to “receive and investigate” such complaints, but also in general derogation of her important statutory and Constitutional responsibilities.

Title 22 of the Pennsylvania Administrative Code 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.” 22 Pa. Code § 4.11. Chapter 4, entitled “Academic Standards and Assessment,” has the purpose of “establish[ing] rigorous academic standards and assessments . . . 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 defines “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.” 22 Pa. Code § 4.3 (emphasis added).

To implement the “[p]urpose of public education” described in 22 Pa. Code § 4.11, PDE’s regulations establish mandates for curriculum that must be met in Pennsylvania’s schools. These include:

1. “employment of sufficient numbers of qualified professional employees . . . to enforce the curriculum requirements of State law,” *id.* § 4.4(b);
2. 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);
3. 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);
4. 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

5. that school districts provide guidance services for K-12 students, *id.*

§§ 339.31 - .32.<sup>1</sup>

State law also places squarely on state officials the responsibility for student services, which are “*an integral part* of the *instructional* program at all levels of the school system.” *Id.* § 12.41(c)(1) (emphases added). These student 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). The services must “[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).

State officials shoulder ultimate responsibility for ensuring that these requirements are met. Chapter 4 requires the Secretary to “*receive and investigate*

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<sup>1</sup> PDE also is responsible for gifted programming. 22 Pa. Code § 16.6(a). PDE must “ensure that appropriate and responsible fiscal oversight and control is maintained over the development and provision of gifted education.” *Id.* § 16.6(b). PDE further must “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 “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).

*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) (emphasis added). The Secretary must “notify the school entity’s superintendent or chief executive of allegations.” *Id.* § 4.81(b). These requirements are not discretionary; they are explicitly mandatory. 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, then the Secretary is also obligated to take action under State law. *Id.* § 4.81(e).

In fall 2013, faced with wholly inadequate services and “not sustainable” staffing levels, 825 parents, caregivers, teachers, and students filed complaints with PDE. *See* Pet. ¶¶ 4, 75. Petitioner Parents United and other advocates additionally filed with PDE an omnibus allegation concerning the impact of counselor shortages on curriculum delivery (the “omnibus allegation”). Pet. ¶ 7, Pet. Ex. B. The Secretary has not performed a meaningful investigation of any of these allegations. Pet. ¶ 6.

Filed by families from neighborhoods across Philadelphia, and concerning children from kindergarten through twelfth grade, these allegations requested investigation of and assistance with problems including overcrowded classrooms; a lack of classes such as physical education, art, music, and foreign languages; cancelled programs for gifted children; the absence of facilities such as libraries or basic 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 engage with the curriculum. Pet. ¶ 5.

The subject matters in the complaints filed by Petitioners echo those of the more than 800 other complaints. The Secretary responded to these complaints in one of two ways: a form letter telling parents to contact their district for help or completely ignoring the concerns.

**B. Some parents submitted serious allegations of curriculum deficiencies to the Secretary and received only a form letter in response.**

The Secretary's sole response to some parents was a form letter, as exemplified by the response to the serious concerns raised by Petitioners Mr. Allen, Ms. Dwyer, Ms. Kapps, and Ms. Plush. Pet. ¶¶ 29, 37, 47, 62. Each received a one-page form letter from PDE stating their allegations were "entirely local

matters” that should be addressed by the District and that PDE would forward their allegations to the District. Pet. ¶ 29, 37, 47, 62.

Petitioner Tim Allen filed his allegations of curriculum deficiencies on October 4, 2013, concerning Bodine High School for International Affairs (“Bodine”), where his son, E.A., was then a sophomore. Pet. ¶¶ 20, 22. Mr. Allen alleged that Bodine had “cut foreign language to just two years of Spanish[,]” having once offered French, Persian, and Mandarin Chinese language classes. Pet. ¶¶ 23, 24, Pet. Ex. H.<sup>2</sup> Mr. Allen also alleged “[o]ver crowded classrooms [that had] become dangerous[,]” stating that “students are cram[m]ed into rooms with desks one foot apart” such that both teacher and students were unable to “move around the classroom.” Pet. ¶ 27, Pet. Ex. H.

Petitioner Christianne Kapps submitted two allegations of curriculum deficiencies on October 11, 2013 concerning the Philadelphia High School for Creative and Performing Arts (“CAPA”), where her daughter C.K. was then a sophomore. Pet. ¶¶ 38, 40. Ms. Kapps alleged that C.K. “has no Phys Ed classes” and that CAPA had no physical education teachers. Ms. Kapps asked: “How can she graduate if she has no Phys Ed Classes?” Pet. ¶ 41, Pet. Ex. J. Ms. Kapps also alleged a “[l]ack of teaching staff[,]” overcrowding, and split grades at CAPA. Pet.

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<sup>2</sup> Mr. Allen clarified in the Petition for Review that E.A. was placed in second year French during the 2013-2014 school year, but was informed by Bodine that, as a result of the cuts, French would similarly be offered for only two years. Pet. ¶ 24.

¶ 43, Pet. Ex. K. Ms. Kapps alleged that C.K.'s Honors classes were overcrowded, with "students enter[ing] the class[es] on an ongoing basis." Ms. Kapps expressed concern that Honors students like C.K. were no longer receiving instruction at their accelerated level. Pet. ¶ 43.

Petitioner Maura Dwyer submitted her allegations of curriculum deficiencies on October 5, 2013, concerning Andrew Jackson School ("Jackson"), where her daughter was then a first-grader. Pet. ¶¶ 30, 32. Ms. Dwyer alleged (1) a lack of guidance counseling services, (2) a lack of teaching staff, and (3) a lack of non-teaching staff at Jackson. Pet. ¶ 33. She stated that the level of overcrowding made it difficult for teachers to walk between students' desks in order to supervise and review their work. Pet. ¶ 33. She alleged that Jackson lacked a full-time guidance counselor, and that having one is "absolutely essential . . . given the multicultural nature of the school, and the high percentage of students who live in poverty." Pet. ¶ 35.

On September 23, 2013, Petitioner Christine Plush submitted allegations of curriculum deficiencies concerning the Arts Academy at Benjamin Rush ("Rush"), where her child E.P. was then a sophomore. Pet. ¶¶ 57, 58. Ms. Plush stated "without a full-time guidance counselor, students do not have the integral supports needed to be successful as well as prepare for college." Pet. ¶ 60. 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.” Pet. ¶ 60.

**C. Other parents submitted serious allegations of curriculum deficiencies to the Secretary and received no response at all.**

Petitioners Roberts, Johnson, and Eberhardt did not get the courtesy of a form letter. The Secretary and PDE did not even bother to send a reply to either of Ms. Roberts’s two allegations or to Ms. Johnson or Ms. Eberhardt. Pet. ¶¶ 56, 68, 73.

Petitioner Robin Roberts twice submitted allegations of curriculum deficiencies concerning Charles W. Henry Elementary School (“Henry”), where her children, M.R. and C.R. were then, respectively, in the eighth and third grades. Pet. ¶¶ 48, 50. Ms. Roberts reported “decreased gifted education.” Pet. ¶¶ 50, 51; Pet. Ex. L. Her older son, M.R., had been identified as “mentally gifted” but, after five years of gifted support, the District eliminated these classes for the 2013-2014 school year. Pet. ¶ 51. Ms. Roberts also alleged a “lack of guidance counseling services,” stating that “there is no one who can assist our children in choosing or applying to high schools” because “guidance counselors have been removed from the building replaced by itinerant counseling services, placing [one] counselor in [seven] schools.” Pet. ¶ 52. Ms. Roberts described the situation as “impossible to adequately serve” several thousand students. Pet. ¶ 52.

Ms. Roberts also alleged “other problems [were] resulting in a deficient program of education, related to insufficient non-teacher staff and inadequate maintenance of school facilities.” Pet ¶¶ 50, 54. “[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.” Pet. ¶ 54. Because of the loss of support staff, the only opportunity to use the bathrooms was when teachers took time from class instruction to escort full classrooms of students to the toilet, which took time away from instruction and meant that students often waited too long to use the facilities. Pet. ¶ 54, Pet. Ex. M.

Petitioner Shirley Johnson submitted her allegations of curriculum deficiencies on September 23, 2013. They concerned Rush, where her child M.J. was then a junior. Pet. ¶¶ 63, 64. 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. Pet. ¶ 65. Specifically, Ms. Johnson alleged that Rush had a counselor available only one day per week, compared with two full-time counselors at the school the previous year. Pet. ¶ 65. She alleged that this lack of counselors interfered with her daughter’s access to information needed to attend college and to address other problems. Pet. ¶ 65.

Petitioner Bianca Eberhardt’s allegations concerned Franklin Learning Center (“Franklin”), where her child D.R. was then a sophomore. Pet. ¶¶ 69, 71.

She alleged a lack of guidance counseling services, lack of teaching staff, lack of non-teaching staff, and lack of facilities, which resulted in loss of instruction. Pet. ¶ 72. 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.” Pet. ¶ 72.

Petitioners Roberts, Johnson and Eberhardt are still waiting for any type of response from the Secretary to their individual concerns.

On October 17, 2013, concerned about the lack of response from the Secretary, Parents United sent its omnibus allegation to the Secretary concerning the lack of counselors at 35 identified District schools, based on submissions from nearly 200 individuals. The complaint cited specific parent allegations and significant problems occurring at 12 of those schools because of an insufficiency of counselors. Pet. ¶ 76. The Secretary acknowledged receipt of the omnibus allegation and forwarded it to the District, but took no other action. Pet. ¶ 89, Pet. Ex. F.

In sum, the Secretary’s response to 825 allegations was to do nothing. As stated in the Petition for Review, she did not, as she suggests in her brief, “investigate” the allegations. Instead, faced with the desperate written pleas of hundreds of parents throughout the District, she turned her back.

#### **IV. SUMMARY OF THE ARGUMENT**

22 Pa. Code § 4.81(a) says: “The Secretary will receive and investigate allegations of curriculum deficiencies from professional employees, commissioned officers, parents of students or other residents of a school entity.” This is mandatory language.

Petitioners and hundreds of other parents and concerned citizens have reached out to the Secretary for help in the face of grim conditions in the School District of Philadelphia. They have documented serious deficiencies ranging from core classes that are no longer offered, to classrooms packed too tight for children to learn, to the elimination of gifted programming and accessible guidance counselors. Unfortunately, the Secretary has decided that doing nothing about these allegations is to “investigate” them, and that not one of these allegations pertains to “curriculum.” Instead, she has simply forwarded the allegations to the District—i.e., the subject of the allegations—and has declined to do any fact-finding, not even contacting the District or the complainants for additional information or clarification. If the Secretary wishes to establish that, as a factual matter, she did engage in investigations rather than merely referring the complaints to the District, that is a matter for assertion and proof at trial, not for preliminary objections to a petition for review alleging that she conducted no investigations.

22 Pa. Code § 4.81 speaks in mandatory terms, and as alleged in the Petition for Review, the Secretary has fallen far short of complying with those mandates. The Court should therefore overrule her preliminary objections.

## V. ARGUMENT

### A. Mandamus is the appropriate remedy when a public official fails to fulfill a duty because she misunderstands the law.

As the Supreme Court has explained, “[t]he writ of mandamus exists to compel official performance of a ministerial act or mandatory duty.” *Fagan v. Smith*, 41 A.3d 816, 818 (Pa. 2012). A court

may issue a writ of mandamus where the petitioners have a clear legal right, the responding public official has a corresponding duty, and no other adequate and appropriate remedy at law exists. Moreover, mandamus is proper to compel the performance of official duties whose scope is defined as a result of the mandamus action litigation.

*Id.* (citations omitted). “Thus . . . mandamus will lie to compel action by an official where his refusal to act in the requested way stems from his erroneous interpretation of the law.” *Id.* (internal quotation marks and citation omitted).

“Where the action sought to be compelled is discretionary, mandamus will not lie to control that discretionary act, but courts will review the exercise of the actor’s discretion where it is arbitrary or fraudulently exercised or is based upon a mistaken view of the law.” *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402, 409 (Pa. 1985) (citations omitted). In particular, mandamus is an appropriate remedy when a Commonwealth agency’s decision not to act is based on an “interpretation of its own regulation [that] is inconsistent with its plain language.” *Seeton v. Pa. Game Comm’n*, 937 A.2d 1028, 1030 (Pa. 2007); *see also id.* at 1034 (“The [Pennsylvania Game] Commission does not have the power to redefine its

authority at will; the courts are an appropriate destination, and mandamus an appropriate remedy, to direct the Commission to comply with its statutory mandate to the extent it misapprehends it.”); *Banfield v. Cortes*, 922 A.2d 36, 42 (Pa. Commw. Ct. 2007) (en banc) (“Mandamus will not lie to compel the performance of discretionary acts *except where the exercise or non-exercise of discretion is arbitrary, fraudulent, or based upon a mistaken view of the law.*” (emphasis added)).

**B. The Secretary’s cramped interpretation of “curriculum” cannot be sustained.**

Section 4.81 requires the Secretary to “receive and investigate allegations of curriculum deficiencies.” In this case, she takes the position that none of Petitioners’ allegations pertain to “curriculum” deficiencies—not even the lack of physical education classes, nor the lack of four years of instruction in a foreign language, nor the lack of gifted support classes. Such an interpretation of “curriculum” cannot be sustained.

Chapter 4 defines “curriculum” as follows:

*Curriculum*—[1] A series of planned instruction aligned with the academic standards in each subject [2] that is coordinated and articulated and implemented in a manner designed to result in the achievement at the proficient level by all students.

22 Pa. Code § 4.3. The Secretary contends that “curriculum refers to the topics being covered in a particular academic subject area and not to things such as

proximity of desks, counselor staffing, or cleanliness of bathrooms.” Resp.’s Br. at 19. Her interpretation ignores the second half of the definition of “curriculum,” which requires that the instruction be coordinated and implemented in a manner designed to result in achievement by *all* students. The lack of sufficient staff, rooms, and materials goes directly to the second part of the definition and cannot be ignored.

**1. Even under the Secretary’s narrow interpretation of the term, many allegations indisputably concern “curriculum” deficiencies.**

Sections 20 through 29 of Chapter 4, titled “Curriculum and Instruction,” help give meaning to “curriculum.” For example, 22 Pa. Code § 4.23(c) states that “Planned instruction aligned with academic standards in the following areas shall be provided to every student in the high school program.” Among the listed areas are “[h]ealth, safety and *physical education*, including instruction in concepts and skills which affect personal, family and community health and safety, nutrition, physical fitness, movement concepts, motor skill development, safety in physical activity settings, and the prevention of alcohol, chemical and tobacco abuse.” *Id.* § 4.23(c)(8) (emphasis added). Put simply, physical education is a required part of the high school curriculum. When, for instance, Petitioner Kapps alleged that her daughter’s high school lacked any physical education classes or teachers, Pet. ¶ 41, she was by any standard alleging a violation of Section 4.23(c)(8) and therefore alleging a curriculum deficiency.



Another area of “planned instruction aligned with the academic standards” is foreign language. Chapter 4’s high school curriculum standards require that “[t]he following planned instruction shall be made available to every student in the high school program: . . . World languages under § 4.25 (relating to languages).” 22 Pa. Code § 4.23(d)(3). Section 4.25 in turn specifies 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).” *Id.* § 4.25(a). Petitioner Allen, to give an example, was thus alleging a curriculum deficiency when he complained that Bodine would no longer offer more than two years of any language at a school designed to offer an “international affairs” curriculum. Pet. ¶¶ 23-24; Pet. Ex. H.

Certain provisions outside Chapter 4 also help give meaning to “curriculum.” For example, Chapter 16, pertaining to special education for gifted students, defines “specially designed instruction” as “[a]daptations or modifications to the general curriculum, instruction, instructional environments, methods, materials or a specialized curriculum for students who are gifted.” 22 Pa. Code § 16.1. It specifies that each school district must provide “[g]ifted education for gifted students, which enables them to participate in acceleration or enrichment programs, or both, as appropriate, and to receive services according to their

intellectual and academic abilities and needs.” *Id.* § 16.2(d)(3). Petitioner Robin Roberts alleged that the District had “decreased” gifted education classes at her older son’s school, classes that had been eliminated entirely within the District. Pet. ¶ 51. This was an allegation that the “specialized *curriculum*” referred to in 22 Pa. Code § 16.1 (emphasis added) was missing.

**2. Classroom and building conditions that interfere with delivery of instruction are curriculum deficiencies.**

The implementation of planned instruction is within the responsibility of the Secretary. If “planned instruction” in the District is not “implemented in a manner designed to result in the achievement at the proficient level by all students,” 22 Pa. Code § 4.3, the Secretary is obligated to respond to these concerns. In this instance, such obstacles to implementation as overcrowding, lack of non-teacher staff, and insufficiently staffed and unsanitary restroom facilities are within the concept of “implementation” because they interfere with the delivery of instruction as much as if the District failed to hire an instructor to deliver planned French lessons.

The Secretary is adamant that she has no responsibility to receive or investigate allegations that schoolchildren are forced to sit in overcrowded classrooms or to spend full days in buildings without sanitary restroom facilities or the staff to keep those facilities open and accessible to students. She attempts to consider curriculum in a complete vacuum and so has represented to many of the Petitioners that allegations concerning such problems are “entirely local matters

that should be addressed by the District” and that “Pennsylvania education law . . . places decision making authority related to your concerns with the District.” Pet. Ex. G. This position is grounded on selectively ignoring various portions of Chapter 4 and other education regulations, including the second half of the definition of “curriculum”: that a curriculum must be “coordinated and articulated and *implemented* in a manner designed to result in the achievement at the proficient level by all students.”

Cramped classrooms that eliminate or limit the ability of teachers to engage in meaningful instruction with students fall within the ambit of curriculum and within the Secretary’s responsibility. For example, Petitioner Allen alleged that at his son E.A.’s school:

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.

Pet. ¶ 27 (quoting Pet. Ex. H).

Several of the other allegations fall into this category, including:

- Petitioner Dwyer’s allegation that first-grade classrooms at her daughter’s school “were overcrowded to the point that teachers had

difficulty walking between the students' desks in order to supervise and review their work," Pet. ¶ 33;

- Petitioner Roberts's allegation that deficient toilet facilities and insufficient non-teacher staffing at her younger son's school forced students to hold their bladders during class and required teachers to take time away from instruction to escort full classrooms of students to bathrooms only at set times, Pet. ¶ 54;
- Petitioner Eberhardt's allegation that her child "was placed in a class that had 45 children, and this level of overcrowding 'prevents the teacher from providing additional attention to the students,'" Pet. ¶ 72 (quoting Pet. Ex. P).

Classrooms without room to maneuver prevent teachers from engaging one-on-one with students and tailoring instruction to students' individual strengths and needs; classrooms without space between desks hinder teachers from teaching students how to work collaboratively in small groups or achieve the discipline required to cover the mandated topics of instruction, both important developmental skills. Accordingly, each of these allegations is an instance in which "planned instruction" in the District was not "implemented in a manner designed to result in the achievement at the proficient level by all students," 22 Pa. Code § 4.3, and thus each is an "allegation[] of curriculum deficiencies" requiring investigation

by the Secretary under 22 Pa. Code § 4.81. Whether the level of services provided was consistent with the “comprehensive and integrated K-12 program,” *id.*

§ 4.13(c), cannot be known in the absence of the mandated investigation.

Allegations of overcrowded classrooms, wretched building conditions, and insufficient overall staffing are thus allegations of curriculum deficiencies that the Secretary must investigate under Section 4.81.

**3. The unavailability of guidance counselors is a curriculum deficiency.**

The Secretary defends her failure to investigate the lack of guidance counselors by asserting that deficiencies in guidance counseling services are not “curriculum” deficiencies, because guidance counseling is described in Chapter 12 instead of Chapter 4. Resp.’s Br. at 17; Pet. Ex. F (letter from PDE). But Pennsylvania law recognizes that guidance counselors are essential to ensure that “planned instruction” is “implemented in a manner designed to result in the achievement at the proficient level by all students,” 22 Pa. Code § 4.3. Chapter 4 identifies as a purpose of public education the need 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(b). And among the purposes of Chapter 4 is “to facilitate the improvement of student achievement.” *Id.* § 4.2. None of this can be achieved without guidance counselors, and thus the Secretary’s defense is unavailing.

Other provisions of Pennsylvania education law further demonstrate that guidance counseling is integral to curriculum. For example, the purpose of student services is “to support the instructional program and to help students attain their educational and career goals.” *Id.* § 12.16. “Student services” include guidance counseling, 12 Pa. Code §§ 12.16, 12.41(b)(1), and they are required to be “***an integral part*** of the instructional program,” § 12.41(c)(1) (emphasis added). Every six years, school districts must “develop and implement a comprehensive and integrated K-12 program of student services based on the needs of its students.” 22 Pa. Code § 4.13(c). According to the District’s most recent Student Services Report, filed with PDE in 2009, “a child’s readiness for instruction is determined by factors such as safety, physical and emotional health, attendance, and involved, caring adult support.” Philadelphia City SD, Student Services Report, n.p. (2009), attached as Ex. 2.<sup>3</sup> The District’s own “statement of educational goals” includes the “development of career preparation, ***knowledge***, skills, and ***attitudes***” as one of four aspects of “expectations of student achievement.” *Id.* (emphases in original).

Furthermore, guidance counselors are responsible for “the educational, emotional, and social development of all students[.]” *Id.* They teach critical skills-

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<sup>3</sup> Although the Student Services Report is not a part of the record, this Court can take judicial notice of it as a public record. *In the Interest of F.B.*, 726 A.2d 361, 366 n.8 (Pa. 1999) (taking judicial notice of the Philadelphia School Code Policy and Procedure Manual for school searches). The September 16, 2014 date on the plan reflects not its creation date but the date when PDE provided it to Petitioners’ counsel pursuant to a request under the Right-to-Know Law.

based learning related to “academic, behavioral, health, personal and social development issues.” 22 Pa. Code § 12.41(b)(1). Students need to learn these skills to ensure success in school and find their places in an increasingly complex and diverse society. In the Philadelphia public schools, counselors are also the sole school staff members responsible for providing information about students’ transitions from elementary to middle school, middle to high school, and high school to college or other career opportunities. A lack of counselors impedes the ability of teaching staff to deliver their instructional services, as teachers are forced to spend more time addressing the needs of students with emotional behavior issues or those subject to bullying. Chapter 4 and the District’s Student Services Report both recognize that counselors are essential to all students’ achieving their academic potential.

Here, numerous allegations concern a shortage of guidance counselors in the District. Petitioner Plush, for instance, alleged that her daughter’s high school

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.”

Pet. ¶ 60 (quoting Pet. Ex. N). Petitioner Johnson similarly “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.” Pet. ¶ 65.

The lack of counselors in the District has meant not simply that all students are getting fewer student services—the drastic reduction of counselors means that some students have no access to counselors *at all*. This is a curriculum deficiency that the Secretary was obligated to investigate.

**C. The Secretary has not “investigated” allegations submitted by parents, despite the mandate of 22 Pa. Code § 4.81.**

The Secretary claims that “[i]t is clear from the Petition’s own allegations, and the exhibits attached thereto, that the Secretary is in fact receiving and investigating these allegations.” Resp.’s Br. at 16. There is no doubt the Secretary *received* some 825 allegations during the 2013-2014 school year. However, based on the facts alleged in the Petition for Review—which are conclusive at the preliminary objections stage—the Secretary has taken no action to *investigate* any of Petitioners’ allegations under Section 4.81. *E.g.*, Pet. ¶¶ 6-7, 13-14, 89, 91-92.

Instead, the Petition alleges that without investigating the allegations, she sent letters to some parents and referred some of the allegations to the District. Whether she took any further steps remains an issue of fact that is inappropriate for resolution at this preliminary objections stage. *E.g.*, *Liberty Mut. Ins. Co. v.*

*Excalibur Mgmt. Servs.*, 81 A.3d 1024, 1026 n.2 (Pa. Commw. Ct. 2013) (en banc)



(“In ruling upon a preliminary objection in the nature of a demurrer, the court must accept as true all well-pled facts and all reasonable inferences deducible therefrom . . . .”).

The Secretary argues that an “investigation necessarily begins with a close examination of the allegation itself.” Resp.’s Br. at 17. That is surely how to *begin* an investigation, but at this stage of the litigation, it is unknown whether the Secretary closely examined the Petitioners’ allegations, let alone those of hundreds of other complainants. As a matter of law, even what steps the Secretary claims to have taken do not constitute an “investigation.” *See generally Black’s Law Dictionary* 844 (8th ed. 2004) (defining “investigate” as “To inquire into (a matter) systematically . . . .”); *Webster’s II New College Dictionary* 583 (2001) (“To observe or inquire into in detail.”). Directing parents to talk to the District, or sending a letter to the District suggesting that it investigate itself, meets no definition of investigate. Nor does sending no response at all, as in the cases of Petitioners Roberts, Johnson, and Eberhardt. And so far as is known at this stage of the litigation, this is all that the Secretary has done.<sup>4</sup>

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<sup>4</sup> According to Respondent’s Response to Petitioner’s First Set of Interrogatories, attached as Ex. 3, since the 2008-2009 school year, the Secretary or her predecessors have received only one allegation of curriculum deficiency apart from the 825 discussed herein. The Secretary asserted that “the Complaint did not involve curriculum matters pursuant to” Section 4.81. Response to No. 4. The Secretary has conducted no Section 4.81 investigation in the past five years, nor at any point sent formal notice of deficiency to any school entity or taken any action under State law against a school entity pursuant to Section 4.81. Responses to Nos. 5-7.

**D. Referring allegations to the subject of the allegations is not an investigation.**

The Secretary believes that “Petitioners take issue with the fact that some ‘allegations of curriculum deficiencies’ were referred to the District.” Resp.’s Br. at 20. Not so. Petitioners take no exception to the Secretary’s forwarding their allegations to the District; in so doing, she was meeting one of her regulatory obligations. But insofar as she interprets simply referring an allegation to the *subject* of the allegation as completing an “investigation” of the allegation, her interpretation of “investigation” is so arbitrarily narrow that it saps Section 4.81 of any meaning.

The Secretary does not have carte blanche to delegate the entire investigation of an allegation to the District, no more than PDE can wash its hands of any other component of its responsibility to “administer all of the laws of this Commonwealth with regard to the establishment, maintenance, and conduct of the public schools,” 71 P.S. § 352(a). Otherwise, Section 4.81 would require nothing more than for the Secretary to receive and remand *all* allegations to the school entity, without further action. Section 4.81’s requirement to notify the District is not authorization to delegate to the body accused of violating regulations the power to investigate itself and determine whether it is in violation. Nor can it be correct that referral of an allegation to the body to be investigated is an investigation. Such a process ignores the Secretary’s obligation to correct the problem—the second

component of the “‘remand and correct’ remedy.” Subsection (c) of Section 4.81, the requirement for a corrective plan, requires the Secretary to make a determination whether any deficiency existed. She cannot fulfill that duty merely by making a referral to the District.

The Secretary argues that “[a] referral to the District makes particular sense in the examples provided in the Petition” because the District is “in a better position to address proximity of desks in classrooms, guidance counselor staffing levels, and the cleanliness of bathrooms[.]” Resp.’s Br. at 19. The District is certainly in the best position to create and implement a plan of corrective action on these matters, just as it is for its failures to provide staffing to schedule sufficient foreign language classes, to provide any programs suitable to gifted children, and to provide required physical education classes. In fact, Section 4.81(c)-(e) contemplates that the Secretary will require the District to do so. However, appropriate corrective action can be determined only through an investigation by PDE.

**E. The Secretary should not ignore an allegation on the basis that it is ambiguous or confusing.**

The Secretary contends, “Section 4.81 does not require the Secretary to notify the complainant of the status or outcome of the allegations received.”

Resp.’s Br. at 21. Petitioners do not suggest that Section 4.81 creates an enforceable obligation for the Secretary to keep a complainant informed about the

status of an investigation. Nor do Petitioners suggest that the Secretary must contact every single complainant upon receipt of an allegation.

But if the Secretary's assertion is that investigation was not necessary because Petitioners' allegations left ambiguity as to whether "curriculum deficiencies" were in issue, that ambiguity would not let the Secretary off the hook. To the contrary, if some of Petitioners' allegations were confusing to the Secretary or if a question existed about whether the District was providing the mandated curriculum to some students but not others, this would only intensify the need for the Secretary to contact the complainants, as well as the District, for clarification or further information.

## VI. CONCLUSION

For the reasons stated above, the Court should overrule Respondent's preliminary objections.

Respectfully submitted,

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Counsel for Petitioners

Dated: January 28, 2015

# Exhibit 1

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

THE SCHOOL REFORM COMMISSION

and

THE SCHOOL DISTRICT OF  
PHILADELPHIA

440 North Broad Street  
Philadelphia, Pennsylvania 19130,

and

COMMONWEALTH OF  
PENNSYLVANIA,  
DEPARTMENT OF EDUCATION  
333 Market Street  
Harrisburg, Pennsylvania 17126,  
Plaintiffs,

No. \_\_\_ M.D. 2014

v.

PHILADELPHIA FEDERATION OF  
TEACHERS,  
LOCAL 3, AFT, AFL-CIO  
1816 Chestnut Street  
Philadelphia, Pennsylvania 19103,  
Defendant.

**NOTICE TO DEFEND**

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 twenty (20) 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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

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Harrisburg, Pennsylvania 17101  
(717) 232-0581

and

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

## **ACTION FOR DECLARATORY JUDGMENT**

The School Reform Commission (the “SRC”) and the School District of Philadelphia (the “School District”), joined by the Commonwealth of Pennsylvania, Department of Education (the “Department”), hereby bring this Action for Declaratory Judgment. In support thereof, Plaintiffs aver as follows:

1. This is an action for a declaratory judgment seeking a declaration on one or both of two separate and independent questions:

- Do sections 693 and 696 of the Public School Code of 1949 grant the SRC the power to achieve needed economies in the operation of its schools by canceling an expired collective bargaining agreement and imposing altered fringe benefits and other economic changes, where the savings generated can be used (1) to promote fiscal stability by helping to balance the School District’s budget both this year and in future years, and (2) to permit the restoration in part of basic resources now in short supply, such as schoolbooks, paper and staff?
- Can the SRC and the School District implement the necessary changes in the terms and conditions of employment of employees represented by the teachers’ union, where the School District and the union have been negotiating for 21 months, held more than 110 bargaining sessions, and exchanged hundreds of proposals – but nonetheless remained at all



times tens of millions of dollars apart on the overriding issue of economic concessions?

### **STATEMENT OF JURISDICTION**

2. This Court has original jurisdiction over this complaint for declaratory judgment pursuant to 42 Pa.C.S. § 761(a)(2) (“The Commonwealth Court shall have original jurisdiction of all civil actions or proceedings . . . [b]y the Commonwealth government . . .”).

### **THE PARTIES**

3. Plaintiff School District of Philadelphia is a home rule school district of the first class and is, by far, the largest school district in the Commonwealth. It serves approximately 128,000 students in its own schools, and by law financially supports an additional 71,000 students in charter and other schools.

4. Plaintiff School Reform Commission is an instrumentality of the School District established by section 696(a) of the Public School Code (24 P.S. § 6-696(a)). The SRC came into being in 2002 after the Secretary of Education (the “Secretary”) determined under section 691(c) of the Public School Code (24 P.S. § 6-691(c)) that the School District was in financial distress and issued a declaration to that effect. The School District remains in a state of financial distress pursuant to the Secretary’s declaration. Under section 696 of the School Code, the SRC is the governing body for the School District.

5. Plaintiff Commonwealth of Pennsylvania, Department of Education, is a departmental administrative agency of the Commonwealth's Executive Department. *See* 71 P.S. § 61(a). The head of the Department is the Secretary of Education, *see* 71 P.S. § 66, who is appointed by the Governor in accordance with the Constitution and laws of Pennsylvania. *See* Pa. Const. art. IV, § 8(a); 71 P.S. § 67.1(d)(1). The Department is responsible, *inter alia*, “[t]o administer all of the laws of this Commonwealth with regard to the establishment, maintenance, and conduct of the public schools. . . .” 71 P.S. § 352(a).

6. Defendant, the Philadelphia Federation of Teachers, Local 3, AFT, AFL-CIO (the “PFT”), is an employee organization recognized by law as the collective bargaining agent for the School District’s teachers and various other categories of school personnel.

## **RELEVANT STATUTORY FRAMEWORK**

### **A. The Department’s Role**

7. Under the Constitution of Pennsylvania, the General Assembly has the overall duty to “provide for the maintenance and support of a thorough and efficient system of public education.” Pa. Const. art. III, § 14.

8. By statute, the General Assembly has assigned to the Department the responsibility, among other powers and duties, “[t]o administer all the laws of this Commonwealth with regard to the establishment, maintenance and conduct of the

public schools, and particularly the [Public School Code of 1949, 24 P.S. §§ 1-101 *et seq.*].” 71 P.S. § 352(a).

9. The Department has many specific responsibilities under the Public School Code to oversee the public education system within the Commonwealth. *See generally* 24 P.S. §§ 1-101 *et seq.* In particular, the Department by statute is assigned the responsibility to administer funding that the General Assembly appropriates to it for distribution to school districts throughout the Commonwealth, including the School District. *See generally* 24 P.S. §§ 25-2501 – 25-2599.5.

10. Most important to this matter, the Department specifically is required to monitor the fiscal health of school districts throughout the Commonwealth. *See* 24 P.S. §§ 6-691, 6-693, 6-696 (financial distress statutes relating to school districts of the first class); *id.* §§ 6-601-A – 6-693-A (financial recovery provisions applicable to all other classes of school districts). The Department does so in part by gathering information about school districts and evaluating their financial health. *See, e.g.*, 22 Pa. Code §§ 731.1, 731.2. Each year, for example, the School District submits an Annual Financial Report to the Department for its review. *See* 24 P.S. § 2-218.

11. In the last few years, the General Assembly has granted the Department additional oversight responsibilities with regard to the School District. For example, the Commonwealth’s 2013-2014 Budget provided \$45 million to be

paid to the City of Philadelphia (the “City”) to provide a grant to the School District. However, that grant could not take effect until “the Secretary of Education ... issued a written certification that the School District ha[d], in the judgment of the Secretary of Education, begun implementation of reforms that will provide for the district’s fiscal stability, educational improvement and operational control.” 72 P.S. § 1722-H(9)(ii). The Secretary issued such a certification in October 2013 based upon reforms already then underway at the School District. (A copy of the Certification is attached hereto as Exhibit A.)

12. The Secretary is similarly responsible for the oversight and certification role with respect to the School District’s receipt of sales and use tax revenue from the City. *See* 72 P.S. § 7201-B(e). Specifically, section 201-B(e) of the Tax Reform Code of 1971 (added by Act 52 of 2013, § 6.1) provides that a city of the first class may impose a one percent sales and use tax that may be used by a school district of the first class in an amount up to \$120 million annually. 72 P.S. § 7201-B(e).

13. However, the City may pay the sales and use tax money to the School District only if the Secretary, in her judgment, has issued an annual certification prior to December 31 of each year that the School District is implementing reforms that provide for the School District’s “fiscal stability, educational improvement and operational control.” *Id.* § 7201-B(e)(1).

14. The Secretary's certification is a crucial condition precedent to the School District's receipt and use of the money from the City's Local Sales and Use Tax Fund. In the event the Secretary did not issue an annual certification, then all money contained in the Local Sales and Use Tax Fund would be paid to the City. *Id.* § 7201-B(e)(2)(iii).

15. In accordance with these assigned duties, the Secretary of Education, through the Department, has closely monitored the reform efforts of the School District and the SRC. In particular, the Department has focused on the efforts of the School District and the SRC to achieve operational efficiency through revised work rules, including changes regarding staff assignments and transfers, the order of recalls from lay-off, and the role of seniority in reduction-in-force decisions.

16. The Secretary and the Department also have monitored the efforts of the School District and SRC to achieve fiscal stability, including through the implementation of spending controls, the negotiation of over \$100 million in savings through concessionary contracts with two of the District's labor unions, and its efforts to achieve savings through modification of its fringe benefits and other changes in the terms and conditions of employment with others of its unions.

17. The Secretary and the Department are required to monitor and analyze these efforts, and annually weigh them in considering whether to approve the release of hundreds of millions of dollars in funds for the School District.

18. On August 6, 2014, the Secretary issued the required certification regarding the sales and use tax, finding that the School District had implemented reforms promoting “fiscal stability” and other goals. (A copy of the Certification is attached hereto as Exhibit B.)

19. Also further to the Department’s oversight responsibilities, the Department and the School District in 2013 entered into a Memorandum of Agreement regarding the School District’s handling of federal grant funds. Pursuant to the Memorandum, the Department monitors the School District’s compliance with various federal management requirements regarding the uses of federal funds.

20. In addition to its direct role in overseeing certain aspects of school districts’ financial health, the Department has an important interest in seeing that public school students generally are provided with appropriate educational opportunities. For instance, under both state and federal law, the Department is responsible to ensure that each school district provides students with disabilities an appropriate individualized educational program. *See* 24 P.S. § 13-1372; 20 U.S.C. § 1412(a)(11). The Department also is responsible for educational matters concerning professional educator certification (*see* 24 P.S. §§ 12-1201 – 12-1217); programs involving student safety (*see* 24 P.S. §§ 13-1301-A – 13-1313-A); and

the administration of statewide assessments (*see* 24 P.S. § 1-121; 22 Pa. Code Ch. 4).

21. Accordingly, the Department and the Secretary have a substantial interest in ensuring that the SRC and the School District have the legal ability to implement reforms (such as those discussed below) that will provide for the School District's fiscal stability, educational improvement and operational control.

**B. The Powers of the SRC and the School District**

22. From 1970 until 1998, collective bargaining between the School District and its unions was governed predominantly by the Public Employee Relations Act ("PERA"), as modified by Act 88 of 1992. *See* 43 P.S. §§ 1101.101 *et seq.*

23. In 1998, however, following a financial crisis that raised the specter of a School District shutdown due to lack of funds, the General Assembly passed Act 46 of 1998 (P.L. 270). Act 46 set up a framework designed, among other things, to give the Commonwealth (including the Department) an expanded role in the management of the School District in the event that the School District should become financially distressed.

24. As amended, Act 46 authorizes the Secretary of Education to make a declaration that the School District is distressed if the Secretary determines that any of the circumstances of distress listed in section 691(c) of the Public School

Code exist. In particular, the Secretary is empowered to declare the School District in distress upon a finding that “the school district ... has failed or will fail to provide for an educational program in compliance with the provisions of this act, regulations of the State Board of Education or standards of the Secretary of Education.” 24 P.S. § 6-691(c)(4).

25. Following a declaration by the Secretary, Act 46 provides that the existing school board would be suspended, and a new governing body (the SRC) created in its stead. Under current law, three of the SRC’s five members are selected by the Governor, while two are appointed by the Mayor of Philadelphia.

26. Act 46 gives the SRC and the School District broad and exceptional powers to cope with the challenges posed by fiscally distressed circumstances. For example, Act 46: (a) authorizes the SRC to suspend most provisions of the Public School Code and accompanying regulations, 24 P.S. § 6-696(i)(3); (b) empowers the SRC to lay off professional employees without regard to seniority, 24 P.S. § 6-696(i)(7); (c) provides the SRC with the ability to reallocate resources, 24 P.S. § 6-696(i)(9); and (d) frees the School District from the duty to bargain collectively over a wide array of topics, including subcontracting, decisions related to reductions in force, staffing patterns and assignments, and teacher preparation time (among others). 24 P.S. § 6-696(k)(2). At the same time, Act 46 imposes restrictions upon the School District’s labor unions, prohibiting them from striking



during any period in which the SRC is in control of the School District's affairs.  
24 P.S. § 6-696(l).

27. Most relevant to the matter before this Court, Act 46 made two key changes in the law.

28. First, Act 46 empowers the SRC to cancel contracts, if doing so would effect needed economies in the operation of the School District's schools. *See* 24 P.S. § 6-696(i) (granting SRC the powers afforded by 24 P.S. § 6-693). The power of cancellation in section 693(a)(1) of the Public School Code is accorded to a financially distressed school district to relieve it of contractual burdens that it can no longer afford. *See also* 24 P.S. § 6-696(k) (incorporating 24 P.S. § 6-693).

29. Second, the statute repealed PERA "insofar as it is inconsistent with the provisions of" Act 46. Act 46, § 28(a).

30. As noted above, several years after Act 46 was enacted into law, the Secretary acted under section 691(c) of the Public School Code, 24 P.S. § 6-691(c), to declare the School District to be in financial distress. The SRC was thereafter constituted under section 696(a) of the School Code. The declaration of distress remains in effect today.

31. The Secretary continues to be responsible to monitor the fiscal health of the School District while the declaration of distress is in effect. Among her responsibilities, the Secretary is granted the power under section 696(n) of the

Public School Code to declare the end of the period of financial distress once long-term financial stability has been achieved. 24 P.S. § 6-696(n). In fact, as the Supreme Court of Pennsylvania has observed, “the Legislature gave the Secretary nearly sole discretion and control over the financial distress process.” *Pa. Dept. of Educ. v. Empowerment Bd. of Control*, 595 Pa. 426, 443, 938 A.2d 1000, 1010 (2007).

32. In short, by adopting Act 46, the General Assembly conferred extraordinary powers upon the SRC and the School District, with the intent of giving them a much freer hand than other public employers when it comes to collective bargaining during a period of financial distress.

33. Specifically, Act 46 grants the SRC and the School District the powers to take the very actions that have become necessary here – (a) the power to cancel a collective bargaining agreement to achieve needed economies in the operations of the schools; (b) the concomitant power to impose changes in fringe benefits and other mandatory subjects of bargaining after cancellation; and (c) relief from the strictures of PERA to the extent they are inconsistent with the powers granted by section 696 of the Public School Code.

## **FACTUAL BACKGROUND**

### **A. The School District's Financial Crisis<sup>1</sup>**

34. The School District is the only district in the Commonwealth that has no power to impose taxes. Its ability to operate is dependent almost completely upon the monies it receives from (or on the authority granted to it by) the City of Philadelphia, the Commonwealth, and the federal government. Deficit spending is prohibited by law.

35. Due to a lack of funds, the School District has been operating at a bare-bones level for some time. A lack of funding for the 2013-2014 fiscal year caused the School District to make drastic cuts to its staff for the second time in three years. As a result, during the 2013-2014 school year, the number of guidance counselors, school nurses, teachers and school police were at rock-bottom levels; the ranks of assistant principals had been thinned to levels that are not sustainable; cutbacks to cleaning and facilities maintenance negatively affected school environments; budgets for books and school supplies also suffered; and advanced placement courses, career and technical education programs, as well as art classes all had to be curtailed.

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<sup>1</sup> Factual averments relating to current fiscal conditions and bargaining with various labor unions are made by the SRC and the School District. Based substantially on good faith reliance upon information provided to it by the SRC and the School District, the Department joins in those averments.

36. In August 2014, facing once again the prospect of a lack of sufficient funding, the School District went through yet another round of cost-cutting, yielding another \$32 million in savings. This meant that, upon the opening of the current school year in September, the deplorable conditions that prevailed during the prior school year continued in place; and the School District, by its calculations, still needed additional funding for the 2014-2015 fiscal year of as much as \$49 million just to be able to operate at that same insufficient and unsustainable level of services.

37. On September 23, 2014, however, the General Assembly passed a bill authorizing a cigarette tax of \$2 per pack for cigarettes bought in Philadelphia, and the Governor signed the bill into law the next day as Act 131. Specifically, Act 131 added to Title 53 of the Pa. Consolidated Statutes a new section 8722, which provides for a local option cigarette tax in school districts of the first class. The proceeds of the local option cigarette tax, previously enacted by the City Council of Philadelphia, are to be paid solely to the School District. *See* 53 Pa.C.S. § 8722(*i*) (added by Act 131, § 3).

38. The cigarette tax revenues received during this fiscal year, which ends on June 30, 2015, will not be enough to cover the School District's expenses in

full. The Commonwealth<sup>2</sup> has estimated that the tax will yield only \$41 million this year, leaving the School District with a funding shortfall of \$8 million.

39. Even if the cigarette tax were to yield enough to close the funding shortfall this year, that level of funding would do nothing this year to enable the School District to remedy the unsatisfactory conditions that have prevailed since the cutbacks that it had to make last year.

40. Prudence also requires the SRC and the School District to plan for the future and to anticipate fiscal issues on the horizon. The School District's revenues this year included one-time funding of \$45 million. As a result of this, and ever rising costs, the School District is looking at a projected funding shortfall for the next fiscal year (2015-2016) of \$71 million, even after taking account of funds expected from a full year of cigarette tax revenues. Two of the major cost-drivers of the deficit are state-mandated contributions to employee pensions and employee health care costs.

41. Given its annual funding problems, the School District for several years has been forced to try to wrest savings from its largest expense category – personnel costs. Between the 2010-11 school year and the beginning of the 2013-14 school year, the School District reduced its full-time staff by a full one-third.

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<sup>2</sup> The Commonwealth's Department of Revenue is responsible under Act 131 to collect the local option cigarette tax for deposit into the Local Cigarette Tax Fund, which is administered by the Commonwealth's Treasury Department for the sole benefit of the School District. *See* 53 Pa.C.S. § 8722(c)(1), (h).

Although additional funding received after the schools opened last year allowed the School District to ameliorate the staffing crisis to a limited degree, the staffing levels last year were, and at the present time still are, woefully inadequate. No further savings can be generated in this fashion; on the contrary, at this point the lack of staff is one of the main School District problems that needs fixing.

42. In an effort to save further monies, the School District has imposed benefit changes and medical plan contributions on its non-unionized employees and also has been seeking economic concessions from its unionized labor force through collective bargaining.

43. The SRC and the School District have been successful in obtaining economic concessions from certain employee organizations, but they have hit a brick wall in their talks with the PFT over the last 21 months, as described below. It was this inability to reach a reasonable compromise with the PFT that gave the SRC and the School District no choice but to cancel the collective bargaining agreement pursuant to sections 693 and 696 of the Public School Code and to impose new economic terms.

**B. The School District's Efforts to Negotiate Union Economic Concessions**

44. In July 2012, SEIU Local 32BJ, which represents approximately 2,700 maintenance workers, building engineers, school cleaners and bus drivers, entered into a four-year agreement estimated to provide \$100 million in savings

over the contract's life. Concessions included wage reductions averaging 10% of salary, a wage freeze for the life of the contract, a reduction in the School District's contributions to the union-run medical fund, and other changes.

45. In March 2014, the Commonwealth Association of School Administrators, which represents 400 principals, assistant principals and other administrators, agreed to a three-year agreement that is estimated to save \$20 million over the life of the contract. The contract eliminated any across-the-board salary increases, reduced the compensation and work year for principals and assistant principals, provided a less costly medical plan, required employees to begin making contributions to the cost of their health care benefits, imposed a charge for insuring spouses who are eligible for other health plans, and implemented other concessions.<sup>3</sup>

46. Negotiations between the School District and the PFT, which represents 11,600 School District employees (and is by far the largest School District union), began in January 2013 – seven months before the August 31, 2013, expiration of the collective bargaining agreement then in effect.

47. From the outset of the talks, the School District sought significant economic concessions from the PFT.

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<sup>3</sup> Several other School District unions remain without contracts.

48. During the last 21 months, the parties met more than 110 times and exchanged hundreds of proposals.

49. Throughout 2013, a mediator from the Pennsylvania Bureau of Mediation participated in the negotiations. In January 2014, the parties requested that William Gross, the Director of the Bureau, become personally involved; and Mr. Gross has participated in the negotiations from that point forward.

50. Notwithstanding these strenuous efforts, the negotiations are now at impasse. The parties have never even come close to agreeing on economic concessions; at all times, the gap separating the parties' bargaining positions on economic issues measured tens of millions of dollars per year.

51. After 21 months, it is clear that the PFT is deadset against consenting to economic concessions of the size that the School District needs.

**C. The Changes to Fringe Benefits and Other Terms Implemented by the School District**

52. For many years, the members of the PFT have enjoyed a health benefits package that today would be the envy of the great majority of Pennsylvanians. The basic health insurance plan for hospitals and medical providers was a top Personal Choice plan administered by Independence Blue Cross, the monthly costs of which (with some exceptions) were paid 100% by the School District; no extra charge was made for employees' spouses who could have obtained health insurance paid for in whole or in part by their own employers; and,



in addition, the School District contributed \$4,353 per employee (approximately \$1 million per week) to the PFT's own Health and Welfare Plan, which administered and provided dental, optical, and prescription drug benefits to the members of the PFT bargaining unit and others.

53. While generous health benefits like these were common a decade or so ago, in recent years most employers, beset by rising health care costs, have opted for less expensive plans, and also have shifted part of the burden of paying for them to their employees. In light of its perennial funding shortages, and ever rising costs, the School District has no choice but to follow suit.

54. The new terms and conditions imposed by the School District upon the PFT bargaining unit employees, and the savings that each will produce during the remainder of this fiscal year, are (in brief) as follows:

a. **Employee Medical Plan.** In the 2013-14 school year, the standard medical plan for most of the School District's employees, including those in the PFT bargaining units, was a customized Personal Choice 20/30/70 plan from Independence Blue Cross. Effective as of December 15, 2014, the School District's standard employee medical plan for most employees, including those in the PFT bargaining units, will be the less costly Personal Choice 320 plan (or a substantially equivalent plan). Employees will have the option of maintaining their enrollment in the current Personal Choice 20/30/70 plan by paying 100% of the

differential in the two plans' premiums. The 320 plan will provide the same medical coverage as the current Personal Choice 20/30/70 plan but will increase the participant's share of the cost through co-pays, deductibles and co-insurance, consistent with changes already agreed to by the administrators' union. [Estimated savings: \$5.584 million.]

b. **Employee Contribution to Medical Benefits.** Starting on December 15, 2014, all employees in the PFT bargaining unit will be required to contribute between 5% and 13% of their monthly costs, depending upon the size of their salaries. [Estimated savings: \$7.366 million.]

c. **Spousal Surcharge for Medical Coverage.** Starting on December 15, 2014, employees whose spouses have declined coverage offered by their own employers in order to receive free medical benefits through the School District will be charged a spousal surcharge of \$70 per pay period. [Estimated savings: \$4.087 million.]

d. **Opt-out Credit for Medical Coverage.** In the past, the School District paid an opt-out credit to employees who chose not to enroll in the medical benefits plan. Effective as of December 15, 2014, this credit has been eliminated. [Estimated savings: \$766,929.]

e. **Contributions to the PFT Health & Welfare Fund.** The new terms and conditions eliminate contributions to the Health and Welfare Fund run

by the PFT, which has built up a large surplus. In their place will be a School District-administered plan covering dental, optical, and prescription drug benefits. The School District will not terminate contributions to the PFT's Health and Welfare Fund until December 15, 2014. The District-administered plan will take effect on July 1, 2015. [Estimated savings: \$22.462 million.]

f. **Uniform Per Diem Rate for Substitute Teachers.** Last year, the per diem rate (which is the amount paid to substitute teachers) was higher if the substitute was a retiree. Starting on October 6, 2014, the per diem rate for certified teachers will apply to all substitute teachers, whether or not retired. [Estimated savings: \$2.04 million.]

g. **Contributions to PFT Legal Fund.** In the past, the School District made contributions to a PFT-administered fund that provided certain legal services free of charge to PFT bargaining unit employees. These contributions have been eliminated, effective as of October 6, 2014. [Estimated savings: \$1.369 million.]

h. **Wage Continuation Benefits.** The amount of wage continuation benefits, *i.e.*, sick leave and short-term disability leave, has been reduced as of December 15, 2014. [Estimated savings: \$23,346.]

i. **Termination Pay Benefits.** Starting on December 15, 2014, the amount of reimbursable accrued and unused vacation, sick and personal time

that is paid upon termination of employment will be reduced, but for new hires only. [Estimated savings: \$99,265.]

55. Implementing all of the changes listed above is estimated to reduce the School District's expenses for the remainder of the 2014-2015 fiscal year by \$43.798 million. For the following year (the 2015-2016 fiscal year), the changes are estimated to create savings of \$49.144 million.

### COUNT ONE

#### **DECLARATORY JUDGMENT– THE RIGHT OF THE SRC AND THE SCHOOL DISTRICT TO CANCEL THE EXPIRED COLLECTIVE BARGAINING AGREEMENT AND IMPOSE NEW ECONOMIC TERMS**

56. The paragraphs above are incorporated as though fully set forth herein.

57. Plaintiffs respectfully request that this Honorable Court, pursuant to the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531 *et seq.*, issue a declaratory judgment holding that the SRC has the power, under sections 693, 696(i), and 696(k) of the Public School Code (24 P.S. §§ 6-693, 6-696(i), (k)), to cancel the collective bargaining agreement with the PFT to the extent it still governs the parties' relationship, and to impose changes to various economic terms and conditions affecting fringe benefits (among other things) in order to effect needed economies in the operation of the School District's schools.

58. Pursuant to section 696(*i*) of the Public School Code (24 P.S. § 6-696(*i*)), the SRC has all the powers granted to a special board of control under section 693 of the School Code.

59. Section 696(k) of the Public School Code defines certain terms used in section 693 of the School Code “[f]or purposes of collective bargaining.” 24 P.S. § 6-696(k).

60. Section 696(k)(5) of the Public School Code further clarifies that the powers afforded the SRC by section 693 of the School Code are not subject to section 696(k)(5)’s statement that “nothing in this subsection shall eliminate, supersede or preempt any provision of an existing collective bargaining agreement until the expiration of the agreement unless otherwise authorized by law.” *Id.* This provision, like all of section 696(k), makes clear that the SRC’s powers under section 693 are specifically intended to apply to collective bargaining agreements between the School District and its unions.

61. Section 693(a)(1) of the Public School Code – as incorporated into section 696 by subsections (*i*) and (*k*) (including especially paragraph (5) thereof) – confers upon the SRC the power “[t]o cancel or renegotiate any contract other than teachers’ contracts to which the board or the school district is a party, if such cancellation or renegotiation of contract will effect needed economies in the operation of the district’s schools.” 24 P.S. § 6-693(a)(1).

62. Further proof of legislative intent to authorize the SRC to cancel collective bargaining agreements to save money came in 2012, when the General Assembly overhauled the financial distress provisions of the Public School Code. *See* Act of July 12, 2012 (P.L. 1142, No. 141). Through those amendments, the Legislature retained section 693, but limited its scope to school districts of the first class. Significantly, while the amendments accorded other financially ailing school districts the power to cancel or renegotiate contracts (using the same language as in section 693(a)(1) of the School Code), the amendments exempt altogether the collective bargaining agreements of those other school districts from the power of cancellation. *See* 24 P.S. § 6-642-A(a)(3). ***But, even though section 693 of the School Code also was amended, no such exemption for collective bargaining agreements was added to the SRC's power to cancel under section 693(a)(1).***

63. Where, as here, the Legislature adds an exception to a provision for all classes of school districts except districts of the first class, and preserves a parallel, identically worded provision for school districts of the first class but omits the exception, the difference obviously is a deliberate one. In other words, the Legislature had the opportunity to exempt from section 693(a)(1) of the Public School Code the SRC's power to cancel collective bargaining agreements, but it intentionally chose not to do so. *See Commonwealth v. Mazzetti*, 615 Pa. 555, 44

A.3d 58, 67 (2012) (when section of statute contains a given provision, omission of such provision from a similar section is significant to show a different legislative intent) (citing *Fonner v. Shandon*, 555 Pa. 370, 724 A.2d 903, 907 (1999)).<sup>4</sup>

64. On October 6, 2014, the SRC adopted a resolution canceling the collective bargaining agreement with the PFT (to the extent it continues to govern the parties' relationship) and authorizing the Superintendent of the School District to implement modified economic terms and conditions for PFT members in order to achieve needed economies in the operation of School District schools.

65. A collective bargaining agreement is unquestionably a contract in the eyes of the law. *Kozura v. Tulpehocken Area Sch. Dist.*, 568 Pa. 64, 71, 791 A.2d 1169, 1174 (2002); *Community Coll. of Beaver Cty. v. Community Coll. of Beaver Cty. Soc. of the Faculty*, 473 Pa. 576, 595, 375 A.2d 1267, 1276 (1977).

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<sup>4</sup> Wholly apart from the SRC's power to cancel the collective bargaining agreement with the PFT, the SRC and the School District had the power (once that agreement expired) to impose new terms and conditions regarding matters for which section 696(k)(2) of the Public School Code expressly eliminates any duty to bargain. Those matters include: (i) contracts with third parties for the provision of goods and services, including educational services or the potential impact of such contracts on employees; (ii) decisions related to reductions in force; (iii) staffing patterns and assignments, class schedules, academic calendar, places of instruction, pupil assessment and teacher preparation time; (iv) the use, continuation or expansion of programs designated by the SRC as pilot or experimental programs; (v) the approval or designation of a school as a charter or magnet school; and (vi) the use of technology to provide instructional or other services.

66. The exception in section 693(a)(1) of the Public School Code for “teachers’ contracts” does not apply since the term “teachers’ contracts” has a “peculiar and appropriate meaning” in Pennsylvania law that does not include a collective bargaining agreement between the School District and a union.<sup>5</sup> Rather, the term refers to the uniform, written employment contracts that individual teachers have with their school districts – *i.e.*, contracts that are mandated by the Public School Code, cannot be varied, and are set out word-for-word in section 1121(c) of the School Code, 24 P.S. § 11-1121(c).

67. The Pennsylvania Supreme Court several times has referred to section 1121(c) contracts as “teachers’ contracts.” *See, e.g., Teachers’ Tenure Act Cases*, 329 Pa. 213, 225, 197 A. 344, 353 (1938) (discussing effect of Tenure Act on existing teachers’ contracts); *Snyder v. Murphy*, 333 Pa. 305, 5 A.2d 226 (1939) (referring to individual Tenure Act contract as “teacher’s contract”); *Spigelmire v. Sch. Dist. of Borough of N. Braddock*, 352 Pa. 504, 507, 43 A.2d 229, 230 (1945)

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<sup>5</sup> The Statutory Construction Act of 1972 provides, in pertinent part:

Words and phrases shall be construed according to rules of grammar and according to their common and approved usage; *but technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in this part, shall be construed according to such peculiar and appropriate meaning.*

1 Pa.C.S. § 1903(a) (emphasis added).



(same); *Reichley v. North Penn Sch. Dist.*, 533 Pa. 519, 525, 626 A.2d 123, 127 (1993) (same).

68. There can be no question that canceling the collective bargaining agreement and imposing the fringe benefit and other changes described above will effect needed economies in the operation of the School District's schools. The changes are projected to reduce the School District's expenses by approximately \$43.798 million over the remainder of the 2014-2015 fiscal year ending June 30, 2015. In the year after that, the changes are estimated to produce \$49.144 million in savings, which will help to erase a projected deficit that measures \$71 million even after accounting for projected cigarette tax proceeds. The money will also be used to cover the funding shortfall expected this year despite the cigarette tax. And it can be used to restore essential resources such as books, paper supplies, and staffing that suffered from last year's cutbacks.

69. Plaintiffs expect the PFT to contest the right of the SRC and the School District to make changes to the employee benefits set forth in the cancelled collective bargaining agreement and to claim that the actions taken by the SRC and School District constituted a breach of the agreement, as well as an unfair labor practice under PERA.

70. Under PERA, a public employer in general has a duty to continue to comply with certain of the terms of a collective bargaining agreement, even after

that agreement expires, until such time as the union and the employer either achieve a new agreement or reach an impasse in their efforts to negotiate one. *See, e.g., Norwin v. Sch. Dist. of Belan*, 510 Pa. 255, 507 A.2d 373, 379 (1986); *In re Appeal of Cumberland Valley Sch. Dist.*, 483 Pa. 134, 394 A.2d 946, 950 (1978).

71. PERA, however, does not address an employer's duties following the *cancellation* of a collective bargaining agreement. Indeed, so far as Plaintiffs are aware, that question has never been considered by any Pennsylvania court.

72. The cancellation of a collective bargaining agreement pursuant to section 696 of the Public School Code (in conjunction with section 693(a)(1)) is inherently different than the expiration of a collective bargaining agreement.

73. Section 696 of the Public School Code was adopted to give special powers to the Department, the SRC and the School District during periods when (as now) the School District is in a state of financial distress.

74. After the Secretary has made a declaration of distress, and the SRC has been established, section 693(a)(1) of the Public School Code specifically authorizes cancellation when doing so would effect needed economies in the operation of the School District's schools.

75. It stands to reason that when the General Assembly conferred the power to cancel collective bargaining agreements upon the SRC and the School District for the purpose of achieving needed economies in the School District's

operations, it did not intend that the School District would be required by PERA to keep honoring the canceled agreement's terms for as long as a union could drag out the bargaining over a new contract. No court should construe sections 693 and 696 of the Public School Code as having intended that result since doing so would render the power to cancel completely meaningless. 1 Pa.C.S. § 1922(1) (In construing a statute, the presumption is “[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.”).

76. In addition, section 28(a) of Act 46 of 1998 repealed PERA “insofar as it is inconsistent with” Act 46’s provisions. If PERA were construed to require the School District to refrain indefinitely from implementing less expensive economic terms despite having canceled the collective bargaining agreement, the result would be plainly inconsistent with section 693(a)(1)’s cancellation power and could not stand.

77. In short, cancellation pursuant to sections 693 and 696 of the Public School Code frees the School District from having to continue to bear the financial burden of economic terms of the canceled collective bargaining agreement while trying to negotiate a new one. Instead, as a fiscally distressed school district of the first class, the School District is empowered by statute to cancel the collective bargaining agreement and promptly to impose new, less onerous, economic terms and conditions.

78. In the fulfillment of its statutory responsibilities, the Department has a legally enforceable interest in seeing that the School District is able to utilize its statutory powers to work its way out of fiscal distress.

79. An actual controversy exists among the parties in which the parties hereto have a direct and substantial interest. The matter is ripe for judicial resolution in the form of a declaratory judgment.

80. The Declaratory Judgments Act is a remedial statute that has as its purpose “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” 42 Pa.C.S. § 7541.

WHEREFORE, Plaintiffs, the School Reform Commission, the School District of Philadelphia, and the Pennsylvania Department of Education, respectfully request this Honorable Court to grant a declaratory judgment in their favor and to declare as follows:

a. The SRC has the right under sections 693 and 696 of the Public School Code to cancel the expired collective bargaining agreement with the PFT, to the extent the agreement continues to govern the parties’ relations;

b. The cancellation of the collective bargaining agreement authorized the SRC and the School District unilaterally to impose changes to employee welfare, health and other benefits, including changing the standard medical plan provided to employees in the PFT bargaining units; requiring all such

employees to contribute to medical insurance costs; imposing a spousal surcharge for medical coverage in certain circumstances; eliminating opt-out credits for medical coverage; eliminating contributions to the PFT Health & Welfare Fund and implementing in its stead a District-administered dental, optical and prescription drug benefits plan; reducing wage continuation benefits, termination pay benefits, and the uniform per diem rate for substitute teachers; and eliminating contributions to the PFT Legal Fund;

c. The cancellation and imposition of these new terms of employment effected needed economies in the operation of the School District's schools; and

d. The power of the SRC and the School District to cancel a collective bargaining agreement exists despite the general duty under PERA to refrain from making changes on matters involving wages, hours and other mandatory terms of employment after the expiration of a collective bargaining agreement (absent certain conditions).

Plaintiffs also seek such other and further relief as this Court may deem just and proper under the circumstances.

## COUNT TWO

### **DECLARATORY JUDGMENT– THE RIGHT OF THE SRC AND THE SCHOOL DISTRICT TO IMPOSE NEW TERMS BECAUSE THE NEGOTIATIONS HAD REACHED AN IMPASSE**

81. The foregoing paragraphs are incorporated as though fully set forth herein.

82. The SRC, the School District and the Department further request the Court to issue a declaratory judgment, pursuant to the Declaratory Judgments Act, 42 Pa.C.S. §§ 7531 *et seq.*, on an alternative ground: that the SRC and the School District had the right to impose new fringe benefit and other terms because the existing collective bargaining agreement had expired and, before the new terms and conditions were imposed, the parties' negotiations over a new collective bargaining agreement had reached a bargaining impasse.

83. As noted above, under PERA, as interpreted by the Pennsylvania Supreme Court's precedents, when negotiations toward a new collective bargaining agreement reach an impasse, a public employer need not continue to observe the mandatory terms and conditions of the expired agreement and instead may make unilateral changes in those terms and conditions of employment that are consistent with its pre-impasse proposals. *Norwin v. Sch. Dist. of Belan*, 507 A.2d at 380 n.9; *Williamsport Area Sch. Dist.*, 406 A.2d at 331.

84. The definition of an impasse is set forth in *Norwin*:

The definition of an “impasse” is that point at which the parties have exhausted the prospects of concluding an agreement and further discussions would be fruitless . . . [;] a state of facts in which the parties, despite the best of faith, are simply deadlocked.

*Norwin*, 507 A.2d at 380 n.9 (quoting R.A. Gorman, *Basic Text in Labor Law, Unionization and Collective Bargaining*, at 445-47 (1976)).

85. Although a finding of impasse is often a fact-intensive matter, in the present case, there can be no question that impasse has been reached.

86. The School District began negotiations with the PFT 21 months ago, beginning in January 2013. Throughout that time, the parties had the benefit of the assistance of state-appointed mediators. Hundreds of proposals were exchanged by the parties, who held more than 110 bargaining sessions. At all times, the School District sought tens of millions of dollars per year in necessary economic concessions – and, at all times, the parties remained tens of millions of dollars apart.

87. The School District tried mightily to reach an agreement with the PFT that would finally come to grips with the dismal fiscal reality that the School District is facing, but these efforts met with failure. If ever there was a clear case of exhausting the possibility of reaching agreement to the point of “deadlock[],” *Norwin, supra*, this is it.

88. The Department has a direct and substantial interest in ensuring that the SRC and the School District can take the actions necessary to establish the School District's long-term fiscal stability, while maximizing the educational opportunities for the School District's students.

89. An actual controversy exists among the parties in which the parties all have a direct and substantial interest. The matter is ripe for judicial resolution in the form of a declaratory judgment pursuant to 42 Pa.C.S. § 7541.

WHEREFORE, Plaintiffs, the School Reform Commission, the School District of Philadelphia, and the Pennsylvania Department of Education, respectfully request this Honorable Court to grant a declaratory judgment in their favor, holding that the parties' negotiations toward a new agreement had reached an impasse, and the SRC and the School District were therefore free to impose new economic terms and conditions under the law governing impasse.

Plaintiffs also seek such other and further relief as this Court may deem just and proper under the circumstances.

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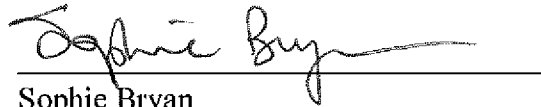
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The School District of Philadelphia

Date: October 6, 2014

**VERIFICATION**

I am the Director of the Strategy Delivery Unit for the Office of the Superintendent, School District of Philadelphia, and as such I am authorized to make this verification on behalf of the School District of Philadelphia and the School Reform Commission. The facts set forth in the foregoing Action for Declaratory Judgment are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. § 4904 related to unsworn falsification to authorities.

A handwritten signature in cursive script, reading "Sophie Bryan", written over a horizontal line.

Sophie Bryan  
Director, Strategy Delivery Unit  
Office of the Superintendent  
School District of Philadelphia

Dated: October 1, 2014

# Exhibit 2

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# Pennsylvania Department of Education

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Commonwealth of Pennsylvania  
Department of Education  
333 Market Street  
Harrisburg, PA 17126-0333

## **Student Services Report** **Tuesday, September 16, 2014**

**Entity:** Philadelphia City SD  
**Address:** 440 North Broad Street  
Philadelphia, PA 19130-4015

## **Educational Community**

The School District of Philadelphia is notably the eighth largest urban school system in the United States and located in the fourth largest city in the nation—Philadelphia. District educates SDP educates 11% of the 1.8 million school age children in Pennsylvania. Approximately 1.4 million reside in Philadelphia's city proper and 5.8 million in the Greater Philadelphia Metropolitan Area.

Philadelphia's economy depends on industries and services such as manufacturing, oil refining, food processing, health care and biotechnology, tourism and finance. The city is also an important center for law and medicine. Area law schools include University of Pennsylvania Law School, Drexel University Earle Mack School of Law, Temple University Beasley School of Law, Rutgers University School of Law in nearby Camden, NJ, Villanova University School of Law, and Widener University School of Law. The American Law Institute is also located in the city. Since colonial times, Philadelphia is recognized as a distinguished center for medicine. Several teaching hospitals, research centers, medical schools, major national science museums and national associations reside within the city; in fact, health care is the largest employment sector. In addition, The University of Pennsylvania is the city's largest employer. Given Philadelphia's prominence in medical fields, the region naturally supports the pharmaceutical industry, including several pharmaceutical companies.

The median income for city households is estimated at \$30,746, and the median income for families at \$37,036. About 19% of families and 23% of the population are below the poverty line, including 32% of the children (under age 18). Population estimates on race include 45% Black, 10% Latino, 39% White, 6% Asian, and other. District enrollment estimates include 62% African American, 17% Latino, 14% White, 6% Asian, and 2% other. More than 500,000 immigrants reside in the Philadelphia metropolitan area—an increase of approximately 113,000 since 2000. At present, the growing immigrant population comprises 10.9% of the city's population.

A snapshot of the Philadelphia's student population as of September 2011 includes 81% low income, 8% English Language Learners—representing over 113 languages, and 14% in special education.

The educational community draws financial and non-financial resources from partnerships with organizations and local institutions representing nearly every economic sector, such as major financial institutions, universities, corporations, and non-profit community organizations. The collaboration of educational and economic sectors in Philadelphia results in a number of mutual benefits such as student internships, executive read-to-me programs for early childhood classrooms, and career training opportunities (e.g., culinary arts).

The close and active partnerships also lead to positive perceptions and deeper understandings of our collective commitment to public education and the children who attend our schools.

Snapshot of Students, Teachers, and Schools (as of September 2011):

- 146,090 students (not including charter students)
- 56% African American, 19% Latino/Hispanic, 14% White, 7% Asian/Pacific Islander, 4% Other
- 249 schools

## **Mission**

The mission of the School District of Philadelphia is to provide a high quality education that prepares, ensures, and empowers all students to achieve their full intellectual and social potential in order to become lifelong learners and productive members of society.

While the School District of Philadelphia has made progress over the past eight years in improving student achievement, we recognize that we must accelerate that progress for our students if we want them to become successful in their future endeavors and productive citizens of a global society. We also recognize and cannot continue to tolerate the insidious opportunity and achievement gap that remains for too many of our students, and we must work to eradicate that gap. As we work to increase achievement and close this opportunity and achievement gap, we must celebrate and embrace the multicultural diversity of our students and families. We must put in the supports and systems that will lead to accelerated student achievement. We must work to allocate resources equitably across the District in schools and for students. We also must hold the adults accountable for the success of our students because we know the critical role that adults play in bringing about that success.

We chose a single word to create a picture of what all these significant but separate actions will achieve. It is a word that most every child can respond to easily: Imagine.

Imagine our schools in 2014. When we succeed in implementing this plan, we will see ...

... a great city system of schools in which teachers, principals, parents, staff, policymakers, and the entire community collectively focus all energy, efforts, planning and development, resources, and initiatives on building a 21st-century culture of achievement ... where children come first, excellence is the norm, talent is nurtured, opportunities are made equal, and success is measured by the steady improvement of teaching and learning in classrooms system-wide ... resulting in accelerated student progress ... a school system in which all students succeed, families have many choices, the staff is great, adults are accountable, and world-class operations support the entire enterprise.

In the following sections of this strategic plan, you will find more detailed descriptions of the schools we imagine. We have organized our thinking into five overarching priorities:

**Student Success.** We will ensure students graduate with the academic skills necessary for success in college, work, and life.

**Quality Choices.** We will build a system of great schools in which success is supported, replicated, and rewarded and failure is not tolerated.

**Great Staff.** We will recruit, develop, and retain talented people who reflect the diversity of our student body.

**Accountable Adults.** We will hold all adults accountable for delivering on our promises to children.

**World-Class Operations.** We will use world-class business, operational, and communication practices that support teaching and learning as we maintain what works, implement change, and introduce new approaches that help our students succeed.

If we are to realize in 2014 what we can now imagine, it will take a commitment from all of us — all of us who are capable of encouraging, challenging, teaching, supporting, inspiring, and celebrating children. The children of Philadelphia deserve no less than our best.

# SRC Policy 101. SCHOOL DISTRICT PHILOSOPHY, MISSION, AND GOALS

1. The School District of Philadelphia is an organization dedicated to achieving excellence in education. Its mission is founded on the belief that all children can learn. Its major objective is to motivate all students to be fully aware of their individual capabilities and potential and to stimulate their effort toward lifelong learning as competent and productive human beings.

2. Inherent in the mission is the development of high levels of competence in basic skills; the appreciation of human values, attitudes and cultures; the fostering of independent thinking; the cultivation of understanding and appreciation of individual differences, and improving the ability to adapt to the technological changes of society.

3. The essential components of this educational process are intellectual, social, and ethical development. Of primary concern are the elements of thought: perception, analysis, diagnosis, comprehension, judgment, and synthesis. These elements constitute the basic dimensions of "learning to learn."

4. There shall be a printed statement of educational goals that describes current expectations of student achievement upon completion of a program of studies in the Philadelphia Public Schools. These statements shall include:

- a. The development of competence in reading, writing, speaking, listening, mathematics, science, reasoning, life skills, computer literacy, social studies, foreign languages, the arts, and physical and health education.
- b. The development of human values emphasizing interdependence among people *as well as understanding and appreciation of other social, cultural, racial, ethnic and religious groups* .
- c. The development of understanding of and participation in our democratic form of government.
- d. The development of career preparation, *knowledge* , skills, and *attitudes*.
- e. This statement shall be available in every classroom and office as well as available to the public and shall serve as an official guide to the staff for program development and implementation.

5. The achievement of the above goals requires that the School District:

1. Provide a variety of educational programs to meet the specific needs of individual students, including Special Education, Early Childhood, *Bi-lingual* and Alternative Programs
2. Provide multi-racial and multi-cultural opportunities for all students
3. Implement a comprehensive program in career education
4. Improve staff performance at managerial, instructional, and supportive service levels
5. Encourage improvement in student and staff attendance and punctuality
6. Provide a safe, clean, supportive physical, social, and emotional environment for learning
7. Develop and promote greater economy, efficiency, and effectiveness throughout the School system
8. Provide for the meaningful involvement of parents and the total community in the educational process
9. Implicit in this statement is the requirement that each staff member accept responsibility for the accomplishment of these goals.

(The SRC is currently reviewing all its policies and may soon be adopting a new version of the above policy.)

## Vision

Imagine a great city system of schools in which teachers, principals, parents, staff, policymakers, and the entire community collectively focus all energy, efforts, planning and development, resources, and initiatives on building a 21st—century culture of achievement ... where children come first, excellence is the norm, talent is nurtured, opportunities are made equal, and success is measured by the steady improvement of teaching and learning in classrooms system-wide ... resulting in accelerated student progress ... a school system in which all students succeed, families have many quality choices, the staff is great, adults are accountable, and world-class operations support the entire enterprise (*Imagine 2014*).

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## **Shared Values**

### **Superintendent's Core Beliefs**

1. Children come first.
2. Parents are our partners.
3. Victory is in the classroom and facilitated by a strong instructional leader.
4. Leadership and accountability are the keys to success.
5. It takes the engagement of the entire community to ensure the success of its public schools.

### **Guiding Principles from The School District of Philadelphia's *Imagine 2014* Strategic Plan**

1. Increasing achievement and closing the opportunity and achievement gap for all students.
2. Ensuring the equitable allocation of all District resources.
3. Holding all adults accountable for student outcomes.
4. Satisfying parents, students, and the community.

## **Strategic Planning Process**

Countless individuals, community groups and organizations from inside and outside the School District of Philadelphia participated in a process to help shape a strategic direction for our schools for the next five years. The process began with working groups comprised of individuals from both inside and outside the school district, reviewing data and reports to build on what works and continue to increase student achievement. Then, once a draft was created from this input, the district then engaged in an extensive process over two months to gather feedback and input from the wider

community. Some attended large-scale community meetings where they heard presentations about the broad goals of the plan and then chose to discuss one goal area in more detail. Some heard the conversation with the assistance of translators, who made the plan understood in six languages. Others participated through meetings of their organizations, such as City Year and Project U-Turn Collaborative, or at roundtables for parents, student government, faith-based organizations, and university faculty. By the end of the community engagement process, thousands of parents, students, staff, and community members had weighed in on the first draft.

Their comments and questions were captured by facilitators and scribes at each session and then reviewed by District staff to determine the overall response to the plan as well as recommendations for change. Overall, there is overwhelming support for the plan and the content of the five goals.

After many months of community meetings and listening symposiums, the work of sorting, summarizing, categorizing and prioritizing ideas, initiatives, and recommendations from a mountain of feedback has led to the District's overall strategic plan, *Imagine 2014*.

## Strategic Planning Committee

Name	Affiliation	Membership Category	Appointed By
Bailey, Ernie	Department of Human Services	Community Representative	Brenda B. Taylor, Deputy Chief, Office of Specialized Instructional Services
Bratton, Nancy	School District of Philadelphia	Administrator	Darrienne Driver, Deputy, Office of Curriculum, Instruction, and Professional Development
Caulk, Emmanuel	School District of Philadelphia	Administrator	Penny Nixon, Associate Superintendent of Schools
Chen, Linda	School District of Philadelphia, Deputy, Teaching and Learning	Administrator	Maria Pitre-Martin, Chief Academic Officer
Cooper, Rhona	School District of Philadelphia- Office of Specialized Instructional Services	Ed Specialist - School Nurse	Brenda B. Taylor, Deputy Chief, Office of Specialized Instructional Services
Deaner, Anne	School District of Philadelphia- Office of Specialized Instructional Services	Administrator	Penny Nixon, Associate Superintendent of Schools
Driver, Darrienne	School District of Philadelphia	Administrator	Penny Nixon, Associate Superintendent of Schools
Duran, Francisco	School District of Philadelphia	Administrator	Penny Nixon, Associate Superintendent of Schools
Feldman, Gary	School District of Philadelphia	Ed Specialist - School Psychologist	Brenda Taylor, Deputy Chief, Specialized Services
Feria, Lucy	School District of Philadelphia	Administrator	Penny Nixon, Associate Superintendent of Schools
Hanna, Tomas	School District of Philadelphia, Chief of School	Administrator	Arlene Ackerman, Superintendent

Operations			
Hook, Ambra	School District of Philadelphia	Administrator	Darienne Driver, Deputy, Office of Curriculum, Instruction, and Professional Development
Meller, Jennifer	School District of Philadelphia- Office of Specialized Instructional Services	Administrator	Brenda B. Taylor, Deputy Chief, Office of Specialized Instructional Services
Nixon, Penny	School District of Philadelphia	Administrator	Leroy Nunery, Acting Superintendent
Nunery, Leroy	School District of Philadelphia	Administrator	SRC
Phillips, Dee	Philadelphia Federation of Teachers	Administrator	Penny Nixon, Associate Superintendent of Schools
Piekarski, Donna	School District of Philadelphia, Deputy of Early Childhood	Administrator	Maria Pitre-Martin, Chief Academic Officer
Pitre-Martin, Maria	School District of Philadelphia- Chief Academic Officer	Administrator	Arlene Ackerman, Superintendent
Pombar, Frank	School District of Philadelphia, Deputy, Attendance and Truancy	Administrator	Arlene Ackerman, Superintendent
Reveron, Delia	School District of Philadelphia- Office of Attendance and Truancy	Administrator	Brenda B. Taylor, Deputy Chief, Office of Specialized Instructional Services
Silverman, Michael	School District of Philadelphia	Administrator	Penny Nixon, Associate Superintendent of Schools
Teasley, Traci	School District of Philadelphia, Assistant Regional Superintendent	Administrator	Arlene Ackerman, Superintendent
Williams, Linda	School District of Philadelphia	Administrator	Penny Nixon, Associate Superintendent of Schools
Zibbell, Rachel	School District of Philadelphia- Office of Specialized Instructional Services	Administrator	Brenda B. Taylor, Deputy Chief, Office of Specialized Instructional Services

## Current Student Services

Service/Resource	Description
(01) Transportation	The Transportation Services Division of the School District provides transportation to and from school for those eligible Philadelphia resident students in accordance with federal and state mandates, court decisions, and School District Policy. Over 93,000 public, non-public and charter school students receive transportation on over 1,375 routes daily. Additionally, this Division provides service to the schools during off-peak periods for educational programs, cultural trips, athletic team movements and special events.

(02) Audiological Services	Main Line Audiology (MLA) provides deaf and hard of hearing students in the School District with mandated hearing evaluations, measuring, fitting, maintenance of hearing aides and ear molds, and the purchasing, maintenance and repairing of audiological equipment including sound field systems, ear molds and hearing aides. MLA also consults with students, parents and staff regarding the placement and care of equipment that is used in schools to improve students' hearing per their Individualized Education Programs (IEPs). Students who are deaf or hard of hearing often require amplification, which can be provided by a hearing aide and/or a sound field system. The provision and maintenance of hearing aides and sound field systems allows the students to access and achieve in the general education curriculum.
(03) Psychological Services	100 psychologists provide services through a multi-tiered consultative model, incorporating pre-referral interventions (instructional consultation in support of classroom teachers, school wide positive behavioral health support, and CSAP participation), diagnostic/prescriptive assessments, and assistance in development of IEP's, monitoring of identified special ed students, and providing of consultative and direct services during and after behavioral health emergencies. At all levels psychologists interact with outside agencies and personnel to assist in comprehensive support of the total child.
(04) Physical Therapy and Occupational Therapy	Approximately 40 licensed Occupational and Physical Therapists provide School Based OT/PT Services in order to assist students to get to and from school safely and to function in the classroom and other parts of the school environment. Motor and sensory deficits, alterations and needs that impact learning are addressed in the school setting. Components of a School Based Physical and Occupational Therapy program include: screening and evaluation of children with a wide variety of functional deficits; program planning based on evaluation; direct therapy activities designed to meet program goals; comprehensive student support team participation; consultation to teachers, other school personnel and parents to maximize classroom performance and home programming; and staff development and training for individuals and groups working with children who have special needs. Examples of such services include teaching the student to use assistive devices that make it possible for him to write; teaching the student how to climb and descend stairs safely; and developing an adapted physical education program.
(06) Counseling Services	The current counselor to student ratio in School District schools is 1:530. Counselors understand that a child's readiness for instruction is determined by factors such as safety, physical and emotional health, attendance, and involved, caring adult support. The program of counseling and guidance services is designed to address the educational, emotional, and social development of all students.
(07) School Health Services	Services are provided by approximately 300 certified school nurses, in 5 major areas: 1. Management of on-site illness and injury; 2. Administration of medications and treatments; 3. Surveillance of communicable disease and immunization compliance in collaboration with the Philadelphia Department of Public Health; 4. Performance of mandated screenings: vision, hearing, scoliosis, growth; documentation of mandated physical and dental exams and coordination with Philadelphia Department of Health Community Health Centers (10) and school-based health centers (5) to obtain primary health care for students in need; 5. Case management and referral to identify

	resources and accommodations for children with special health needs, including homebound services to children with illnesses that prevent them from attending school temporarily (School District-employed teachers) and hospital/homebound services (contracts with St. Christopher's Hospital for Children and Children's Hospital of Philadelphia), medical transportation (provided by School District Transportation Office), follow-up to correct with community providers for identified vision problems (Eagles Youth Partnership and Pennsylvania College of Optometry), and oral health problems (PA Smile, St. Christopher's Hospital/Ronald McDonald Dental Care Mobile, Oral Health Impact Project, Kid Smiles).
(08) Social Work Services	Social service support is provided through School District staff and through contracted/partnership programs with community based entities. The following are the School District based resources: • 23 Social Service Liaisons provide social service support to the schools in 'Empowerment 1' (Corrective Action). (MA Level) • 3 Social Work Services Coordinators provide case management and clinical support to 3 'Empowerment 2' schools as part of a Federal Counseling Grant, Project ACCELERATE. (MA Level, certified) • 2 Social Work Services Coordinators provide case management and clinical to 2 high schools as part of the Keys to Success program. (MA Level) • 10 CSAP/Behavioral Health Liaisons (1 per Region) provide crisis intervention support, professional development, and technical assistance for the Student Assistance Process to schools. (MA Level) • 1 Interagency Coordinator The following personnel are contracted through partnership with community based entities: • 100 Consultation and Education Specialists (C&Es), serving 207 schools, link children and families to community based programming based on needs identified through the CSAP process. (BA Level) • 3 Behavioral Health Agencies are contracted to provide part time social workers to 13 High Schools as part of the Keys to Success Program. (MA Level)
(09) Parent Counseling, Training	There are myriad resources for parent training in the School District. The Parent University allows parents to more fully participate in their child's education and supports greater collaboration with the district and individual schools. The Project ACCELERATE social service workers provide frequent parent support groups and family wellness groups in three Empowerment schools. The Office of Specialized Instructional Services regularly provides specific parent trainings in conjunction with the Local Task Force and other parent groups.
(10) Speech and Language Pathology/Therapy	The School District provides speech and language services to more than 2,500 students who are diagnosed with Speech and Language Impairment. 100 qualified speech therapists and additional contracted providers offer consultative, collaborative and direct support to students; teach them how to integrate speech/language skills across educational settings; and works within the school team to recommend and provide appropriate support for students.
(11) Adaptive Physical Education	Students with medical disabilities are provided with a Physical Education (P.E.) program defined by the limitations prescribed by their health providers. Students with special learning needs receive a P.E. program in accordance with goals determined by the school team and articulated on their Individualized Education Programs (IEP). Schools that serve students with special learning needs have specialized P.E. equipment in order to achieve goals.
(12) Behavior	• Positive Behavior Support- Universal Supports: Historically provided

Intervention Program	through grant funding to various schools. Currently PBS coaching support is being provided by Devereux Center for Effective Schools to 3 schools, as part of Project ACCELERATE grant. In addition, a PBS leadership team has been established to build an infrastructure to implement PBS 'district-wide' • CSAP/Behavioral Health Liaisons: 10: 1 per Region CSAP/Behavioral Health Liaisons provide crisis intervention support, professional development, and technical assistance for the Student Assistance Process to schools (Regionally based). (MA Level)
(13) Assistive Technology Devices and Services	The School District provides a wide range of assistive, adaptive, and rehabilitative devices for students with disabilities so that they benefit from the Least Restrictive Environment.
(15) Interpreter	The School District provides extensive support, through sign language interpreting services, for deaf or hearing impaired students, parents, teachers and the community, specifically at Individualized Education Programs (IEP) meetings, in classrooms, and for coverage at interagency meetings for students. For the past 11 years, the Deaf-Hearing Communication Center (DHCC) has provided interpreter support for the School District. During the 2008/09 year, the School District increased the level of services provided for both the public and for individual students. DHCC provides sign language interpreter service at School Reform Commission meetings to ensure the School District meets its obligations to provide support to the deaf and hard of hearing population under the Americans with Disabilities Act (ADA). The public engagement component of this service also expanded to include PSTV- Channel 52 broadcasts with sign language interpretation. Further, there has been an increase in the need for interpreter services for deaf students in mainstream settings. The School District's in house interpreter staff, along with support from DHCC, provides these services. By doing so, the School District meets the mandates for Least Restrictive Environment for students in mainstream programs and enables both deaf and regular education students the opportunity to learn together. The School District anticipates a continuation of this programmatic trend.
(16) Orientation and Mobility	Occupational and Physical Therapists and Vision Itinerants, based on either Individualized Education Program (IEP) or 504 Service Agreement goals as determined by the school team, provide services directly to students either in a 1:1 setting, in groups, or consultatively to classroom teachers and other school-based staff.
(17) Mental Health Services provided by other than IU/SD	• School-Based Behavioral Health (SBBH) Program: 28 schools, 11 providers. Is designed to meet the child's behavioral health needs while maintaining them safely in their regular classroom. • School Therapeutic Service: 14 Schools, 7 providers. Is mental health treatment service developed as an alternative to traditional "wraparound" services in school settings. • NURTURE program: 9 schools, 1 provider. Is a strengths-based model and maintains the child in the assigned school placement attending regular classes. it offers on-site group therapy, individual therapy and psycho-education, in collaboration with the child's family and any involved agencies.
Bullying Prevention	The Bullying Prevention Program is a school-wide multi-component program developed to create a school climate characterized by zero tolerance for bullying behavior. The major goal of the program is to reduce existing bully/victim problems in District schools, and prevent the development of new ones. Tailored to the unique climate of each school, the program offers training for all school staff including a

	<p>comprehensive examination of bullying behavior and appropriate means of intervening. Efforts to reduce opportunities and rewards for bullying behavior are focused on increasing awareness, developing clear and consistent rules and consequences for bullying and supporting improved peer relations through weekly classroom meetings. Taking a systemic approach in an effort to spread the message beyond school doors, the Bullying Prevention Program engages and trains parents, and works closely with community stakeholders to connect the dots between the home, school, and community. The district has on staff a certified trainer in the Olweus Bullying Prevention Program, one of eleven U.S. "Blueprints for Violence Prevention" selected by the Center for the Study and Prevention of Violence at the University of Colorado at Boulder.</p>
Peer Mediation	<p>Peer Mediation is a process that enables two or more students in a dispute to find mutually agreeable solutions to their differences with the aid of a mediator. In mediation, the participants decide and agree on win-win solutions. In an effort to provide an alternative to traditional disciplinary practices, peer mediation empowers student participants by enabling them to trust the fairness of the process and encouraging their participation. The district has on staff two certified trainers in "Peers Making Peace," identified as a promising program in the United States. Through participation in training and on-going support by identified school-based staff, student mediators acquire the skills of negotiation, communication, empathy, and leadership. Conducting mediation sessions allows for the application of these skills, resulting in safer, nurturing learning environments.</p>
Positive Behavioral Supports (PBS)	<p>The inclusion of school-wide Positive Behavior Support (PBS) further delineates strategies to develop a set of unified practices specifically to address the behavior and climate components of Single School Culture?, by establishing and maintaining effective school environments that maximize academic achievement and behavioral competence of all learners. To this end, the core components of the PBS model are implemented in each school, using a team approach. With professional development and central office support, all schools are required to implement the following PBS elements: three to five positively stated rules that adopted school-wide; positive social expectations of students that are defined and taught; acknowledgement of positive behaviors; consistent consequences for problem behaviors reinforced by the entire school family; and use data for decision making.</p>
Single School Culture (SSC)	<p>Single School Culture? is not a program but a way of organizing and running a school. It begins with shared norms, beliefs, values, and goals and results in agreed upon processes and procedures that produce consistency in practice. Single School Culture? is a methodology, adopted by the District, to assist schools in identifying common values, beliefs, and unified practices to address the areas of student achievement, behavior, and climate. To achieve SSC in each building, school teams participate in regularly scheduled meetings to analyze student data and identify and prioritize the problematic practices that impact staff and student morale, student achievement, and practice. Teams then determine appropriate practices and procedures to improve the identified issues and gain a staff consensus for implementation.</p>

## Needs Assessment

### Reflections

There are currently no reflections selected for this section.

The School District of Philadelphia, the eighth-largest public school district in the nation, must effect systemic change while enhancing capacity to meet the mental and physical health needs of children. With a diverse student population of some 170,000 public school students in grades K-12, 86% of all School District of Philadelphia (SDP) students come from historically-underserved racial and ethnic backgrounds (African-American, Latino, Asian or Native American). Nearly 13,000 students display limited English proficiency, and come from a range of homes amongst which over 60 different primary languages are spoken. Over 23,000 students have been diagnosed with significant physical and/or learning disabilities requiring special educational services.

Some 76% of enrolled students in the School District are from low-income families, as defined by federal (*Title I*) poverty criteria for participation in the Free/Reduced-Price School Lunch Program (FRPSLP). The correlation between socioeconomic status and student achievement has been well documented (U.S. Department of Education, National Center for Education Statistics, 1998-2005). Given how many Philadelphia families face the chronic stress of poverty, the reduced readiness with which the School District's children engage the learning process is significant. On the most recent Pennsylvania System of School Assessment (PSSA) examinations (administered statewide to all students in Grades 3, 5, 8 and 11) more than two-thirds of Philadelphia's students scored significantly below the 50<sup>th</sup> percentile (bottom two quartiles) in Reading and more than three-fourths were below the 50<sup>th</sup> percentile in Mathematics. Two-thirds of Philadelphia's schools have been placed in *School Improvement or Corrective Action* status under federal *No Child Left Behind (NCLB)* guidelines, reflecting repeated failure to make "Adequate Yearly Progress" (AYP) in improving low student test scores. This year, the District identified a cohort of seventy (70) schools designated in *Corrective Action II* status (for failure to make AYP for two consecutive years within the past five years) and thus requiring intensive intervention, including possible restructuring.

In addition to these well-documented learning challenges, studies show that many students living in poverty have more mental and physical health problems than more advantaged youth. Difficulties with school adjustment often impede student achievement, can frequently manifest in the display of disruptive behaviors that degrade school climate, and may reduce school effectiveness as an environment for teaching and learning. The magnitude of the need for the provision of additional supports through is great.

The School District is uniquely poised to address the complex educational, social, developmental, physical, and emotional, and behavioral needs of its students by virtue of the fact that we are situated in a major metropolitan area. Not only does the School District, coordinated by the Office of Specialized Instructional Services, provide an array of internal supports, but we also partner closely with social service, health, and behavioral health provider agencies to more comprehensively address student needs (see current services and resources list).

## **BEHAVIORAL HEALTH/SOCIAL SERVICES**

### **Uniformity/Outcomes**



In an effort to address the complicated and enduring behavioral needs of Philadelphia's school children, many models have been utilized. The range and intensity of these interventions has been variable, and it has been difficult to effectively communicate and consistently determine salient outcomes. A more unified service delivery model is needed that includes both cohesive outcomes and the high level of professional training necessary if those outcomes are to be realized. Among currently existing programs, there is a need for clarification of expectations and improved communication across the region and the many provider agencies. Improvement in this area needs to be advanced at both the upper administrative levels and at an individual school program level.

### **Crisis Response**

While the School District does have a general protocol for crisis intervention and recovery, the agency for administration of these steps lies between two offices—the Office of Climate and Safety and the Office of Specialized Instructional Services. Through initial meetings, these two offices have begun to identify limitations to the plan and moving forward will establish a more unified protocol for crisis response and recovery. As part of this meeting process, it has also been elucidated that the high level of expertise required to both assess and follow-up with students and school communities following such incidents is also limited. The School District is working on partnering with community entities such as Philadelphia Coalition for Victims Advocacy (PCVA) and the Philadelphia Office of Behavioral Health to gain their assistance in improving crisis response via developing a unified model that encompasses best practices in the field. Through this burgeoning partnership, there will be a wider web of highly trained individuals to provide assistance when crises occur.

### **Comprehensive Student Assistance Program (CSAP)**

The CSAP/Behavioral Health Liaisons (CSAP/BHLs) have established professional development modules, which have been presented to all school principals to date. The CSAP/BHLs have also developed a training module utilizing a case management model to support monitoring of tier II cases (SAP). They provide on-going implementation support to every school in a variety of ways (see CSAP section). However, to date, the implementation of the CSAP and monitoring process has been inconsistent across the entire school district. These inconsistencies need to be addressed. The data collection as required to satisfy state requirements has improved with the training and monitoring by the CSAP/BHLs, however, the quality of the actual CSAP process and outcomes are not measured by the current data base. This limitation too is an area for improvement.

### **Counseling**

In addition as part of the SDP's comprehensive strategic plan, the School District will provide students with high quality accessible academic counseling, mental health services, and support programs that include partnerships with community agencies, businesses and industries, and colleges and universities. In addition the district ventures to provide personal and social counseling to help students resolve conflicts, define individual goals, and understand themselves and the needs of others. In order to accomplish these goals, the SDP will endeavor to improve student to school guidance counselor ratios in all schools.

## **STUDENT HEALTH SERVICES**

New morbidities related to poverty, violence and addiction and the inclusion of children with complex chronic health problems preclude limiting school health services to a fragmented,

narrowly- focused effort related to illnesses and injuries rather than a cohesive, broad-based program available to all children.

### **Assistance to Parents**

Often, schools are confronted with parents who struggle to meet the needs of their children in order to support learning. SDP's new Parent University is designed to assist parents in supporting their children to achieve academic success. The University will provide opportunities for parents to collaborate with schools and the District, to fully participate in their child's education. The curriculum design will accelerate student and parent learning outcomes, and strengthen parenting skills and knowledge.

### **Staffing**

There is the expectation that, in line with national trends, many school nurses will be of age to retire in next 5 years, resulting in staffing difficulties. To this end, support of School Health Services by Human Resources must increase in priority, so that staffing levels do not decrease and will actually increase.

### **Documentation of Health Services to Students**

The School District's electronic student health records system, while data rich and able to provide information consistent with State Health Services reporting requirements, needs to be more accessible and user friendly. This will require that the Student Health Services Division collaborate with the Office of Information Technology to develop web-based access to the Health Information System (HIS). The goal of collaboration is that documentation of services to students and written communication with parents is complete and efficient, and that the capacity to generate computerized forms directly from the HIS is also possible. To have the capacity to accomplish this at each school site will require the provision of updated computer hardware and software in health rooms.

### **Professional Development**

In order to enhance knowledge of new and complex needs that occur in student populations, whether medical, psychological, social or cultural, opportunities to provide clinically up-to-date, culturally competent and relevant professional development to school nurses. Improved professional development will explore, develop, and deliver online and in person programming opportunities that address health-related issues that affect students' abilities to learn and to be successful in the school setting.

## **PSYCHOLOGICAL SERVICES**

A number of initiatives can enhance the role of the school psychologist to direct more of their specialized knowledge toward early intervening. This expanded role needs to include improved school wide screening and monitoring of behavioral concerns; greater involvement in school wide positive behavior support; direct involvement in CSAP; more emphasis upon evaluation for instructional support; integrated crisis response; an expanded counseling role; and expanded consultation to ES and AS classrooms.

The School District of Philadelphia (SDP)/Intermediate Unit (IU) 26's School Reform Commission recently adopted "Imagine 2014," a five year Strategic Plan focused on building a 21st century culture of achievement for all students. This plan lays the foundation and framework to build a system of great schools for ALL children in Philadelphia. Through Imagine 2014, we have a

coherent focus and a roadmap of strategies and initiatives in five key priority areas: Student Success, Quality Choices, Great Staff, Accountable Adults, and World-Class Operations. Many of the key projects that will define our success are built on programs and support systems that result in the removal of barriers and enhanced learning environments. While the School District has made progress over the past few years in improving student achievement, we recognize that we must accelerate that progress for our students if we want them to become successful in their future endeavors and productive citizens of a global society. As we work to increase achievement and close this opportunity and achievement gap, we must celebrate and embrace the multicultural diversity of our students and families, while putting the supports and systems in place.

## **Action Plan**

### **Goal: IMPROVE BEHAVIORAL HEALTH SERVICES**

**Description:** The School District of Philadelphia will improve the coordination of behavioral health resources for students and provide a comprehensive continuum of care in our schools to remove barriers to learning and increase academic success. These school-linked behavioral health initiatives span from prevention to early intervention, and finally, to targeted support for students identified with needs.

**Strategy: Assuring quality of existing behavioral health partnership programs.**

**Description:** The District will assure quality of existing behavioral health partnership programs (CARE, SBBH, STS, NURTURE, TESC).

**Activity: Implementation provider uniformity**

**Description:** Establish uniformity of program implementation; develop plan for monitoring uniformity of program implementation; revise CARE Handbook; collaborate with SDP Office of General Counsel to establish 'acceptance parameters' for endorsement of Memorandum of Understanding between SDP and partnership agencies; pilot a model summit type meeting among regional behavioral health program providers to monitor uniformity of service delivery and to advance communication; develop an administrative level cross systems meeting schedule (SDP , CBH, and Program provider); follow meeting schedule

#### **Person Responsible Timeline for Implementation Resources**

None Selected	Start: 8/3/2009	-
	Finish: 8/31/2010	

**Status:** Not Started — Overdue

**Strategy: Developing uniform social service supports**

**Description:** The District will develop a uniform model of social service support in schools.

**Activity: New model development**

**Description:** Cross systems steering (DBH, DHS, SDP, DHO); draft summary and RFP; draft training modules and schedule; clarify and communicate intended outcomes to all stakeholders; hire Program Management Personnel, including Data manager; unified training; clarity of outcomes

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 6/30/2009	-
	Finish: 6/30/2010	

**Status:** Not Started — Overdue

**Strategy: Ensuring CSAP (SAP) uniformity across District**

**Description:** The District will ensure CSAP (SAP) uniformity of implementation.

**Activity: Implementation of CSAP uniformity**

**Description:** Improve system of accountability for CSAP progress monitoring; develop standardized guidelines for CSAP meeting schedule and structure; update CSAP procedural manual; communicate to and train SDP personnel in standardized guidelines; continue meeting with IT department to revise/update current data collection system

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

**Strategy: Establishing uniform crisis response**

**Description:** The District will establish a uniform policy and procedure for crisis response.

**Activity: Coordinated crisis response system**

**Description:** Develop Cross-Systems team to do gap analysis, utilize existing expertise/best practices to inform the model, continue city-level cross systems meetings to establish a 'Philadelphia Model' for Emergency Response (PCVA, DBH, Providers); Continue internal SDP Team meetings (OSCS/OSIS) to address gaps and needs; contact authors of identified model(s)

to provide expertise and consultation; plan kickoff event to engage and educate SDP and City stakeholders; identify funding sources to support consultation of experts and training personnel; Draft procedures incorporating the identified model(s) and NIMS/ICS; develop documentation to accompany procedures; develop training plan; Develop plan to communicate uniform model/policy/procedures to all SDP personnel; implement new model

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

**Strategy: Improving staffing ratios**

**Description:** The District will improve student to staff ratios of student support personnel

**Activity: Staffing supports for students**

**Description:** In Elementary Schools, provide parent ombudsmen, student advisors, and social service liaisons in each elementary school to identify students and families in crisis for early wrap-around services. In Middle Schools, ensure a ratio of one guidance counselor for every 150 students, provide every student with a mentor, advisor, advocate, or other adult who stays connected to that student throughout the middle grades experience. In High Schools, provide one grade-level counselor for every 200 students, who would stay with each group of students for all four years. Decrease overall student to counselor ratio to 500 to 1.

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

**Goal: IMPROVE PSYCHOLOGICAL SERVICES**

**Description:** The School District of Philadelphia is dedicated to improving the most effective method of providing school psychological services, through a multi-tiered consultative service delivery model. This model incorporates pre-referral intervention, diagnostic/prescriptive assessments, and program consultation to regular and special education staff.

**Strategy: Coordinating crisis response**

**Description:** The District will develop a coordinated response to crisis intervention.

**Activity: Coordinated crisis response system**

**Description:** Collaborate with behavioral health consultants and Office of School Climate and Safety; develop a set of common procedures for response to crisis intervention.

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 7/1/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

**Strategy: Developing best practices**

**Description:** The District will incorporate current best practice strategies and standardize psychological practice.

**Activity: Procedure manual**

**Description:** Update procedures manual with input from university consultant and hold regional focus groups meetings with psychologists and consultant, provide training on new procedures.

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 6/30/2009	-
	Finish: 9/30/2009	

**Status:** Not Started — Overdue

**Strategy: Developing proactive student support**

**Description:** The District will create an environment for proactive rather than reactive support.

**Activity: Pre-referral level of support**

**Description:** Mandate psychologist participation in CSAP; include psychologist in school wide PBS planning and implementation.

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

## **Strategy: Expanding psychological service**

**Description:** The District will expand the utilization of psychological services to include consultation.

### **Activity: Psychological consultation**

**Description:** Foster the greater use of psychologists' expertise in consultation and behavior support in schools; meet with Regional special ed directors, regional superintendents, and principals to expand the perception of psychologist services to schools.

#### **Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

## **Goal: IMPROVE SCHOOL HEALTH SERVICES**

**Description:** The School District of Philadelphia will improve school health services. School nurses and partnering community agencies will help to identify and provide support for health conditions that adversely impact learning and will help students to develop good health habits that will last a lifetime.

### **Strategy: Creating school safety, environment, and climate**

**Description:** The District will infuse school-based decision making with appropriate public health best practices

### **Activity: School based plans**

**Description:** School Nurse is a team member on all school leadership teams; School Improvement Plans and School Emergency Response Plans have health related components

#### **Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

### **Strategy: Ensuring quality student health services**

**Description:** The District will assure that all students are receiving high quality, developmentally appropriate health services at an expert level of nursing practice.

**Activity: School health service delivery**

**Description:** Provide school nurses with clinically up-to-date, culturally competent, relevant professional development on the provision of health services in the school setting; improve the ratio of school nurses to students so that students who are considered socially, educationally or physically at risk receive focused case management and support; hold monthly regional meetings, led by school health coordinators, to provide information consistent with District policy/procedure; hold city-wide school nurse meetings to address health issues that cut across all school communities; use alternate methods of delivery of professional development, including web-based programming; collaborate with Office of Human Resources to develop recruitment and retention practices

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

**Strategy: Improving Student Skills**

**Description:** The District will increase students' self-care skills and teach them to be responsible consumers of health care.

**Activity: Student/family interfaces**

**Description:** Use all student/family interfaces to provide relevant, developmentally appropriate, culturally competent health information, provide group and individual health counseling, expand formal programs in collaboration with community providers (e.g. STD education to all high school students by Phila. Dept. of Public Health)

**Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

**Strategy: Providing Parent Support**

**Description:** The District will assist parents to support their children in achieving success at school.



## **Activity: Parent resource development**

**Description:** Provide parents with health-related, evidence-based knowledge, skills and resources to support their children's education and increase student achievement, participate in parent meetings, collaborate with District's "Parent University" to offer information and resources

### **Person Responsible Timeline for Implementation Resources**

None Selected	Start: 9/7/2009	-
	Finish: Ongoing	

**Status:** Not Started — Overdue

## **Narratives**

## **Developmental Services**

### STUDENT HEALTH SERVICES

Students learn best when they are healthy. School nurses are dedicated to promoting and protecting the health of students and staff in school and to helping students to develop good health habits that will last a lifetime. School nurses help to identify and provide support for health conditions that adversely impact learning through the following initiatives:

-Participation, along with Health and Physical Education Educators, in the delivery of the Health Curriculum and Wellness Programs

-Promotion of improvements in the school's safety, environment and climate

-Participation in site-based School Health Councils

-Increase students' self-care skills through group and individual health counseling

-Teach students to be responsible consumers of health care

-Assessment of vision, hearing, growth and other conditions that may interfere with learning

-Assistance to families to obtain health insurance and to connect with health care for their children

-Participation in disaster and emergency preparedness planning

-Assurance of compliance with City and State health requirements, such as immunizations.

-Collaboration with the Philadelphia Department of Public Health in the control of communicable disease through surveillance and referral

### **BEHAVIORAL HEALTH/SOCIAL WORK**

In order to target the social and behavioral needs of all students, the SDP provides many interventions including Positive Behavior Supports (PBS). This intervention thus far has been funded by grants and there is currently a leadership team within the SDP building the infrastructure to bring PBS district wide. The District utilizes the Second Step Curriculum to address issues of violence and bullying to all students. The Project Accelerate granted program provides Family Wellness workshops to all interested families.

## **Diagnostic, Intervention and Referral Services**

### **STUDENT HEALTH SERVICES**

Student health services provides many interventions to students who have day to day medical needs, or who need coordination with outside medical and dental entities to assure that proper care is being provided. These services include safe administration of medications and treatments that must be provided during the school day; provision of onsite health care in the event of illness and injury so that students can remain in school; participation in IEP and 504 teams to assure that students with special health needs have appropriate services, aids, and accommodations in order to access their educational programs; collaboration with community vision, dental and primary health care providers to connect students with necessary care.

### **PSYCHOLOGICAL SERVICES**

In an expanded model for delivery of psychological services, the psychologist will be seen as the individual with consultation and practice skills to be able to assist schools in meeting a broad range of teacher and student needs. They will assist principals and school teams in identifying positive behavioral and academic practice, will provide their expertise in helping teachers to differentiate instruction, and will provide diagnostic assessment to provide additional data on student needs to plan effective interventions. They will become a greater resource for schools and teachers in helping to meet the goals of providing educational opportunities for students in a safe environment conducive to effective instruction and learning. They will be able to assist in crises by virtue of their experience and training.

### **BEHAVIORAL HEALTH/SOCIAL WORK**

In order to meet the needs of students experiencing social emotional difficulties the SDP has many targeted interventions. Social Service Liaisons work collaboratively with leadership and behavioral support teams to increase efficacy of CSAP interventions including date management to drive planning. They also provide behavior consultation to other school staff, collaborate with disciplinarians to support positive behavior change, coordinate resources, and attends interagency meetings. Project ACCELERATE personnel provide targeted group support to children and provide wellness groups to families. A grant application by the Center For Grieving Children is being developed in cooperation with the SDP to bring grief support to school. The SDP also has on-going systems meetings with acute services provided by Philadelphia. There are cross-office meetings between the Office of Climate and Safety and the Office of Specialized Instructional Services to improve internal crisis response systems. The SDP also engages in cross-systems meetings to improve coordination of city and school crisis supports. Finally, in an effort to more finely tune professional role to specific training and outcomes, the SDP participates in cross-systems planning to develop a comprehensive social service intervention model to remove barriers to student learning.

## Consultation and Coordination Services

### BEHAVIORAL HEALTH/SOCIAL WORK

There is an array of behavioral support programming for those children who are experiencing chronic problems. These programs are provided both via outside agencies and there are also several SDP initiatives to address chronic student behavioral difficulties.

Programs provided by outside agencies in collaboration with SDP:

-SAP Assessors who provide psychological evaluation and screening for drug/alcohol issues. SAP also makes recommendations for behavioral health care and provides group therapy in the high schools they serve.

-SBBH, 28 schools, 11 providers:

The School-Based Behavioral Health (SBBH) Program is designed to meet the child's behavioral health needs while maintaining them safely in their regular classroom. The SBBH program provides group therapy, individual therapy and psycho-education. The program collaborates closely with family and any involved agencies, and serves as a consultant to teachers and school administrators. The goal of the SBBH program is to identify triggers and implement individualized interventions that allow the child to progress academically while reinforcing positive behaviors. The program staff will also make referrals to outpatient behavioral health when needed. The Assessment/ Screening component of SSBH is designed as a means to develop a clear and objective clinical picture of the child's baseline needs and the services required. The Assessment/Screening period can be approved for up to 30 days. The Step-Down component of SBBH includes Group Mobile Therapy and Individual Mobile Therapy Therapeutic Staff Support provided to those students who are ready to transition out of the SBBH program. SBBH Group Mobile Therapy and Individual Mobile Therapy can be approved for up to two hours per week through the end of the school year.

-STS, 14 Schools, 7 providers:

The School Therapeutic Service is mental health treatment service developed as an alternative to traditional "wraparound" services in school settings. Similar to existing school based behavioral health programs, STS provides a full range of therapeutic services and is designed to meet the behavioral health care needs of school age children in a more effective and efficient manner. STS strives to provide age appropriate behavioral health interventions to reduce the barriers to learning due to the child's mental health diagnosis.

-NURTURE, 9 schools, 1 provider:

The Nurture Program was developed out of a strengths-based model that originated in London, England. The purpose of this program is to maintain the child in the assigned school placement attending regular classes while offering on-site group therapy, individual therapy and psycho-education, in collaboration with

the child's family and any involved agencies. The program staff also serve as behavioral health consultants to the school, and when appropriate make referrals to outpatient mental health when needed.

-CARE, 8 programs serving all K-8 schools:

The CARE Program is a self-contained classroom setting, similar to a partial hospital program that offers a strong educational component and operates year-round. It is the most intensive of all the SBBH programs, with a staff ratio of 10:3. Program staff provides positive reinforcement, identify and link the child to community resources, and replace behaviors that inhibit academic progress with positive behaviors. Program staff also works to anticipate the child's triggers and work with the teacher to develop effective, individualized interventions. CARE programs serve all eight (8) regions in the School District of Philadelphia.

-TESC:

Therapeutic Emotional Support Classroom (TESC) is funded by CBH, however only children identified by the School District of Philadelphia on an Individualized Education Plan (IEP) as needing emotional support are eligible for TESC. Therefore, CBH does not make referrals to this program. TESC is designed to support child's academic progress while addressing their individual behavioral health needs.

-Outpatient Satellite Clinic: (1, 1 provider)

Currently provided in 1 Comprehensive, Persistently Dangerous high school. Individual, group and crisis intervention services and consultation to over 50 students at a time.

-Screening for Sexualized Behaviour — All schools serving K-5 students:

Partnership with local expert in treating inappropriate sexualized behaviour to screen for and link with more comprehensive interventions

-Consultation and Education Specialists is a prevention partnership program funded jointly by the Department of Human Services and SDP. It provides case management services to children who are identified via the tier II CSAP process. The C&Es also provide psychoeducational groups and support crisis recovery efforts.

The following are social service initiatives provided by the Philadelphia School District: Social Work Services Coordinators provide case management and clinical support. Their work includes running parent wellness groups, providing behavioral support to the CSAP planning process, providing psychoeducational groups to students, and collaborating with PBS outside agency providers. CSAP/Behavioral Health Liaisons provide crisis intervention support, professional development, and technical assistance for the Student Assistance Process to schools.

An interagency coordinator provides over sight to the CSAP/BHL team.

## **Student Assistance Program**

The School District's K-12 Comprehensive Student Assistance Process (CSAP) is a three-tiered, collaborative process by which schools identify barriers to learning and remove barriers by accessing internal (school-based) and external (community-based) resources. The heart of CSAP is the classroom, where the classroom teacher analyzes the strengths and learning needs of his or her students and adapts instruction and environment to create optimal learning conditions.

School-wide CSAP:

Any comprehensive support process must begin with creating a network of supports for students and staff that result in a safe and productive learning environment. At the school-wide level, elements which contribute to such an environment include ongoing opportunities for skill-building among staff and students, the engagement of families as educational partners, a behavior management program which is clearly defined and consistently implemented, and a coordinated system of support for all students.

CSAP Tier I (30 School Days):

The Tier I level of intervention is designed to address the needs of groups of students experiencing similar barriers to learning. At this level, teachers meet regularly with their colleagues to identify and implement strategies for the classroom. The Professional Learning Community (PLC) facilitator coordinates Tier I meetings.

CSAP Tier II (60 School Days):

It is sometimes the case that individual students may be experiencing particular barriers to learning that need targeted support. Tier II is designed to address the needs of such students. At Tier II, a core team of trained professionals joins parents at a meeting coordinated by the school counselor. Together, this team develops an intervention plan that is designed to address the needs of the student and/or family. This plan can include both school-based and community-based supports, and the team can include auxiliary members as indicated by the presenting issue. Agency partners can also be included with parental permission.

CSAP Tier III (Mandated Timelines):

At Tier III, the focus is on an evaluation for change of placement when a child is still not meeting with success. This change of placement may be for educational or behavioral reasons. Team membership, documentation, and timelines are governed by procedural dictates established by the School District of Philadelphia and the Commonwealth of Pennsylvania.

To further support the CSAP process, the CSAP/BHL provide CSAP certification training, CSAP over view training, technical assistance and oversight to the CSAP process, and they also provide case management model training to support effective monitoring of the CSAP process.

## **Communication**

The School District uses various methods to communicate with parents and the community:

-Public Access: School Health Services web page, including link to Philadelphia Department of Public Health Community Health Care Centers; explanation of role of school nurse; link to health forms; list of mandate screenings; current immunization requirements

-Office of Specialized Services website: <http://webgui.phila.k12.pa.us/offices/s/oss/>

-School Nurse Access: Monthly regional school nurse meetings and city-wide meetings several times per year, addressing all aspects of School Health Services, including introduction of collaborating community providers

-Public Access: School-based parent meetings, such as “back-to-school night” and when there is a public health-related issue in the community (MRSA, flu)

-Nurse to Parent: referral forms to communicate health issues to parents and recommendations for follow-up, for all screenings and for any visit to the health room for acute illness or injury

-Nurse to Parent: telephones in every health room

-Team meetings on individual student health issues

-Nurse to Faculty: meetings for communication on in-school policies/procedures and issues related to the health of students and staff

-Nurse to Parents/Staff: dailygram messages; autodialer (Parent Link)

-Public Access: Health Fairs at various locations, with community vendors, insurance providers and other health resources.

## **Assurance for the Collection, Maintenance, and Dissemination of Student Records**

- By checking each of the boxes below, the local education agency assures compliance with the requirements of 22 Pa. Code Chapter 12 and with the policies and procedures of Pennsylvania Department of Education (PDE). PDE will specify, in writing, policies and procedures to be followed. Requests for any deviations from these regulations, policies, and procedures must be made in writing to PDE (electronic mail may be directed to [ra-chapter12@state.pa.us](mailto:ra-chapter12@state.pa.us)).

The Local Education Agency (LEA) assures the following:

- The LEA has a local plan, including policies and procedures, in place for the collection, maintenance, and dissemination of student records in compliance with § 12.31(a) and § 12.32
- The plan shall be maintained in compliance with § 12.31(b) and made available to PDE in compliance with § 12.31(c)

## **Assurance for the Operation of Student Services and Programs**

- By checking each of the boxes below, the local education agency assures compliance with the requirements of 22 Pa. Code Chapter 12 and with the policies and procedures of Pennsylvania Department of Education (PDE). PDE will specify, in writing, policies and procedures to be followed. Requests for any deviations from these regulations, policies, and procedures must be made in writing to PDE (electronic mail may be directed to [ra-chapter12@state.pa.us](mailto:ra-chapter12@state.pa.us)).

The Local Education Agency (LEA) assures that there are local policies and procedures in place that address:

- Free Education and Attendance (in compliance with § 12.1)
- School Rules (in compliance with § 12.3)
- Discrimination (in compliance with § 12.4)
- Corporal Punishment (in compliance with § 12.5)
- Exclusion from School, Classes, Hearings (in compliance with § 12.6, § 12.7, § 12.8)
- Freedom of Expression (in compliance with § 12.9)
- Flag Salute and Pledge of Allegiance (in compliance with § 12.10)
- Hair and Dress (in compliance with § 12.11)
- Confidential Communications (in compliance with § 12.12)
- Searches (in compliance with § 12.14)
- Emergency Care and Administration of Medication and Treatment (in compliance with 35 P.S. § § 780-101—780-144)
- The LEA acknowledges that the above policies shall be maintained locally and be made available to the public upon request. The policies are not to be submitted to the Commonwealth except upon specific request by PDE.

In addition, the LEA assures the following:

- The Student Services Report complies with § 12.41(b), § 12.41(c), and § 12.42 (consistent with the Early Intervention Services System Act (11 P.S. § § 875-101—875-503))
- Consistent with § 445 of the General Education Provisions Act (20 U.S.C.A. § 1232h), parents or guardians are informed regarding individual survey student assessments and provided a process for refusal to participate (in compliance with § 12.41(d))
- Persons delivering student services shall be specifically licensed or certified as required by statute or regulation (in compliance with § 12.41(e))

## **Supporting Documents**

### **Supporting Documents - Attachment**

- SDP Wellness Policy

# Exhibit 3



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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

**RESPONDENT'S RESPONSE TO PETITIONERS' FIRST  
SET OF INTERROGATORIES**

Respondent Carolyn Dumaresq Responds to Petitioners' First Set of Interrogatories as follows:

The definitions as set forth in the Interrogatories are used herein unless indicated otherwise.

**INTERROGATORY NO. 1:** Identify all Persons who have or had any role in activities undertaken by the Secretary or PDE concerning, or in response to, the Allegations, and describe all activities taken by such Persons in connection with each of the Allegations, including a) the transmittal of a request for information specifically concerning each Allegation either within PDE, or between PDE and the District, or between PDE and a Petitioner; b) the manner in which such requests for information were transmitted (i.e., orally, in writing, by email, etc.); and c) the dates on which such requests or information were transmitted.

**RESPONSE:** Respondent provides the following response:

1. Stephen Fisher, Director, School Services Office, had the following roles: reviewed Allegations; determined Allegations involved local matters; referred Allegations to the Philadelphia School District; and responded to Petitioners.

2. Daniel Iser, Basic Education Advisor II, School Services Office, had the following roles: reviewed Allegations; determined Allegations involved local matters; and maintained log of Allegations.
3. Lois Novak, Basic Education Advisor II, School Services Office, and Theresa Shakespeare, Basic Education Advisor II, School Services Office, had the following roles: reviewed Allegations; and determined Allegations involved local matters.
4. April Queeley, Clerk 2, School Services Office, had the following roles: received Allegations; referred Allegations to Stephen Fisher, Daniel Iser, Lois Novak and Theresa Shakespeare; and maintained log of Allegations.

**INTERROGATORY NO. 2:** Identify all Persons who have or had any role in activities undertaken by the Secretary or PDE concerning, or in response to, any Complaints concerning the District that were submitted to the Secretary or PDE during the 2013-14 School Year.

RESPONSE: Objection. The definition of “Complaint” as set forth in the Interrogatories makes the request overly broad and unduly burdensome to comply with. According to that definition, in addition to allegations of curriculum deficiencies “Complaint” “refers to . . . other statements . . . contending that a School Entity fails to meet requirements of federal or state law . . . .” .” As such, the term “Complaint” shall mean allegations of curriculum deficiencies. Subject to and without waiving the above objection, Respondent provides the following response:

1. Stephen Fisher, Director, School Services Office
2. Daniel Iser, Basic Education Advisor II, School Services Office
3. Lois Novak, Basic Education Advisor II, School Services Office
4. Theresa Shakespeare, Basic Education Advisor II, School Services Office
5. April Queeley, Clerk 2, School Services Office

**INTERROGATORY NO. 3:** For each School Year from 2008-09 through 2013-14, state how many Complaints the Secretary or PDE has received and identify each School Entity involved.

RESPONSE: Objection. The definition of "Complaint" as set forth in the Interrogatories makes the request overly broad and unduly burdensome to comply with. According to that definition, in addition to allegations of curriculum deficiencies "Complaint" "refers to . . . other statements . . . contending that a School Entity fails to meet requirements of federal or state law . . ." As such, the term "Complaint" shall mean allegations of curriculum deficiencies. Subject to and without waiving the above objection, Respondent provides the following response. For each School Year from 2008-09 through 2013-14, the Secretary or PDE received one Complaint. The School Entity involved was Central Bucks School District.

**INTERROGATORY NO. 4:** For each School Year from 2008-09 through 2013-14, state for how many Complaints the Secretary or PDE (a) conducted an investigation, (b) determined the Complaint did not involve curriculum matters, (c) determined the Complaint involved local matters, or (d) otherwise responded to under 22 Pa. Code § 4.81(a)-(b), and identify each School Entity involved in each type of response.

RESPONSE: Objection. The definition of "Complaint" as set forth in the Interrogatories makes the request overly broad and unduly burdensome to comply with. According to that definition, in addition to allegations of curriculum deficiencies "Complaint" "refers to . . . other statements . . . contending that a School Entity fails to meet requirements of federal or state law . . ." As such, the term "Complaint" shall mean allegations of curriculum deficiencies. Subject to and without waiving the above objection, Respondent provides the following response. For each School Year from 2008-09 through 2013-09, for one Complaint the Secretary or PDE conducted

an investigation and determined the Complaint did not involve curriculum matters pursuant to 22 Pa. Code § 4.81 (a)-(b). The School Entity involved was Central Bucks School District.

**INTERROGATORY NO. 5:** For each School Year from 2008-09 through 2013-14, state how many times the Secretary has “determined that a curriculum deficiency exists” pursuant to 22 Pa. Code § 4.81(c), and identify each School Entity involved.

RESPONSE: For each School Year from 2008-09 through 2013-14, there were no times the Secretary “determined that a curriculum deficiency exists” pursuant to 22 Pa. Code § 4.81(c).

**INTERROGATORY NO. 6:** For each such School Year from 2008-09 through 2013-14, state how many times the Secretary “sen[t] a formal notice of deficiency to the governing board of the school entity” pursuant to 22 Pa. Code § 4.81(d), and identify each School Entity involved.

RESPONSE: For each School Year from 2008-09 through 2013-14, there were no times the Secretary “sen[t] a formal notice of deficiency to the governing board of the school entity” pursuant to 22 Pa. Code § 4.81(d).

**INTERROGATORY NO. 7:** For each School Year from 2008-09 through 2013-14, state how many times “the Secretary . . . [has] take[n] action under State law” against a School Entity pursuant to 22 Pa. Code § 4.81(e), and identify each School Entity involved.

RESPONSE: For each School Year from 2008-09 through 2013-14, there were no times “the Secretary . . . [has] take[n] action under State Law” against a School Entity pursuant to 22 Pa. Code § 4.81(e).

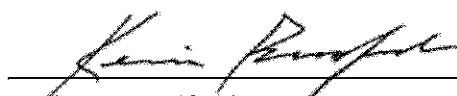
**INTERROGATORY NO. 8:** Identify all Persons whom the Secretary or PDE consulted or sought advice from about how the Secretary or PDE should respond to the Allegations or to any Complaints received by the Secretary or PDE during the 2013-14 School Year, except Persons whose identity is protected by an attorney-client privilege.

RESPONSE: Objection. The definition of "Complaint" as set forth in the Interrogatories makes the request overly broad and unduly burdensome to comply with. According to that definition, in addition to allegations of curriculum deficiencies "Complaint" "refers to . . . other statements . . . contending that a School Entity fails to meet requirements of federal or state law . . ." As such, the term "Complaint" shall mean allegations of curriculum deficiencies. Subject to and without waiving the above objection, Respondent provides the following response:

1. Stephen Fisher, Director, School Services Office
2. Patricia Hozella, Director, Bureau of Special Education (02/08/14 to present), and Acting Assistant Director, Bureau of Teaching and Learning (09/09/13 to 02/07/14)

Office of Attorney General  
21 S. 12<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Philadelphia, PA 19107  
Phone: (215) 560-2262  
Fax: (215) 560-1031

Date: December 24, 2014

  
\_\_\_\_\_  
Kevin R. Bradford  
Senior Deputy Attorney General

Susan J. Forney  
Executive Deputy Attorney General

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TIM ALLEN, et al.,

Petitioners,

v.

CAROLYN DUMARESQ,

Respondent.

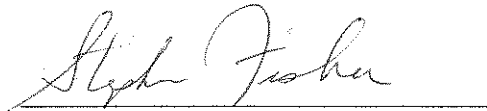
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NO. 474 M.D. 2014

**VERIFICATION**

Stephen Fisher hereby states that the answers provided in response to Petitioners' First Set of Interrogatories are true and correct to the best of his knowledge, information, and belief. The undersigned understands that the statement(s) therein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities.

Executed on: 12/24/2014



Stephen Fisher  
Director of School Services Office  
Office of Elementary and Secondary Education  
Pennsylvania Department of Education  
Harrisburg, PA

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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**CERTIFICATE OF SERVICE**

I, Kevin R. Bradford, hereby certify that Respondent’s Response to Plaintiff’s First Set of Interrogatories was on December 29, 2014 electronically mailed to the following parties who have agreed to this form of service:

- Benjamin D. Geffen, Esquire [[BGeffen@pilcop.org](mailto:BGeffen@pilcop.org)]

By: 

Kevin R. Bradford  
Senior Deputy Attorney General

Office of Attorney General  
21 S. 12<sup>th</sup> Street, 3<sup>rd</sup> Floor  
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Susan J. Forney  
Executive Deputy Attorney General