

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

C.H., a minor, by and through his  
Parent, **Kimberly Williams**,  
individually, and on behalf of all others  
similarly situated,

E.W., a minor, by and through his  
Parent, **Nina Williams**, individually,  
and on behalf of all others similarly  
situated,

J.F. a minor, by and through his  
Parents, **Natalie Wieters and Larry  
Freedman**, individually, and on behalf  
of all others similarly situated,

Plaintiffs,

v.

**The School District of Philadelphia,**

**Kim Caputo**, in her official capacity as  
Deputy Chief of the Office of  
Specialized Services for the School  
District of Philadelphia,

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT -- CLASS ACTION**

## I. PRELIMINARY STATEMENT

1. Extended School Year (“ESY”) services began in Pennsylvania when the Third Circuit decided *Battle v. Pennsylvania*, 629 F.2d 269 (3d Cir. 1980), finding that the State’s refusal to provide more than 180 days of education was incompatible with the special education principal of emphasis on the individual and prevented the proper formulation of appropriate educational goals for individual children. ESY is essentially the individualized extension of specific services beyond the regular school year.

2. If necessary for a child, ESY services can be provided anytime there is an extended break from school, such as winter, spring or summer breaks, since by definition, ESY services means special education and related services provided “beyond the normal school year of the public agency”. 34 C.F.R. § 300.106(b)(1). Most importantly, under the federal IDEA regulations, when implementing ESY services, the school district may not:

- (i) Limit extended school year services to particular categories of disability; or
- (ii) Unilaterally limit the type, amount, or duration of those services.

[34 C.F.R. § 300.106(a)(3) (emphasis added).]

3. The School District of Philadelphia (“the District”) has a policy, custom, or practice for ESY that predetermines the program for all qualifying students by making decisions concerning the amount and duration of services outside of the Individualized Education Program (“IEP”) process. The mechanism by which the District enforces its policy, custom, or practice for ESY is the ESY registration form that is sent out to parents. (*See Ex. A.*) By the terms of the form, as well as its use in practice, the District unilaterally predetermines ESY amount and duration and thereby precludes and prohibits individual determinations by IEP teams of individually-created ESY programming.

4. As a result of the District's policy, custom, or practice for ESY, this action is brought on behalf of thousands of Philadelphia school children with disabilities seeking elimination of the illegal policy, custom, or practice that adversely affects their education. The Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq., ("IDEA") provides that children with disabilities are legally entitled to have their educational programs developed by Individual Education Program ("IEP") teams. These teams are legally required to make individual determinations about whether children with disabilities are entitled to special education and related services during breaks in the school year. Such breaks might include winter or spring break or summer break. Children with disabilities are also entitled to have their Individual Education Program ("IEP") teams determine the amount, the type and the duration of the services based upon their own individual unique needs.

5. In direct conflict with this statutory and regulatory federal requirement, the District has an ESY program that predetermines the amount, type and duration of service. The length of service is set at 6 weeks and only during the District's summer break. The amount of service is set at 4 hours per day for 3 days per week.

6. The District serves approximately 19,240 students with disabilities, including students with autism, emotional disturbance, hearing impairments including deafness, intellectual disabilities, multiple disabilities, orthopedic impairments, other health impairments, specific learning disabilities, speech and language disabilities, and visual impairment.<sup>1</sup>

7. The policy, custom, or practice, as established and as implemented, violates the purpose and intent of the IDEA as it occurs with little or no parental notice or involvement,

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<sup>1</sup> The District's most recent data shows it does not serve any children with deaf-blindness or traumatic brain injury.

without required consideration of children's individualized circumstances, and in direct violation of the mandated individual planning process of the IDEA.

8. Plaintiffs bring this claim on their own behalf and on behalf of all other students within the District who are or will be subjected to the District's policy, custom, or practice (the "Class"). Class relief is necessary because of the systemic nature of the Defendants' conduct and given the large number of Plaintiffs, joinder of all Class members is impracticable.

## II. JURISDICTION AND VENUE

9. The claims herein arise under the IDEA, 20 U.S.C. § 1400 et seq. (2004), and 34 Code of Federal Regulations Chapter 300, 22 Pa Code § 14.1 et seq. ("Chapter 14"). This Court has subject matter jurisdiction over the federal law claims pursuant to 28 U.S.C. § 1331 and 20 U.S.C. §§ 1415(i)(2) and §1415(i)(3)(A).

10. The claims herein for declaratory and injunctive relief pending the resolution of this matter are authorized by 28 U.S.C §§ 2201 and 2202.

11. This Court may exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Chapter 14 of the Pennsylvania Code is the state special education law that must be consistent with the IDEA.

12. Venue in this district is proper under 28 U.S.C. § 1391(b).

13. Plaintiffs have exhausted or are not required to exhaust administrative remedies pursuant to the IDEA, 20 U.S.C. § 1415(i)(2) and 20 U.S.C. § 1415(i)(3)(A).

- a. Plaintiff C.H. has exhausted through the IDEA hearing process, with a hearing decision dated August 3, 2014. The hearing officer concluded that the District could legally violate the IDEA by using its ESY policy, custom, or practice to program ESY for C.H. (Ex. B, *C.H. v. SDP*, ODR No. 14530-1314). This Complaint constitutes an appeal from the administrative proceedings on ESY only and requesting only declaratory relief for C.H.

- b. Plaintiff E.W. exhausted through the IDEA hearing process, with a hearing decision dated July 25, 2014. The hearing officer found for E.W. and concluded that the District's action under the policy, custom, or practice for ESY violated the individualization mandate for the student's ESY programming and awarded compensatory education. (Ex. D, *E.W. v. SDP*, ODR No. 15180-1314). As E.W. is only 13 years old, however, he is subject to this same policy, custom, or practice again in the future as the Hearing Officer ordered no systemic relief or any specific relief for E.W. in the future.
- c. Plaintiff J.F. has filed a request for a due process hearing which is pending at this time.
- d. Plaintiffs J.F. and the rest of the Class are exempt from the IDEA's administrative exhaustion requirement because exhaustion is futile given the District's policy, custom, or practice; and the hearing officers' belief that they do not have the power to order systemic relief. *Beth v. by Yvonne V. v. Carroll*, 87 F.3d 80, 90 (3d Cir. 1996) (exhaustion not required where it would be futile or inadequate or where the agency cannot grant adequate relief, or where exhaustion would work a severe harm); *See R.B. v. Mastery Charter Sch.*, No. 2:10-cv-06722, 2010 WL 5464892, at \*6 (E.D. Pa. Dec. 29, 2010).
- e. Finally, where, as here, a school district has engaged in a policy, custom, or practice that violates the IDEA and that is inconsistent with the individualized nature of the IDEA, such a policy, custom, or practice can evade review through the administrative process and is properly brought to this Court. *Honig v. Doe*, 484 U.S. 305 (1988) (state suspension policy could evade review); *Christopher S. v. Stanislaus County*, 384 F.3d 1205 (9th Cir. 2004) (shortened school day for children with autism was policy not subject to exhaustion of administrative remedies).

### III. STATUTORY FRAMEWORK

14. The IDEA requires public schools that receive federal funds to provide a free and appropriate public education ("FAPE") to all students with disabilities ages 3 to 21 based on the individual unique needs of the student and subject to certain procedural requirements to ensure meaningful parental participation in the process of the child's education. 20 U.S.C. § 1400, § 1412(a), § 1414, § 1415, and see 34 Code of Federal Regulations Chapter § 300. The named minor Plaintiffs and Class members each qualify as "child[ren] with a disability" under the

statute, and each has an IEP that governs his or her education. 20 U.S.C. § 1401(3), § 1414(d), § 1415. The District receives federal funds pursuant to the IDEA and is bound by the IDEA.

15. Each named plaintiff and Class member has an IEP Team that is comprised of parents and school staff who are to make educational decisions for the child, including ESY programming. The IDEA mandates that decisions about a child's ESY program are to be made individually through the IEP team process and with the parent's meaningful involvement. 20 U.S.C. § 1414(e) specifically provides that "...each local educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." *See also* 20 U.S.C. § 1415; 34 C.F.R. § 300.327. The District's ESY policy, custom, or practice is in direct conflict with the statutory framework of the IDEA that mandates parental involvement and individual planning through the IEP team process.

### **III. PARTIES**

16. Fifteen year-old Plaintiff, C.H., resides with his mother, Plaintiff Kimberly Williams (Parent of C.H.) in Philadelphia, Pennsylvania within the boundaries of the School District of Philadelphia. He attends Roxborough High School and is presently in the 10<sup>th</sup> grade. C.H. has autism and a severe language disorder that interferes with his learning. C.H. is entitled to the protections of the IDEA and Chapter 14 of the Pennsylvania Code. During the 2013-2014 school year, C.H.'s IEP Team never discussed ESY. In January 2014, Ms. Williams received a form notice that C.H. would be receiving Extended School Year services. The notice states the ESY Program is offered on Tuesdays, Wednesdays, and Thursdays from 9:00 a.m. to 1:00 p.m. from July 1 to August 7, 2014. (*See Ex. A.*) At no time prior to the issuance of this notice, did C.H.'s IEP Team discuss the number of weeks, days per week, or minutes per day that C.H. needs ESY programming. This matter was litigated as ODR No. 14530-1314. (*See Ex. B.*) The

Hearing Officer upheld the District's policy, custom, or practice as permissible. This decision is the second time C.H. has requested a special education hearing involving violations with his ESY programming. In the first case, litigated as ODR No. 14056-1213, Hearing Officer McElligott ruled that the District failed to make ESY programming for summer 2013 a part of C.H.'s IEP planning and educational programming in the 2012-2013 school year, even though the District recognized the need for such programming. (See Ex. C, *C.H. v. SDP*, ODR No. 14056-1213.) C.H. will continue to receive special education services through the age of eligibility (age 21), and he will continue to be subject to the District's ESY policy, custom, or practice. Despite bringing multiple due process complaints, hearing officers lack the authority to order the necessary district wide relief.

17. Thirteen year-old Plaintiff E.W. is currently an eighth grade student at Stephen Decatur School and resides with his mother, Nina Williams, in Philadelphia, Pennsylvania within the boundaries of the School District of Philadelphia. E.W. has a specific learning disability and has an IEP. There is no dispute that E.W. is entitled to the protections of the IDEA and Chapter 14 of the Pennsylvania Code. At the end of the 2013-2014 school year, E.W.'s mother filed for an administrative hearing and the hearing officer concluded that the District's ESY Programming for this student was a standard-program-first, rather than individual first approach. (Ex. D, *E.W. v. SDP*, ODR No. 15180-1314). In conflict with the IDEA's mandate for parental involvement and individual programming, the hearing officer found that decisions were made by the District about ESY programming, and the applicability of its standard ESY program, without any input from the student's IEP team. He ordered compensatory education for E.W. for the violations. However, because E.W. is young, he will continue to be subject to the District's improper ESY

policy, custom, or practice and is not able to obtain district wide relief through a hearing officer forum such as ordering the District to cease the illegal ESY policy.

18. Fourteen year-old Plaintiff, J.F., resides with his parents, Plaintiffs Natalie Wieters and Larry Freedman in Philadelphia, Pennsylvania within the boundaries of the School District of Philadelphia. J.F. attends Hill Freedman School and is presently in the 8<sup>th</sup> grade. J.F. has autism and a severe language disorder that interferes with his learning. J.F. is entitled to the protections of the IDEA and Chapter 14 of the Pennsylvania Code. In May, 2014, his parents requested ESY for him that was individually tailored, including tutoring and certain therapies in various amounts during the summer of 2014. The District responded in writing that its program was appropriate. J.F.'s parents have requested a special education hearing for an individual remedy and that hearing is pending. However, because J.F. is young, he will continue to be subject to the District's ESY policy, custom, or practice and a hearing officer cannot afford him relief such as ordering the District to cease the illegal ESY policy.

19. Defendant, the School District of Philadelphia, is a school district within the Commonwealth Pennsylvania organized pursuant to the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. 1-101 et seq. The District's headquarters and principal place of business is located at 440 N. Broad Street Philadelphia, Pennsylvania. The District is the Local Educational Agency responsible to ensure that Plaintiffs receive a free appropriate public education pursuant to the IDEA and Chapter 14. The District also operates as Intermediate Unit 26.

20. Defendant Kimberly Caputo is the Director of the Office of Specialized Services of the School District of Philadelphia and is named herein in her official capacity. Ms. Caputo is



directly responsible for the District's compliance with the requirements of the IDEA and Chapter 14.

#### IV. CLASS ACTION ALLEGATIONS

21. Plaintiffs bring this suit individually and as a Class Action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of all similarly situated individuals. The Class that Plaintiffs seek to represent is composed of:

All children with disabilities in the School District of Philadelphia in grades Kindergarten through the age of entitlement (age 21) who have been denied, are in the process of being denied or are at risk of being denied appropriate individualized special education services during periods of school breaks, known as Extended School Year, as a result of the District's illegal ESY policy, custom, or practice of predetermining ESY services.

22. The Class is so numerous that joinder of all members is impracticable. Currently, there are approximately 19,240 students with disabilities on IEPs in the District and thousands more that will be affected by the District's illegal ESY policy, custom, or practice in the future. The exact number of Class members (those students in need of ESY) is not fully known to Plaintiffs at present, but it can be ascertained by Defendants and is some portion of the 19,240 students.

23. There are questions of law and fact common to the Class and that predominate over any questions affecting only individual members of the Class, specifically, questions as to the legality of Defendants' systemic acts or omissions with respect to the District's ESY policy, custom, or practice, as a result of the District's illegal approach contrary to the IDEA and 22 Chapter 14.

24. Plaintiffs' claims are typical of the claims of the Class as all members are similarly affected by Defendants' conduct in violation of the law that is complained of herein.

25. Plaintiffs will fairly and adequately protect the interests of the Class.

26. Counsel for Plaintiffs are experienced in handling federal class action litigation and will adequately and zealously represent the interests of the Class. The Public Interest Law Center has litigated many federal class actions to protect the civil rights of persons and children with disabilities.

27. Defendants have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or declaratory relief is appropriate respecting the Class as a whole. C.H. and E.W. filed and completed administrative hearings alleging the same violations relative to ESY programming. While each hearing officer ruled in regard to each student, hearing officers do not have authority to decide whether the District's ESY program as a whole was flawed and illegal and/or to issue systemic relief.

28. A class action is superior to any other available method for fairly and efficiently adjudicating this controversy in that there is no interest by members of the Class in individually controlling the prosecution of separate actions; upon information and belief no similar litigation concerning the relief requested herein has already begun by any Class member; it is desirable to concentrate the litigation of the claims made herein in a single proceeding; and whatever difficulties may exist in the management of the Class will be greatly outweighed by the class action process, including, but not limited to, providing Class members with a method for redress of claims more fairly, efficiently, and consistently than individual litigation may provide.

29. It would be futile to require Plaintiffs to exhaust or re-exhaust administrative remedies since the District has adopted a systemic ESY policy, custom, or practice that is contrary to the IDEA and as a result Pennsylvania's special education administrative hearing system cannot adequately remedy the systemic problem, and upon information and belief, the

state's seven special education hearing officers are not enough to handle an ESY hearing for each student affected in a timely manner.

30. Plaintiff E.W. seeks no individual compensatory education relief pursuant to the IDEA as he has been awarded compensatory education for his loss of educational benefit by the hearing officer's decision. He seeks only to have the ESY policy, custom, or practice declared illegal so that he will no longer be subject to it and instead his IEP team will determine his individual needs and individually decide his ESY programming in future years.

31. Plaintiff C.H. seeks to have that portion of the decision in his administrative hearing reversed insofar as it found for the District on the issue of its ESY policy, custom, or practice. C.H. seeks to have the ESY policy, custom, or practice declared illegal so that he will no longer be subject to it and instead have his IEP team will determine his individual needs and individually decide his ESY programming in future years.

32. Plaintiff J.F. seeks to have the policy, custom, or practice declared illegal so that he will no longer be subject to it and instead his IEP team will determine his individual needs and individually decide his ESY programming in future years. Any individual compensatory education or reimbursement relief to which he is entitled can be ordered by a hearing officer. The hearing officer, will not, however, be able to provide him declaratory relief of striking down the District's ESY policy, custom, or practice.

## VII. FACTS

### The Extended School Year Policy, Custom, or Practice

33. The District operates schools that serve children grades K-12, and through the age of entitlement (age 21).

34. The District issues a form letter to all students with disabilities who are within the categories considered "severe" under 22 Pa Chapter 14. (*See Ex. A.*) It also issues this ESY form letter to students with learning disabilities and others who are not within those categories.

35. By the terms of the first statement on the District's form letter, it is supposed to be issued after an IEP meeting is held at which the IEP team has discussed the child's individual need for ESY and decided, as a team, the amount and duration of ESY services for the individual child. (*See Ex. A.*)

36. The District's form letter is created by the Office of Specialized Services ("OSS"). It is sent to the school buildings and the school special education liaison officers complete the form and send it to the parents. The parents are not allowed to change the length of weeks of ESY, the length of the school day for ESY, or the days of the week for ESY.

37. The District has admitted to its practice of using the ESY form letter. These issues were explored at the administrative hearings for C.H. and E.W. Each time staff admitted that the IEP team did not determine the amount or duration of ESY services for the student; rather the District relied on its form letter to determine when, where, and how long services for the student would be offered. In the C.H. hearing, the District stated that the IEP team could not override the ESY form letter. (*See Ex. G, Excerpt of Testimony of Jamila Ballard and Ex. H., Excerpt of Testimony of Sonya Berry.*) In the E.W. hearing, the District staff attempted to remediate the District's policy, custom, or practice for ESY upon follow-up questioning by District counsel. Nevertheless, the testimony was consistent with the C.H. hearing that the IEP team did not have authority to change the amount or duration of ESY services for the student. (*See Ex. I, Excerpt of Testimony of Christine Kenney.*)

38. In the hearing decision for E.W., dated July 25, 2014, Hearing Officer McElligott found that the process was program-first, not individual child based.

39. At the administrative hearing for C.H., the staff admitted that the OSS determined length of ESY, amount of time per day and days of service and that the IEP team could not override this. They had to fit the child's program into the administratively predetermined length of time (six weeks), days (three per week), and hours (four per day). Hearing Officer Valentini approved this non-individualized approach in her decision.

40. Instead of involving parents in the process to determine the length, amount and duration of ESY for their student, administrators or their staff, who are not a part of the IEP team and often who have never met the child, unilaterally make ESY decisions without first consulting with parents and the IEP team.

41. The District Special Education Plan Report, which is designed to outline current and future work to ensure the development and implementation of appropriate educational programs for students with disabilities, provides that teachers will be trained in the ESY process. (Ex. E, PSD Special Education Plan at 19.) The District's policy, custom, or practice for ESY, as evidenced by the ESY form (Ex. A), indicates that either the school staff have not been trained in legal ESY processes or any such training has provided incorrect instruction.

42. On April 21, 2014, the Public Interest Law Center of Philadelphia wrote the District to comment on its 2014-2017 Special Education Plan Report. (Ex. F.) The Law Center expressly notified the District that its policy, custom, or practice of predetermining ESY amount and duration via the ESY form and its implementing practices for ESY violated the IDEA and Chapter 14 of the Pennsylvania Code. Despite bringing these violations to the attention of the

District in April 2014, the policy, custom, or practice persists as evidenced by the experiences of the named plaintiffs in this Complaint.

43. The Pennsylvania Department of Education has issued guidelines that explicitly addressed the very issue in this case:

“May the LEA unilaterally limit the ESY service’s type, amount and/or duration?”

No. Federal regulations at 34 C.F.R. § 300.106(a)(3) state that, ‘an LEA...may not unilaterally limit the type, amount, or duration of [ESY] services.’ OSEP has issued a policy letter stating that limiting the duration of summer services for students with disabilities ‘... would violate the basic requirement that programs be designed to meet the individual needs of each child’ .... Any predetermination or set policy on the amount of time ESY will be provided is contrary to the regulations. Individual determinations of the number of weeks, days per week, and minutes per day must be based on each student’s unique needs.”

[Ex. J, “Extended School Year Services in Pennsylvania” at page 22, published February 2014.]

44. The District’s ESY policy, custom, or practice is contrary to the IDEA and corresponding regulations, 22 Pa Code Chapter 14, and the written recommendations and directives of the Pennsylvania Department of Education, the state agency charged with directing special education in Pennsylvania.

## IX. LEGAL CLAIMS

### **Count One: Violation of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq. and Chapter 300 of the Code of Federal Regulations.**

45. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

46. The District’s ESY policy, custom, or practice is established and implemented in a manner that is completely contrary to the IDEA because the decisions about the length, amount and duration of ESY is made without regard to the individual unique needs of each child, substantially infringe upon meaningful parental involvement in the process and are made wholly

outside of the procedural safeguards and requirements of the IDEA. 20 U.S.C. § 1414(d), 20 U.S.C. § 1415; 34 C.F.R. 300.106(a)(3).

47. The District's ESY policy, custom, or practice imposes predetermined limits on the amount, types, and length of ESY services and this denies the IEP team the authority to individually plan for a student's needs.

48. Wherefore, Plaintiffs and the Class demand judgment in their favor and against Defendants for declaratory and injunctive relief set forth herein.

**Count Two: Violation of Pa Code Chapter 14**

49. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

50. The District's ESY policy, custom, or practice is established and implemented in a manner that is completely contrary to Chapter 14 (and as interpreted by the state educational agency) because the decision about the amount, length and duration of ESY for students are made without regard to the individual unique needs of each child, substantially infringe upon meaningful parental involvement in the process and are made wholly outside of the procedural safeguards and requirements of Chapter 14.

51. By imposing predetermined limits on the amount, types, and length of ESY services, students' need for ESY services are not being developed on an individualized basis.

52. Wherefore, Plaintiffs and the Class demand judgment in their favor and against Defendants for declaratory and injunctive relief set forth herein.

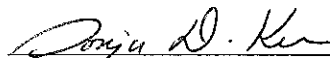
## X. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that:

1. The Court take jurisdiction of this matter, and certify the matter as a Class Action.
2. The Court also recognize the Complaint as an appeal from administrative proceedings by Plaintiff C.H. who seeks only declaratory relief.
3. Declare that the District's ESY policy, custom, or practice is illegal and contrary to the IDEA.
4. Enjoin the District from using the ESY form as written and require the District to create a legally compliant form and process for individually determining the amount and type of ESY programming for all children in the class.
5. Award to Plaintiffs their costs and attorneys fees; and
6. Grant such other and further relief as may be just and proper.

Dated: Oct. 30, 2014

Respectfully,



Sonja Kerr (Pa Bar No. 95137)

Jason Fortenberry (Pa Bar No. 311397)

PUBLIC INTEREST LAW CENTER OF  
PHILADELPHIA

1709 Benjamin Franklin Parkway, Second Floor

Philadelphia, PA 19103

Telephone: (215) 627-7100

Facsimile: (215) 627-3183

*Counsel for Plaintiffs*



# EXHIBIT A

School District of Philadelphia  
Office of Specialized Services  
440 North Broad Street, Philadelphia, PA 19130

INSERT DATE

Dear Parent:

At the time of your child's IEP meeting, it was determined that your son/daughter was eligible for the Extended School Year (ESY) Program. ESY begins on Tuesday, July 1, 2014, and ends on Thursday, August 7, 2014

Your child will be enrolled in the 2014 ESY Program. Your child's teacher can provide more information regarding the program. A summer program is offered, during which your child's ESY program outlined in his/her IEP, can be implemented. The Program is on Tuesdays, Wednesdays, and Thursdays from 9:00 a.m. to 1:00 p.m.. The Office of Transportation will send you a letter at the end of June regarding school assignments and pick up times. You will also receive a name tag for your child with the Transportation letter. If your child cannot tell an adult his or her name when asked, we request that the name tag, included in the transportation letter, be placed on your child on the first day of ESY, as appropriate. This will help ensure the safety of all students. Please **COMPLETE** and **SIGN** below. Thank you and we look forward to hearing from you about ESY.

**PLEASE RETURN COMPLETED/SIGNED FORM TO YOUR CHILD'S TEACHER**

<b>2014 ESY REGISTRATION (Please Check One)</b>	
<input type="checkbox"/> My child <b>WILL ATTEND</b> the 2014 ESY Program.	
<input type="checkbox"/> My child <b>WILL NOT ATTEND</b> the 2014 ESY Program.	
Student Name (Please PRINT) _____	Date of Birth _____
Home Address _____	SCHOOL PLEASE COMPLETE: Student ID#: _____
Current 2013-2014 School _____	

\* \* \* \* \* **TRANSPORTATION** \* \* \* \* \*

<b>PICK UP AND DROP OFF INSTRUCTIONS (Please Check One)</b>	
<input type="checkbox"/> Please <b>PICK UP</b> my child at our home address as listed above.	<input type="checkbox"/> <b>I WILL TRANSPORT</b> my child to the ESY Site.
<input type="checkbox"/> Please <b>PICK UP</b> my child at the alternate address below.	
Pick-Up Street Address _____	Zip Code _____
Pick-Up Contact Name _____	Contact Phone # _____
<input type="checkbox"/> Please <b>DROP OFF</b> my child at our home address as listed above.	<input type="checkbox"/> <b>I WILL TRANSPORT</b> my child from the ESY Site.
<input type="checkbox"/> Please <b>DROP OFF</b> my child at the alternate address below:	
Drop-Off Street Address _____	Zip Code _____
Drop-Off Contact Name _____	Contact Phone # _____

Signature: Parent/Guardian \_\_\_\_\_ Date \_\_\_\_\_

**DO NOT INSERT THIS PARENT LETTER IN ESY STUDENT FOLDER**

# EXHIBIT B

**PENNSYLVANIA**  
**SPECIAL EDUCATION HEARING OFFICER**

DECISION

DUE PROCESS HEARING

Name of Child: [REDACTED]

ODR #14530/13-14 KE

Date of Birth:

[REDACTED]

Dates of Hearing:

May 19, 2014

May 20, 2014

June 11, 2014

June 13, 2014

June 24, 2013

OPEN HEARING

Parties to the Hearing:

Ms. Kimberly Williams  
[REDACTED]  
[REDACTED]

Representative:

Sonja Kerr, Esquire  
Jason Fortenberry, Esquire  
Public Interest Law Center  
of Philadelphia  
1790 Benjamin Franklin Parkway  
Philadelphia, PA 19103

School District of Philadelphia  
440 N. Broad Street  
Philadelphia, PA 19130

Brian Subers, Esquire  
Fox Rothschild  
10 Sentry Parkway Suite 200  
Blue Bell, PA 19422

Date Record Closed:

July 23, 2014

Date of Decision:

August 3, 2014

Hearing Officer:

Linda M. Valentini, Psy.D., CHO  
Certified Hearing Official

## Background

Student<sup>1</sup> is a teen-aged student who resides with Student's mother [hereinafter Parent] in the School District of Philadelphia [hereinafter District] and is eligible for special education under the current classifications of autism and speech/language impairment. During the 2013-2014 school year Student attended a District high school and completed the 9<sup>th</sup> grade. Student's Parent requested this hearing, alleging that during the 2013-2014 school year the District denied her meaningful participation in the decision-making process regarding Student's education, and denied Student a free appropriate public education.

## Issues

1. Did the District significantly impede the Parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education [FAPE] to Student in any or all of the following ways:
  - a. Promising the Parent that an iPad would be provided but failing to notify Parent that compliance was delayed/not forthcoming; and/or
  - b. Promising the Parent that a 1:1 aide would be provided so Student could attend regular education art and gym but failing to notify Parent that compliance was delayed/not forthcoming; and/or
  - c. Implementing a "distributed practice" model for speech therapy without notifying the Parent; and/or
  - d. Not having meaningful discussion with Parent about an ESY program; and/or
  - e. Assigning Student to tasks unrelated to Student's interest in art which the Parent brought to the District's attention.
2. Has the District failed to provide Student with FAPE during the 2013-2014 school year in any or all of the following ways:
  - a. Failure to comply with the requirement in Student's Individualized Education Plan [IEP] that Student be provided an iPad as assistive technology; and/or
  - b. Denial of Student's ability to participate in the Least Restrictive Environment through failure to comply with the requirement in the IEP as amended by a Notice of Recommended Educational Placement [NOREP] that Student be provided a 1:1 aide so that Student could participate in regular education art and physical education classes; and/or

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<sup>1</sup> This decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

- c. Denial of appropriate speech/language services based on Student's individual needs; and/or
  - d. Instructing Student using inappropriate present levels of educational performance; and/or
  - e. Failing to provide meaningful transition planning to develop Student's interest in art and excluding Student from a related career and technology course; and/or
  - f. Predetermining Student's 2014 ESY program by making decisions about the amount and duration of services outside the IEP process and failing to consider Student's individual circumstances; and/or
  - g. Failing to appropriately address bullying of Student thus impeding Student's ability to receive FAPE?
3. Has the District discriminated against Student because of Student's disability in violation of Section 504 during the 2013-2014 school year by:
- a. Excluding Student from regular education art and physical education to which nondisabled peers had access; and/or
  - b. Failing to protect Student from bullying when nondisabled students were protected?
4. Should the District be ordered to conduct a comprehensive evaluation of Student?

### Findings of Fact

#### Background

1. Student is a teen-aged Student who during the course of the hearing was in 9<sup>th</sup> grade at one of the District's high schools. Student is eligible for special education under the primary disability category of autism and the secondary disability category of speech and language impairment.<sup>2</sup> [(S-6, S-74)]
2. During the 2012-2013 school year, Student's 8<sup>th</sup> grade, Student attended a District middle school [hereinafter middle school] in a supplemental autistic support program. An IEP meeting was held on April 19, 2013 and the Parent approved the IEP on the ensuing Notice of Recommended Educational Placement

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<sup>2</sup>Student was previously classified in the category of intellectual disability, based on cognitive and adaptive deficits found on the last full assessment of cognitive abilities in a 2008 reevaluation using the Wechsler Nonverbal Scale of Ability and the Stanford Binet 5<sup>th</sup> Edition Abbreviated test composite. These results were consistent with prior evaluation results from 2005 using the Stanford Binet-4<sup>th</sup> Edition. The record is silent as to how and why Student is no longer so classified. [S-72]

Substantive: The Parent has not produced persuasive evidence to show that Student was inappropriately educated in academic areas during the 2013-2014 school year.

Remedy: The District appropriately used the assessment data to develop and modify goals and objectives for Student as the year progressed and to instruct and monitor progress on these goals and objectives. No remedy is due on this issue.

#### Transitional Planning/Career Education/Interest in Art

Procedural: The District listened when Parent relayed Student's interest in art, and provided regular education art classes to Student once the 1:1 aide was assigned. The District indicated to the Parent that it would provide Student with the experiences of attending the only two art-related exploratory classes offered at Student's high school- web design and cinematography, and did provide this to Student. The District explained to the Parent that the three-year Career and Technical Education [CTE] courses were only open to students once they reached tenth grade.

Substantive: Student missed attending regular education art classes due to the difficulty locating/assigning an aide. As Student is interested in art and may possibly be able to use this interest in post-secondary employment, missing these art classes was a denial of FAPE. The CTE programs are set up to run for three years beginning in 10<sup>th</sup> grade. As a 9<sup>th</sup> grader Student was not eligible to attend a CTE program in 2013-2014. This is not deemed to constitute a denial of FAPE. The Parent alleges discrimination under Section 504 because Student was denied access to regular education art classes. This issue is coextensive with the IDEA issue of denial of FAPE; there is no evidence that Student's not attending regular education art classes [or regular education physical education classes] was discrimination; lack of a 1:1 aide for several months was the reason Student did not go to regular education art and physical education.

Relief: The denial of FAPE resulting from Student's inability to participate in regular education art class [and regular education physical education class] will be remedied under the issue of 1:1 aide. No additional remedy is required in the area of transition planning.

#### ESY

Procedural: The Parent was present at four IEP meetings, accompanied by counsel at each. In the second of these IEP meetings [November 2013] ESY was specifically addressed, as an error regarding ESY in the previous IEP had to be corrected. ESY was presented in all IEPs following. At the end of January the Parent received the ESY registration form. At the February 19, 2014 IEP meeting the Parent brought up two new issues – alleged bullying and her desire for Student to attend a CTE program related to art. Clearly she was not hampered from raising concerns about any aspect of Student's program, including ESY, but she did not do so. The four IEP meetings as well as the Resolution Meeting in January 2014 offered a great deal of *opportunity* for meaningful parental participation and ESY could have been put front and center in any of these

meetings had the Parent chosen to do so. I find no procedural error in the offer of Student's ESY program.

Substantive: An ESY program is judged by the standards of appropriateness and FAPE that would govern any aspect of a Student's special education program – Is the program reasonably calculated to confer meaningful [not minimal] educational benefit? The Parent has argued that by proposing an ESY program of three days a week for four hours each day within a specific calendar period the District has failed to individualize the plan for Student's ESY services. As I have found recently in another matter, it is perfectly reasonable for any school district, particularly a large district with a substantial special education population, to establish time parameters for delivery of ESY services over the summer. Availability of buildings, teachers, support staff, and transportation must be established in such a way that every child who is entitled to ESY receives it. The Parents' argument that offering specific dates, days and times is a "cookie cutter" approach to Student's ESY is rejected – the ESY schedule is no more of a cookie cutter approach than establishing a school year calendar with opening and ending dates, hours of the school day, and holidays or breaks. What individualizes an ESY program are the goals and objectives in the ESY portion of the IEP. Student's ESY goals and objectives relate to the goals and objectives addressing Student's needs during the school year. Conclusions of hearing officers are specific to each case, each set of facts, and each witness and document. It may be that in another case the evidence and my conclusions would add up to a different result, but in this matter I find no denial of FAPE.

Remedy: Student is not entitled to a remedy for ESY as I find there has not been a denial of FAPE in this regard.

### Bullying

Procedural: The Parent has not alleged a procedural violation regarding this issue.

Substantive: The Parent brings claims on Student's behalf as a denial of FAPE under the IDEA and as discrimination under Section 504 on this issue. On the same day that the District found out about the conduct of the female student towards Student steps were taken to address the situation. Staff including the building principal became involved. Staff were in contact with the Parent, with the other student's Guardian, met with the other student, changed Student's bus seat and then reversed the change when the Parent expressed concern about this. These steps, as far as is known, have prevented further incidents. Although the Parent characterizes the cell phone incident and the money incident[s] as bullying, the exact nature of these events is not known to the adults, and as described in the record may not rise to the level of bullying. No one but Student and the female peer know exactly what transpired between them; the interaction could have been flirtation, persuasion, bribery, manipulation, coercion or demand, or a combination of any of these. It does appear that the female student at the very least took advantage of Student's good nature. I find that the District handled this situation swiftly and appropriately and in a non-discriminatory manner - there is no evidence that it would have done anything more for a non-disabled Student.



- d. Provide, as part of Student's IEP, direct instruction on self-advocacy through modeling, social stories, group discussion, videos and/or other methods. This instruction must be carried out in a small group setting once per week for thirty [30] minutes in the autistic support classroom or in a social skills group composed of special education and regular education students. Further, the 1:1 aide must be present at the sessions and as each occasion arises, prompt Student to utilize and practice the learned skills. This instruction may be provided by a guidance counselor, a school social worker, a school psychologist and/or the speech/language therapist, or by another individual possessing the training and skills required to provide this service.
- e. Conduct, within 60 calendar days, counting from the first day of school in the 2014-2015 school year, a comprehensive multidisciplinary evaluation of Student including record review, parent input, special education and regular education teacher and 1:1 aide input, student input, special education and regular education classroom observation, cafeteria observation, and cognitive testing, achievement testing, speech/language testing, social/emotional assessment, functional behavior analysis, executive functioning assessment, and assistive technology assessment. A thorough vocational assessment is also ordered, but as it is likely to take longer than 60 calendar days, that evaluation is to be completed no later than May 31, 2015. The Parent's permission is not required to conduct any part of the comprehensive evaluation described in this paragraph.

Any claims not specifically addressed by this decision and order are denied and dismissed.

August 3, 2014

Date

*Linda M. Valentini, Psy.D., CHO*

Linda M. Valentini, Psy.D., CHO  
Special Education Hearing Officer  
NAHO Certified Hearing Official

# EXHIBIT C

Pennsylvania  
Special Education Hearing Officer

DECISION

Child's Name: [REDACTED]

Date of Birth: [REDACTED]

Dates of Hearing:

August 23, 2013  
September 26, 2013  
September 27, 2013  
October 10, 2013  
October 11, 2013  
October 17, 2013

**CLOSED HEARING**

ODR Case #14056-1213KE

Parties to the Hearing:

Ms. Kimberly Williams  
[REDACTED]  
[REDACTED]

Philadelphia School District  
440 North Broad Street  
Philadelphia, PA 19130

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Sonja Kerr, Esquire  
Public Interest Law Center  
1790 Benjamin Franklin Parkway  
2<sup>nd</sup> Floor  
Philadelphia, PA 19103

Mr. Brian Subers, Esquire  
Fox Rothschild LLP  
10 Sentry Parkway / Suite 200  
P.O. Box 3001  
Blue Bell, PA 19422-3001

November 1, 2013

November 11, 2013

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Christian Hayes (“student”) is a 15-year old student residing in the Philadelphia School District (“District”). The parties agree that the student qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)<sup>1</sup> for specially designed instruction/related services for autism and speech and language impairment.

The parent claims that the District failed to provide a free appropriate public education (“FAPE”) to the student for the 2012-2013 school year, including extended school year programming (“ESY”) for summer 2013. Parent also claims that the District has violated its obligations to the student under Section 504 of the Rehabilitation Act of 1973 (“Section 504”).<sup>2</sup> As a result, the parent claims compensatory education for these alleged deprivations. Additionally, parent seeks directives for the student’s individualized education plan (“IEP”) team.<sup>3</sup>

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<sup>1</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.163 wherein Pennsylvania education regulations explicitly adopt most provisions of 34 C.F.R. §§300.1-300.818.

<sup>2</sup> It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of Section 504 at 34 C.F.R. §§104.1-104.61. *See also* 22 PA Code §§15.1-15.11 wherein Pennsylvania education regulations explicitly adopt the provisions of 34 C.F.R. §§104.1-104.61.

<sup>3</sup> In her complaint, parent also requested placement of the student for the 2013-2014 school year at a specific District high school. As set forth more fully below in the *Procedural Background* section, prior to the commencement of the hearing, the student was placed at this high school through a hearing officer-ordered exchange between the parties of a notice of recommended educational placement (“NOREP”). Therefore, this claim for remedy was rendered moot.

The District counters that, at all times, it met its obligations to the student under IDEA and Section 504. As such, the District argues that no remedy is owed to the student.

For the reasons set forth below, I find in favor of the parent.

### **ISSUES**

Was the student provided with a free appropriate public education for the 2012-2013 school year?

If not, is parent entitled to compensatory education and/or other remedy?

### **PROCEDURAL BACKGROUND**

- a. Parent filed her complaint on June 21, 2013. Parent sought a placement for the 2013-2014 school year in a particular District school, compensatory education for the 2012-2013 school year, and directives for the student's IEP team. An element of the parent's allegations centered on alleged failures of the District to comply with the terms of a 1995 consent decree issued by the federal District Court for the Eastern District of Pennsylvania related to the District's handling of the placement of students with disabilities when transitioning from middle school to high school ("Legare consent decree"). (Parent's Exhibit ["P"]-1; Hearing Officer Exhibit ["HO"]-21 at pages 14-27).
- b. Pursuant to 34 C.F.R. §§300.510 and 300.515, based on the filing date of the complaint, the decision due date was statutorily set for September 4, 2013, 75 days from the filing date of the complaint. These 75 days account for a 30-day period for a resolution meeting process and a 45-day period thereafter for the conclusion of the hearing. A hearing date was set for August 19, 2013. (HO-2, HO-7, HO-10).
- c. The District filed an answer to the complaint on July 3, 2013. In its answer, the District asserted that the hearing officer did not

## **DISCUSSION AND CONCLUSIONS OF LAW**

To assure that an eligible child receives a free appropriate public education (“FAPE”) (34 C.F.R. §300.17), an IEP must be reasonably calculated to yield meaningful educational benefit to the student. Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982). ‘Meaningful benefit’ means that a student’s program affords the student the opportunity for “significant learning” (Ridgewood Board of Education v. N.E., 172 F.3d 238 (3<sup>rd</sup> Cir. 1999)), not simply *de minimis* or minimal education progress. (M.C. v. Central Regional School District, 81 F.3d 389 (3<sup>rd</sup> Cir. 1996)).

### Denial of FAPE

The record supports a finding that the District denied the student FAPE. The denial comes in the form of a mosaic of procedural and substantive acts and omissions. First and most importantly, the student’s speech and language services in the 2012-2013 school year is problematic on every level. From the design of the speech and language programming, to its implementation, to its progress monitoring, this record leaves very little confidence that the District provided for the student’s speech and language needs.

Second, the District did not make ESY programming for the summer of 2013 part of any discussion at an IEP meeting. The

March/April 2013 IEPs contain identical language for ESY programming from the March 2012 IEP, and no IEP on this record provides any indication that the District considered individualized ESY programming for the student, even though the record is clear that the student qualifies for such programming, and the District recognized it. In sum, on this record, the District placed the student's parent in a position where the only recourse was to spend private resources for necessary summer programming.

Third, there were IEP goals where no instruction or services were delivered. Most pointedly, this occurred throughout the 2012-2013 school year with the post-secondary transition goal where the student would provide name, address, and phone number with 100% accuracy. There was never any instruction or services related to this goal, and it was removed in the March/April 2013 IEPs. To a lesser degree, the musical keyboarding goal was also never implemented after its creation in the March 2013 IEP—approximately three months of instruction under the IEP that was ignored.

Fourth, there are three prejudicial procedural flaws that rise to a level of denial of FAPE. On this record, the evidence is preponderant that the District was content to delegate the running of the IEP meetings to the special education teacher with explicit knowledge that she could not

held that a student who is denied FAPE “is entitled to compensatory education for a period equal to the period of deprivation, but excluding the time reasonably required for the school district to rectify the problem.” (M.C. at 397).

Here, the nature of the denial of FAPE is a mosaic of prejudicial substantive and procedural acts and omissions by the District throughout the 2012-2013 school year. Having said that, the student made progress on IEP goals, so the student’s education program was not a total loss. Yet the denial of FAPE, and again most importantly a failure on almost every level to program appropriately for the student’s significant speech and language needs, requires that an award of compensatory education follow. As a matter of equity, then, the parent will be awarded 2.75 hours per day for every school day in the 2012-2013 school year.<sup>8</sup>

#### Reimbursement

The District failed to make ESY programming for summer 2013 a part of the student’s IEP planning and educational programming in the 2012-2013 even though the District recognized the need for such programming. As a result, the student’s parent was forced to utilize private resources to provide necessary programming in the summer of 2013.

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<sup>8</sup> A full day of compensatory education amounts to 5.5 hours for a secondary level student. See 22 PA Code §11.3.



## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the School District of Philadelphia denied the student a free appropriate public education in the 2012-2013 school year.

The student is entitled to compensatory education in an amount equivalent to 2.75 hours for every school day in the 2012-2013 school year.

Additionally, parent is entitled to reimbursement for out-of-pocket private expenditures for any summer 2013 athletic, social, artistic and academic programming arranged for the student. Upon presentation by the parent of proof of payment of out-of-pocket private expenditure(s) for summer 2013 programming for the student, the District is ordered to reimburse parent. Provision of evidence of proof of payment shall be exchanged between counsel for the parties, and the District shall issue reimbursement within 60 calendar days of the date District counsel receives such evidence.

Furthermore, parent is entitled to reimbursement for transportation costs for transporting the student to and from summer 2013 programming. Parent is entitled to mileage reimbursement as allowable under Internal Revenue Service mileage reimbursement rates for the period in question for one round-trip from the parent's home address to the address(es) of the program location(s)—to be calculated

using an internet-based mapping website—for each day the student attended a summer 2013 program. Upon presentation by the parent of a compilation of the mileage calculations, the District is ordered to reimburse parent. Provision of the mileage calculation shall be exchanged between counsel for the parties, and the District shall issue reimbursement within 60 calendar days of the date District counsel receives such calculation.

The hearing officer declines to give directives to the student's IEP team.

Any claim not specifically addressed in this decision and order is denied.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

November 11, 2013

# EXHIBIT D

Pennsylvania  
Special Education Hearing Officer

DECISION

Child's Name: [REDACTED]

Date of Birth: [REDACTED]

Date of Hearing: July 15, 2014

**CLOSED HEARING**

ODR Case # 15180-1314AS

Parties to the Hearing:

Ms. Nina Williams  
[REDACTED]  
[REDACTED]

School District of Philadelphia  
440 North Broad Street  
Philadelphia, PA 19130

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Jason Fortenberry, Esq.  
1709 Benjamin Franklin Parkway  
2<sup>nd</sup> Floor  
Philadelphia, PA 19103

Benjamin Hinerfeld, Esq.  
2 Penn Center / Suite 1020  
1500 John F. Kennedy Boulevard  
Philadelphia, PA 15102

Sarah Davis, Esq.  
10 Sentry Parkway/Suite 200  
P.O. Box 3001  
Blue Bell, PA 19422-3001

July 15, 2014

July 25, 2014

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Evan Williams (“student”) is a 13-year old student who has been identified as a student with a specific learning disability. The student resides in the School District of Philadelphia (“District”).

The parties do not dispute that the student is a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEA”)<sup>1</sup>. The parties dispute centers on the student’s extended school year (“ESY”) program for the summer of 2014. The parent maintains that the District’s proposed ESY program is inappropriate due to predetermination and non-individualization. The District maintains that the proposed ESY program it has offered is appropriate and, as such, has complied with its duties under federal and Pennsylvania law to offer the student a free appropriate public education (“FAPE”).

For the reasons set forth below, I find in favor of the parent.

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<sup>1</sup> It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §14.132.

## **ISSUES**

Was the District's proposed ESY program predetermined  
and/or  
did it lack individualization?

If so, is the student entitled to compensatory education?

If not, is the District's proposed ESY program appropriate?

## **FINDINGS OF FACT**

1. In November 2013, after attending a cyber charter school, the student entered the District under the terms of an individualized education plan ("IEP") drafted by the cyber charter school. (Parent Exhibit ["P"]-1; School District Exhibit ["S"]-8 at page 2; Notes of Testimony ["NT"] at 157-158).
2. The IEP from the cyber charter school indicated that the student was eligible for ESY programming. (P-1 at pages 23-25).
3. Shortly after enrolling, the District requested, and received, permission to re-evaluate the student so the District could draft its own IEP for the student. (S-5).
4. In December 2013, the District issued its re-evaluation report. (S-9).
5. In January 2014, the student's IEP team convened to consider the District's IEP. (S-13).

In this case, the preponderance of the evidence is that the IEP team's consideration of the student's ESY programming was predetermined to fit within the specific context of the District's ESY programming schedule rather than an individualized consideration of the student's needs with ESY programming designed to meet those needs. Every District witness supported this proposition. Certain District witnesses remediated this position upon follow-up questioning by District counsel with testimony that there would be individualization of the student's programming (e.g., NT at 241-242, 168-169). But the tenor and tone of District witnesses who testified by telephone, and the demeanor of the District witness who testified in person, lead this hearing officer to the conclusion that the District's approach to ESY programming for this student was a standard-program-first, rather than IEP-first, approach. And that supports the conclusion that, on this record, there was a lack of individualization for the student's ESY programming.

Added to these credibility-based determinations is the fact that the standardized ESY program information was supplied to the parent without any IEP meeting having been convened or any consideration of ESY eligibility/programming having been considered by the IEP team. This is a further indication that decisions were made by the District about ESY programming, and the applicability of its standard ESY program, without any input from the student's IEP team.

**ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the student is entitled to 150 hours of compensatory education. The nature and limits of the compensatory education are set forth above in the *Compensatory Education* section.

Jake McElligott, Esquire

Jake McElligott, Esquire  
Special Education Hearing Officer

July 25, 2014



# EXHIBIT E

Philadelphia City SD  
**Special Education Plan Report**  
07/01/2014 - 06/30/2017

# District Profile

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## Demographics

440 North Broad Street  
Philadelphia, PA 19130  
(215) 400-4000  
Superintendent: William R. Hite, Jr., EdD  
Chief Academic Support Officer: David M. Hardy  
Deputy Special Education: Kimberly A. Caputo, J.D.

## Introduction & Overview

The School District of Philadelphia's (SDP) Special Education Plan Report outlines the current and future work intentionally undertaken to ensure the development and implementation of appropriate educational programs for students with disabilities. This work is informed by and aligned to the SDP's vision: "The School District of Philadelphia will deliver on **the right of every child** in Philadelphia to an excellent public school education and ensures **all children** graduate from high school ready to succeed, (**Action Plan v 2.0**)." Through the actions outlined in this Plan and with the support of parent and community partners the SDP strives to fulfill this vision. We are and will continue to dedicate staff and resources to accomplish the following objectives:

1. **Promote effective instructional practices in every classroom.** Quality instruction is core to student success; therefore, we will support students with disabilities by improving and promoting professional development opportunities across multiple fronts including: the implementation of effective instructional practices and researched-based strategies aligned to PA Core instruction; delivery of instructional best practices for the learner with diverse needs as identified by IDEA; selecting, utilizing and implementing research validated academic and behavioral interventions with fidelity; understanding and using student data to inform instructional practices and as the foundation of the individualized education program. In addition, we will continue to promote the District's Backward By Design instructional framework, an outcomes-focused instructional model aimed at ensuring effective delivery of the PA Core Standards and enhanced by the Response to Instruction and Intervention (RtII) process;
2. **Provide high quality Special Education services in the least restrictive learning environment.** The SDP provides a wide continuum of services ranging from placement in the most highly restrictive educational settings to the provision of special education supports and service in the general education setting. The needs of students with disabilities are diverse; accordingly, we will align our organization, systems, policies, and investments to provide excellent instruction and to effectively

meet their unique needs in the least restrictive environment. Specific actions underlying the accomplishment of this objective include: increased training and support on inclusive practices; promoting the partnership between regular and special education teaching staff; expanding resources on accommodations and supplementary aids and services available to regular and special education teaching staff; improving and expanding methods of resource delivery to teaching staff.

3. **Provide parents with information about their students' progress and how to support that progress.** We will clearly articulate our expectations for learners at all ages and parents' role in their children's learning by providing parents with training, information, and necessary tools to support student learning. In short, we will empower parents and families with information, insight, and ideas on how to support students in their learning and how to hold schools and the District accountable for the delivery of high-quality educational opportunities.

To execute the objective of providing effective instructional practices in every classroom and providing students with special education services in the least restrictive environment, the Office of Specialized Services (OSS) will provide training in the following areas for targeted school teams, including principals, general education teachers, special education teachers, paraprofessionals, and parents:

- Universal Design for Learning
- Research Validated Interventions
- Research Validated Classroom Management Strategies
- Standards Aligned System
- Standards Aligned Instruction
- Standards Aligned IEPs
- Positive Behavior Intervention Strategies
- Inclusive Practices Self-Assessment
- SaS toolkit
- Language Essentials for Teachers of Reading and Spelling (LETRS)
- Progress Monitoring with AIMSweb
- Parent Overview Training in each area above

We will seek to develop, support and promote a series of preK-grade 3 teams from schools in each learning network to receive the above training and support. During each successive year of this 3 Year Plan, a different cohort of schools will receive the trainings listed. To maximize impact for the School District of Philadelphia, transcripts of the training and the training process will be created and select live trainings will be video recorded and made available on the School District of Philadelphia's Office of Specialized Services website.

The Pre-K-3 focus of the aforementioned trainings harmonizes with The School District of Philadelphia's **Anchor Goal 2 (Action Plan v 2.0)**: "100 percent of 8-year-olds will read on grade level." To reach this goal for students with disabilities, the SDP's Office of Specialized Services seeks to provide general education teachers and special education teachers with resource guides to support the general education teacher in the delivery of core content, accommodations, and modifications to students with disabilities in the general education classroom. Moreover, OSS will stress with multiple stakeholders (e.g. Office of Superintendent, Academic Office, Early Childhood, Multi-Lingual Curriculum and Programs, Curriculum and Assessment, principals, teachers, parents, community and business partners) the necessity of intervening early academically with students with disabilities, utilizing research validated interventions with fidelity in reading, math, and writing while closely monitoring students' progress.

While Pre-K-3 is one focus population, targeted K-12 teachers will also participate in relevant professional development and training in order to meet the needs of students receiving Special Education services. The Special Education Personnel Development section of this plan specifies the trainings these practitioners will receive.

Finally, parents are a vital key to student success. The Office of Specializes Services embraces the fact that parents are often the students' best advocates. Consequently, OSS throughout the 3 years of this plan will provide overview training in each of the educational practices and processes in which we train teachers. Our goal is empower parents with knowledge of effective programming for students with disabilities in order that they may be our most effective partners for achieving student progress and achievement.

### Planning Committee

Name	Role
Kimberly Caputo	Deputy Chief, Office of Specialized Srvc.
Melody Alegria	Special Education Director
Danelle Ross	Special Education Director
Natalie Hess	Special Education Director
Alton Strange	Transition Coordinator
Joanne Eggleston	Parent Coordinator
Amy Holdsworth	Emotional Support Coordinator
Jamie Devlin	Behavior Coordinator
Judy Anderson	Autism Coordinator
Joyce Dukes	Intervention Coordinator
Cameron Milton	Technology Coordinator
Christopher Marino	Operations Coordinator
Roberta Dilworth	Intermediate Unit Psychologist
Nancy Velez	Special Project Assistant
Joyce Hill	Secretary
Renay Boyce	Regular Education Teacher
Russell Washington	TaC Coordinator
Delores Brown Waters	Parent

# Core Foundations

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## Special Education Students

There are currently 19,260 Special Education students in the School District of Philadelphia

## Identification Method

**Identification Method (SLD)-The School District of Philadelphia uses the “discrepancy model” to identify students with a Specific Learning Disability. The process is as follows:**

- Upon a parent oral request for a multi-disciplinary evaluation, the LEA issues a Permission to Evaluate Request form and presents it to the parent. The parent’s signature on this document and its return to the LEA serves as the parent’s written request for evaluation.
  - Within 10 days of the written parent request for evaluation, the LEA shall present to the parent a Permission to Evaluate Consent form. Upon the parent’s indication of consent on this form and upon the receipt of this form by the LEA indicating the parent’s consent for evaluation, the LEA shall conduct a Multi-Disciplinary evaluation within 60 days from the date consent was given and the Permission to Evaluate Consent form was returned to the LEA.
  - The LEA shall present to the parent a Permission to Evaluate Consent form when the LEA, through its Child Find obligations, suspects that a student has a disability. Upon the parent’s indication of consent on this form and upon the receipt of this form by the LEA indicating the parent’s consent for evaluation, the LEA shall conduct a Multi-Disciplinary evaluation within 60 days from the date consent was given and the Permission to Evaluate Consent form was returned to the LEA
  - The SDP adheres to Pa. Code 14.125 when making a determination of Specific Learning Disability (SLD).
1. Using multiple sources of data, determining whether the child does not achieve adequately for the child’s age or meet State-approved grade-level standards in one or more of the following areas, when provided with learning experiences and scientifically based instruction appropriate for the child’s age or State-approved grade-level standards:
    - Oral expression
    - Listening comprehension

- Written expression
  - Basic reading skill.
  - Reading fluency skills.
  - Reading comprehension.
  - Mathematics calculation.
  - Mathematics problem solving.
2. The process will examine, through norm-referenced measures of intellectual ability and achievement levels, whether a child exhibits a pattern of strengths and weaknesses, relative to intellectual ability as defined by a severe discrepancy between intellectual ability and achievement, or relative to age or grade.
  3. The process will determine that its findings under this section are not primarily the result of:
    - A visual, hearing or orthopedic disability.
    - Mental retardation.
    - Emotional disturbance.
    - Cultural factors.
    - Environmental or economic disadvantage.
    - Limited English proficiency.
  4. The evaluation process will also ensure that underachievement in a child suspected of having specific learning disability is not due to lack of appropriate instruction in reading or mathematics by considering documentation that:
    - Prior to, or as a part of, the referral process, the child was provided scientifically-based instruction in regular education settings, delivered by qualified personnel, as indicated by observations of routine classroom instruction; and
    - Repeated assessments of achievement were conducted at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.



## **Enrollment**

The School District of Philadelphia has no issues of disproportionality relating to students with disabilities.

## **Non-Resident Students Oversight**

In order to meet its obligations under Section 1306 of the Public School Code with respect to Non Resident Students residing in children's institutions within the district, The School District of Philadelphia (SDP) and its Intermediate Unit (IU) have established the following procedures as the host district:

1. Upon admission, the Philadelphia institution provides intake information to the SDP. Each student is entered into a tracking database. On a regular basis, the institution provides the SDP with student eligibility determinations and records from the home district, monthly census reports, and regular progress reports over the course of the student's stay.
2. The SDP provides educational staff to housing institutions, directly or through contract, in order to ensure that Special Education services are provided to students with disabilities residing in these institutions.
3. SDP has allocated staff to serve as the LEA representative, to monitor the educational program for compliance with IDEA requirements, to assist with educational planning and administer assessments as indicated.
4. For students living in a group home and other non-academic settings, the district assists with registration and enrolment in the neighborhood school for that location.

Barriers that limit the District's ability to meet its obligations under Section 1306 are generally related to rapid or unexpected turnover within the institutions and difficulty obtaining educational records from the home district.

## **Incarcerated Students Oversight**

Within Philadelphia there are two facilities where school aged students are incarcerated and each provides educational services. The Youth Study Center (YSC) and Pennypack House are staffed to meet the needs of students with disabilities. Each facility /school program has principal, regular education teachers, special education teachers, and are assigned a school psychologist. As a school, they are subject to the same oversight as all School District of Philadelphia schools. These schools are assigned to an academic division with the oversight of an Assistant Superintendent and a Special Education Director. Each school submits quarterly program profile information detailing the make-up of the Special Education programs and enrollment information in their buildings.

## **Least Restrictive Environment**

SDP offers a K-12 continuum of intervention levels (itinerant, supplemental, and full time) and programs (autistic support, emotional support, learning support, life skills support and multiple /complex disability support) to support the wide variety of student needs.

Supplemental support and related services are provided by (109) school psychologists, (40) occupational and physical therapists; (179) school nurses; (105) speech language pathologists (8) vacancies; (25) hearing classroom teachers and itinerant teacher service providers (4) vacancies; (19) American sign language interpreters; (15) teachers of the visually impaired.

Resources dedicated to maintain students in the least restrictive environment include consultative classroom support by professional related service provider staff; professional administrative special education staff (special education directors); program targeted support by an autism coordinator, coordinator for behavioral based programs, coordinator for complex/MDS programs, and an ABA behavior coordinator. The use of assistive technology, receptive and expressive communication devices, interagency collaboration, modified curriculum and materials represent a sampling of the key supports and services provided to students with disabilities to support access to the opportunities made available to all students within our district.

SDP/OSS provides training, support and programs to school based staff to ensure that “to the maximum extent appropriate, children with disabilities, including those in private institutions, are educated with non-disabled children, and that removal from the regular education environment only occurs when education in that setting with supplementary aids and services, cannot be achieved satisfactorily”.

### **Training**

- Free and Appropriate Education (FAPE) in the Least Restrictive Environment (LRE) for Principals and Special Education Liaisons (SEL)
- Universal Design for Learning (UDL)
- Differentiated Instruction
- Accessible Instructional Materials (AIM)
- Accessibility features of Apple products, SMART Boards, and Promethean Boards
- Standards Aligned IEPs
- Standards Aligned Instruction for Complex Need Support students
- SaS toolkit
- SETT Protocol
- Research Validated Interventions
- Language Essentials to Teachers of Reading and Spelling (LETRS)

- Behavior Prevention and Intervention

### **Support Processes & Programs**

- Include Me from the Start
- Special Olympics- Unified sports
- Inclusive Practices Self-Assessment
- Progress Monitoring
- Educational Benefits Review
- Inter-Office Collaboration between the Office of Specialized Services, Office of Early Childhood, Office of Curriculum and Assessment, Office of Multi-Lingual Curriculum and Programs, and the Office of Teacher Effectiveness to streamline curriculum, data review, professional development, and information

### **Replication of successful programs, evidence based models, and PDE sponsored initiatives**

- School District of Philadelphia's Office of Specialized Services working in partnership with principals replicates the use of research validated interventions in each of its schools
- School District of Philadelphia's Office of Specialized Services partners with Pattan King of Prussia to provide professional development and training to staff, on site at the SDP and at the Pattan King of Prussia office, in Inclusive Practices, Universal Design for Learning, Standards Aligned Instruction, Standards Aligned IEPs, Safety Care, Explicit Vocabulary Instruction, Behavior Prevention and Intervention, and Language Essentials for Teachers of Reading and Spelling (LETRS)
- School District of Philadelphia's Office of Specialized Services partners with the University of Pennsylvania STAR Program and with the TIM Academy to provide professional development support for students with Autism. The training helps to facilitate the movement of students with Autism from a more restrictive environment to a lesser restrictive environment.

### **SPP Targets, Out of District Placements and LRE**

- The School District of Philadelphia (SDP) SPP target in the Indicator 5 section-Educational Environments: The SDP did not meet its target for SE Inside the Regular Class 80% Or More; The SDP did not meet its target for SE Inside the Regular Education Class Less Than 40%; The SDP met its target for SE In Other Settings.
- There are currently 843 SDP students placed in out-of-district placements.
- The IEP teams working in partnership with the Office of Specialize Services determines on a case-by-base basis if a student's needs exceeds the capability of the district to support the student. When a determination is made that an out-of-district placement is needed, the IEP Team and the Office of Specialize Services matches the student to an out-of-district program that best meets the need of the student. This process ensures that LRE requirements are met.

directly with Devereux and to implement Restorative Practices in 10 schools working directly with the International Institute for Restorative Practices.

- **Positive Behavioral Interventions and Supports (PBIS)** provide a continuum of positive behavior support for all students in a school. It addresses areas including the classroom and non-classroom settings, such as hallways, buses and restrooms. PBIS includes proactive strategies to define, teach, and support appropriate student behaviors.
- **Behavior and Emotional Support Coordination** provides support to schools in behavior prevention and intervention, behavioral data collection, developing functional behavioral assessments and behavior intervention plans, and placements, when necessary, in Emotional Support programs.
- **QBS, Inc., Safety Care -Behavioral Safety Training.** SDP/OSS provides training for teachers and paraprofessionals in the use of safe, straightforward, effective approaches designed to prevent or reverse escalation of a student's behavior and to avoid the use of restraints. Safety-Care provides the tools staff need be safe when working with behaviorally challenging individuals. Safety Care helps professionals to understand how and why crisis events happen, and ways in which staff might inadvertently contribute to them. Safety Care teaches professionals to prevent crises using a variety of supportive interaction strategies and to apply simple, evidence-based de-escalation strategies that are effective for any population. Safety Care also helps professionals to respond appropriately and safely to dangerous behavior, prevent the need for restraint, and to intervene after a crisis to reduce the chance that it will happen again.

OSS has broadened the ability to provide Safety Care training to school based staff by increasing the internal staff-training cohort to include all special education directors, coordinators and special project assistant staff. In partnership with principals and assistant superintendants, SDP/OSS seeks to target Safety Care training on a classroom and building wide basis in response to data points including: increased discipline activity; increased referrals for evaluation/reevaluation due to behavior; increased referrals for more restrictive settings.

- **School Therapeutic Services (STS)** provides a team of behavioral health professionals, housed in select schools, who provide treatment to students who have been assigned to the program. STS services include individual and group psychotherapy, behavioral modification and coping skills, one-to-one/or group rehabilitation, and crises intervention. STS services also include regular morning check-in, case management service, client-centered case consultation with teachers and other school personnel, family support, and participation in the RTII process, Interagency, and IEP meetings.

### **SDP Goals and Objectives to Date regarding PBIS and Restorative Practices Grant**

During the first six months of the grant, SDP expected Devereux would train the leadership teams of the 10 schools with at least one full day, if not two full days.

Many of the schools first identified as beneficiaries of this grant experienced resource changes during the summer. As a result, SDP and Devereux determined to provide the schools with introductory sessions via a web-seminar in the late summer. This ensured that the schools were aware of the expectations of PBIS as well as what support Devereux would provide. Following these introductory sessions and after receiving additional requests from "receiving schools" to implement PBIS, the list of participating schools was updated.

Devereux's full day trainings are for the identified leadership teams in each participating school (which, in all instances, includes the principal). The training required the leadership teams to leave the school building during the day. SDP anticipated that given the reductions in staff, principals would be reluctant to leave the building. However, with the support of their assistant superintendents, all ten schools have completed one full day of training and the second day of training is scheduled to occur in early December.

In addition, SDP coaches have been identified and have participated in training. Devereux has provided the application for those coaches to become facilitators, and SDP moving forward with this process.

SDP's Information Technology Department is also considering whether the 10 schools can use the PBIS data collection system SWIS. This would allow accurate and detailed data collection in those schools to assist the PBIS schools in developing their intervention plans.

During the first six months of the grant, SDP expected that IIRP would have trained the staff of all 10 schools and schools would begin implementation.

IIRP trainings involve all staff members at that particular school, and thus they must occur on given professional development days. This proved to be challenging, as many of

the professional development days during the calendar year have been designated as for professional development relating to instruction.

Nonetheless, seven of the 10 schools have had one full day of training, one school is in its second year of implementation and is meeting regularly with IIRP, and two schools have had introductory meetings. For the seven schools, the second day of training is scheduled for February 2014, and the first day for the two schools is also scheduled for February 2014.

In an effort to work with the SDP schedule, IIRP has slightly revised its training program so that it is working with the schools during "common planning" time. This adjustment by IIRP alleviates the pressures to find time and or funds for training.

IIRP has also agreed to allow additional SDP employees to attend their basic four-day course or their 2-day leadership course for no cost. These trainings, scheduled for November 2013, are occurring at the SDP building. This enables staff that may have missed training, new staff and additional SDP employees at other schools not a part of this grant to take part in training. SDP views this as important to sustain and grow SDP's efforts to implement restorative practices in additional schools.

### **SDP Leadership Team Meeting**

SDP has created a leadership team that meets monthly to discuss the School-Wide Climate Programs. Members of this team include deputy-level SDP staff, representatives from DHS, CBH, the Campaign for Non-Violent Schools, CHOP, IIRP and Devereux. This team affords the opportunity to provide updates, share challenges and successes, and set goals.

### **SDP Goals and Objectives for November 2013-May 2014**

During the next six months, SDP anticipates that Devereux will complete the two days of training for the leadership team. It is anticipated that the leadership teams will develop their universal system of PBIS.

SDP also anticipates that its Information Technology Department will work with Devereux to utilize SW1S and data collection specific to helping the schools develop their universal system of PBIS will occur.

SDP anticipates that Devereux will continue to mentor and train the SDP coaches.

SDP is also looking to Devereux to assist in developing a plan for sustainability and increased district-wide participation in PBIS. Specifically, Devereux will work with SDP's



Stoneleigh Fellow to continue to develop a plan for PBIS demonstration sites, facilitators, and an application process.

### **Restorative Practices**

During the next six months, SDP anticipates that the seven schools will receive one or 2 more full days of training. SDP expects IIRP to continue meeting with the individual schools to monitor implementation, provide technical support, and work with small groups on implementation. SDP expect that the remaining two schools will work with SDP to begin implementation during its common planning time and will have at least one day of training.

SDP expects that IIRP will determine the baseline data points based on the data that SDP is compiling and providing to IIRP.

SDP wants to continue to work with IIRP to plan additional community events open to additional SDP staff.

SDP is also looking to IIRP to assist in developing a plan for sustainability and increased district-wide participation in Restorative Practices. Specifically, IIRP will work with SDP's Stoneleigh Fellow to continue to develop a plan to increase awareness of Restorative Practices based on this pilot, for building its own trainers and an application process.

### **Intensive Interagency/Ensuring FAPE/Hard to Place Students**

SDP is committed to work with state and local agencies and area school districts and intermediate units to provide quality services to eligible children. SDP does at times have difficulty in locating a program to ensure the provision of FAP in the LRE. When ensuring FAPE for an individual student or a particular disability category becomes problematic, the District begins a review process that may include:

- Assessing the appropriateness and level of fidelity with which the present IEP interventions are being delivered,
- Reviewing and revising as needed the students behavior improvement plan,
- A Comprehensive Psycho-educational Re-Evaluation followed by an updated/revised IEP,
- Interagency collaboration with regard to supportive services available within the community,
- A referral for placement in one of the district's alternative programs,
- A referral for placement in an out of district, disability specific, program.

Presently, the District is having a great deal of success in the provision of programs for students with Low Incidence disabilities and higher functioning Learning Disabilities in schools with the District. The district also utilizes Child Service system partners (i.e. Behavioral Health agencies) to assist with providing social and emotional support services within our elementary and middle schools. These services have also proven effective. Greater difficulty has been experienced in providing a continuum of services for students at the upper end of the Intellectual Disability range (IQ between 65-75), lower end of the Learning Disability range, and students with significant issues with Emotional Disturbance. This has been particularly true for the adolescent population. For many of these students, placement within the newly opened virtual academy (PVA) or one of our credit recovery or evening programs has proven to be successful. When services for these students cannot be provided at a level sufficient to meet FAPE requirements, the district will make a referral to one of several Approved Private School settings the does provide the requisite services.

## Behavior Support Services

The School District of Philadelphia (district) recognizes its legal responsibility for providing all students with disabilities, including those with behavioral challenges, with a free appropriate public education (FAPE.) The Individualized Education Program (IEP) is the mechanism by which IEP teams identify the special education and related services that are necessary for students to make meaningful progress during the school day. A Service Agreement (504) Plan is required for those students with disabilities who need accommodations or related services, but do not need special education instruction.

In some cases, a student's behavior may impede his/her learning or that of others (i.e., affects the student's safety in the school setting or on the district's transportation, or the student's behavior affects the student's progress in behavioral and academic areas). In these cases, the IEP or Service Agreement team must complete a functional behavior assessment and a behavior support plan. Based on the results of the functional behavior assessment and the strategies designed to prevent or redirect targeted behavior and reinforce desired behavior, the team will determine the level of support necessary to implement the Behavior Support Plan (i.e., regular class teacher, special education teacher, related service providers, classroom assistance/assistant, or full-time supportive services assistant.)

Some children, who are eligible for Medical Assistance, receive one-to-one behavioral support through therapeutic staff support (TSS) funded through the city's Behavioral Health Services (BSS). When a student with disabilities receives TSS and the IEP or Service Agreement team determines that such support is also educationally necessary, the TSS may be used to implement the required service. In such cases, the district has the responsibility to ensure that one-to-one behavioral support is provided on a consistent basis. Through a Comprehensive Interagency process, the School District of Philadelphia collaborates with our Child Service System Partners (e.g. Department of Human Services, Community Behavioral Health, local Behavioral Health agencies) to also ensure consistency of behavioral health service delivery between home and school and to integrate therapeutic behavioral recommendations from the behavioral health agencies into the behavior intervention plan being implemented in school.

The School District of Philadelphia (SDP) offers a variety of behavioral support services at a school level. These support services assists the SDP in our commitment to identify challenging behaviors and to intervene early in order that students receive Special Education in the Least Restrictive Environment.

SDP schools across the district also implement Positive Behavioral Supports (PBIS). Moreover, the district is engaged in a grant project to implement PBIS in 10 schools working

Over the life of this plan an expansion of the continuum of services is being explored in the area of school to work and transition/vocational programming for the population described above.

### **Strengths and Highlights of the Special Education Program**

- Research Validated Interventions are available to all students with disabilities
- Easy System/Easy Trac for IEP writing/storage, Evaluation and Reevaluation report writing/storage, Access Billing, Special Education Data, and Accountability
- Delivery of Related Services
- Training for paraprofessionals and teachers in Safety Care during the school day, after school, and on Saturdays
- Training of teachers in the selection, implementation, and progress monitoring of research validated interventions during the school day, after school, and on Saturdays
- Training of teachers in Explicit Vocabulary Instruction during the school day, after school, and on Saturdays
- Training of MDS teachers in the Communication Matrix during the school day, and after school
- Training of teachers in the Language Essentials for Teachers of Reading and Spelling (LETRS) after school and on Saturdays
- Training of Autistic Support teachers in Applied Behavioral Analysis, Functional Routines, Discreet Trial Training, Pivotal Response, and the TEACCH method during the school and after school
- Training of teachers in progress monitoring utilizing AIMSweb during the school day and after school
- Training of teachers and principals in behavior prevention and intervention strategies during the school day, and after school
- Parent trainings covering parent engagement with schools, Procedural Safeguards, and overview of research validated interventions utilized in the district with students with IEPs during the school day and after school
- Training of counselors, deans, Special Education Liaisons, principals and assistant principals in the Comprehension Interagency Collaboration process during the school day and afterschool
- Training teachers in the Transition process during the school day, and afterschool
- Training of teachers in the Extended School Year process during school, and after school
- Facilitating a yearly Autism Expo
- Facilitating a yearly Intervention Expo
- Hiring Highly Qualified paraprofessionals with new hires receiving an introduction to IDEA and responding to challenging behavior in the classroom setting
- Marrriott Bridges program- School to work program for students with disabilities

# Assurances

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## Special Education Assurances

The School District of Philadelphia verifies the following Assurances:

- Implementation of a full range of services, programs and alternative placements available to the school district for placement and implementation of the special education programs in the school district.
- Implementation of a child find system to locate, identify and evaluate young children and children who are thought to be a child with a disability eligible for special education residing within the school district's jurisdiction. Child Find data is collected, maintained and used in decision-making. Child find process and procedures are evaluated for its effectiveness. The District implements mechanisms to disseminate child find information to the public, organizations, agencies and individuals on at least an annual basis.
- Assurances of students with disabilities are included in general education programs and extracurricular and non-academic programs and activities to the maximum extent appropriate in accordance with an Individualized Education Program.
- Compliance with the PA Department of Education, Bureau of Special Education's report revision notices process.
- Following the state and federal guidelines for participation of students with disabilities in state and district-wide assessments including the determination of participation, the need for accommodations, and the methods of assessing students for whom regular assessment is not appropriate.
- Assurance of funds received through participation in the medical assistance reimbursement program, ACCESS, will be used to enhance or expand the current level of services and programs provided to students with disabilities in this local education agency.

## **24 P.S. §1306 and §1306.2 Facilities**

### **Pennypack House**

- Pennypack House is a school for incarcerated juveniles in an adult facility
- Pennypack House is a School District school that provides all educational services that are typical in neighborhood schools including Special Education, related, and psychological services
- 57 students are placed in the Pennypack House, 19 students are students with IEPs
- Pennypack House has 6 special education teachers assigned

### **Therapeutic Center at Fox Chase**

- The Therapeutic Center at Fox Chase is a behavioral health institution
- The center provides residential treatment for students classified under 1306 non-resident
- Up to 42 students are placed at the center

### **Wordsworth Academy STARS**

- Wordsworth Academy STARS is a behavioral health institution
- The academy provides residential treatment for students classified under 1306 non-resident
- Up to 120 students are placed at the center

### **Friends Hospital**

- Friends Hospital is a behavioral health institution
- The hospital provides residential treatment for students classified under 1306 non-resident
- Up to 20 students are placed at the hospital

# District Level Plan

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## Special Education Personnel Development

### Autism:

**Targeted Teachers Grades K-5-** will receive on-going training, direct classroom consultation, and remote consultation in Strategies for Teaching Based on Autism Research (STAR)- The STAR Program teaches children with autism the critical skills identified by the 2001 National Research Council. The ABA (Applied Behavior Analysis) instructional methods of discrete trial training, pivotal response training and teaching functional routines form the instructional base of this comprehensive program for children with autism. The STAR Program includes detailed lesson plans, teaching materials, data systems and a curriculum-based assessment for teaching in the six curricular areas of receptive language, expressive language, spontaneous language, functional routines, academics, and play & social skills.

Additionally, teachers will receive training and follow-up support to implement and monitor student progress in Direct Instruction Interventions (e.g. Language for Learning, Reading Mastery)

**Training Partners:** School District of Philadelphia's (SDP) Office of Specialized Services Training, Technical Assistance, and Consultation (TaC) team, University of Pennsylvania, Contracted Coaches for Direct Instruction training and support

**When:** On-going throughout the school year

**Targeted Teachers Grades 6-12-**will receive training that incorporates the best of structured teaching (TEACCH) methods, applied behavior analysis (ABA), and Picture Communication theories. What is learned is easily adaptable to regular or specialized classrooms, or in home-based settings.

Training and classroom support covers:

- Understanding autism and PPD
- Models of instruction, including structured teaching and ABA
- Communication and social skills
- New and promising research
- Conducting child assessments
- Practical strategies and skills
- Customizing what you've learned to your classroom

- Problem solving/working with families

**Training Partners:** The Tim Academy, the SDP TaC team

**When:** On-going throughout school year

**Targeted Teachers Grades K-12**-will receive training in Standards Aligned Instruction for Complex Support Needs students. This training is a PDE Bureau of Special Education initiative.

Teachers and support staff will also receive training in **Safety Care**. Safety-Care provides the tools needed to be safe when working with behaviorally challenging individuals. Safety Care helps to:

- Understand how and why crisis events happen, and understand ways in which we might inadvertently contribute to them
- Prevent crises using a variety of supportive interaction strategies
- Apply simple, evidence-based de-escalation strategies that are effective for any population
- Respond appropriately and safely to dangerous behavior
- Prevent the need for restraint
- Intervene after a crisis to reduce the chance that it will happen again

**Training Partners**-Pattan King of Prussia, the SDP TaC team

**When:** On-going throughout school year

### Paraprofessionals:

**Targeted Classroom Assistants and One to One Classroom Assistants**-newly hired classroom assistants and one to one classroom assistants will receive a **2-Day Orientation** that includes the following:

- Safety Care
- 20 Hour Yearly Paraprofessional Requirement
- Data Collection
- PD Now Online Professional Development



**Current Employees**-on a bi-weekly basis will receive the following-

- Safety Care
- 20 Hour Yearly Paraprofessional Requirement
- Data Collection
- Computer Use
- Train the Trainer-one paraprofessional from each school will turn around the 20 Hour Yearly Paraprofessional Requirements and the PD Now Online Professional Development

**Behavior Support:**

**Targeted Special Education teachers K-12 will receive training in the following:**

- Strategies for Supporting Positive Behaviors in the Classroom
- Setting up classrooms
- Establishing rules/structures and procedures
- Research validated instructional practices/strategies
- Safety Care training
- AIMSweb behavior training
- Social Skills training
- Managing support staff training
- Data Collection and monitoring training
- Writing effective Functional Behavioral Assessments
- Writing and implementing effective behavior intervention plans

**Targeted Complex Support Needs Teachers will receive the following additional training:**

- Functional Communication
- Sensory needs

**Training Partners:** Pattan King of Prussia, the SDP TaC team

**When:** On-going throughout the school year

**Transition:**

**Select school staff and teachers will receive training in the following:**

- Transition from Early Intervention into school age programs
- Transition into middle school and high school programs (Legare)
- Writing effective transition goals in the IEP
- Training in administering career assessment inventories and using the data to inform programming
- Training in implementing living, learning, and working benchmarks into the curriculum for all K-12 students with IEPs
- Training in post-school outcomes for students with IEPs

**Training Partners:** Pattan King of Prussia

**When:** On-going throughout the school year

**Additional Trainings for School Based Teams (Pre K-3 Focus)-** (e.g. principals, general education teachers, special education teachers, paraprofessionals, and parents)- These trainings occur in year 1 and repeat in years 2 and 3. One school team per academic division will be trained. After the 3 year period 24 school teams will have been directly trained in the areas listed below. To maximize impact for the School District of Philadelphia, transcripts of the training and the training process will be created and select live trainings will be video recorded and made available on the School District of Philadelphia's Office of Specialized Services website.

### **Fall Semester**

- Inclusive Practices Self-Assessment
- SaS Toolkit
- Universal Design for Learning
- Research Validated Classroom Management strategies

### **Spring Semester**

- Standards Aligned System Training
- Standards Aligned Instruction
- Standards Aligned IEP Writing
- Differentiated Instructional Strategies

### **Year Around Professional Development/Training**

- Research Validated Interventions
- Progress Monitoring-AIMSweb
- Language Essentials to Teachers of Reading and Spelling (LETRS)

**Training Partners:** The SDP TaC team, SDP Special Ed. Directors, Pattan, Center for Applied Special Technology (CAST), Contracted Consultants

**Parent Training:****Parents will receive training in the following:**

- Autism Expo
- Behavior Support Overview
- Transition Overview
- Research Validated Interventions Overview
- Inclusive Practices Overview
- Universal Design for Learning Overview
- Classroom Management Overview
- IEP Overview
- Progress Monitoring Overview
- Procedural Safeguards

**Training Partners:** The SDP TaC team, the Local Task Force, Pattan, Contracted Consultants

**When:** Quarterly

# Special Education Affirmations

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We also affirm our understanding that any requests for any deviations from the Chapter 14 regulations, standards, policies, and procedures must be made in writing to the Pennsylvania Department of Education. The school district understands that the Special Education Component of the District Level Plan will be approved by PDE in accordance with the following criteria as set forth in 22 Pa. School Code § 14.104 and as part of the District Level Plan:

1. There are a full range of services, programs and alternative placements available to the school district for placement and implementation of the special education programs in the school district.
2. The school district has adopted a child find system to locate, identify and evaluate young children and children who are thought to be a child with a disability eligible for special education residing within the school district's jurisdiction. Child find data is collected, maintained, and used in decision-making. Child find process and procedures are evaluated for its effectiveness. The school district implements mechanisms to disseminate child find information to the public, organizations, agencies, and individuals on at least an annual basis.
3. The school district has adopted policies and procedures that assure that students with disabilities are included in general education programs and extracurricular and non-academic programs and activities to the maximum extent appropriate in accordance with an Individualized Education Program.
4. The school district will comply with the PA Department of Education, Bureau of Special Education's revision notice process.
5. The school district follows the state and federal guidelines for participation of students with disabilities in state and district-wide assessments including the determination of participation, the need for accommodations, and the methods of assessing students for whom regular assessment is not appropriate.
6. The school district affirms the Pennsylvania Department of Education that funds received through participation in the medical assistance reimbursement program, ACCESS, will be used to enhance or expand the current level of services and programs provided to students with disabilities in this local education agency.

*No signature has been provided*

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*Board President*

*No signature has been provided*

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*Chief School Administrator*

# EXHIBIT F



PUBLIC INTEREST LAW  
CENTER OF PHILADELPHIA

AFFILIATED WITH THE LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

April 21, 2014

STAFF

Jennifer R. Clarke  
*Executive Director*

Amy Laura Cahn  
*Staff Attorney*

Michael Churchill  
*Of Counsel*

Benjamin D. Geffen  
*Staff Attorney*

Sonja D. Katz  
*Director, Disabilities Rights Project*

Edwin D. Wolf  
*Executive Director*  
1974-1976

Dr. William R. Hite, Jr., Superintendent  
William Green, SRC Chairperson  
David M. Hardy, Chief Academic Support Officer  
Kimberly Caputo, Deputy Chief, OSIS  
School District of Philadelphia  
440 Broad Street  
Philadelphia, PA 19130  
Via Email and Mail

RE: Comments on 2014-2017 Special Education Plan for School District of Philadelphia

Dear Dr. Hite, Chairperson Green, Mr. Hardy and Ms. Caputo:

On behalf of the Public Interest Law Center of Philadelphia ("Law Center"), I appreciate the opportunity to provide written comments on the 2014-2017 Special Education Plan ("Plan") for the School District of Philadelphia ("District"). The Law Center is a committed advocate for children with disabilities within the District, both on individual matters and systemic issues and we hope that these comments will be useful as the District continues to strive to improve special education services to children.

**Parent Training (Plan, pg. 3-4, and references throughout).**

The District's plan suggests it intends to provide parents information and to "empower parents and families with information." However, the District's plan is vague on how this will happen. The District has recently indicated that it presently does not provide parents who speak English as a second language and who do not read English with translated copies of their children's IEPs, evaluations and other important special education documents. All parents must have this information, not just those who read English. Another problem is that some schools are experiencing high turnovers in special education teachers, and related services staff and staff are not providing quarterly progress reports. This leaves the child's IEP team with a dearth of information for planning purposes.

Suggestion: The District should commit to ensuring translation for all parents who do not read English. It should require Special Education Directors to establish a means of ensuring that, at least, quarterly progress reports are completed as required for all children.

**Special Education Personnel Issues-Related Services. (Plan, pg. 10)**

The District serves 19,260 students with disabilities. The District's own numbers suggest that there may not be sufficient related services staff to assist children with disabilities. At pg. 10, the District notes vacancies in both speech and language pathologists and hearing teachers but suggests it has sufficient related services staff. We regularly hear of excessive case loads in all areas. Excessive case loads can contribute to lack of staff as they are unable to fulfill their duties and become discouraged and leave. In a recent due process hearing, related services staff testified of high case loads that seem inconsistent with the District's plan. At IEP meetings we hear of the lack of related services staff, including nurses, speech and language therapists and occupational therapists.

Suggestion: The District should include the actual anticipated caseloads of its related services staff, not just the numbers of staff. Moreover, the District should assure that there are sufficient staff to meet the needs of all students who need such services and in amounts that are meaningful. The amount of services needed is hidden, in part, by the District's continued practice of indicating on IEPs that children will receive a particular amount of related service "per IEP term." This practice allows staff to not provide services for periods of time and then "make up" the services. The District has been repeatedly told to discontinue this practice by at least three hearing officers but it continues to do so. The District's Special Education Plan should include training to all related services staff and Special Education Liaisons to immediately discontinue this practice.

**Training in Various Areas for "Targeted Schools." (Plan, pg. 3)**

A stated goal of the Plan is to increase inclusive opportunities for students with disabilities. Key to this is providing sufficient numbers of trained staff to collaborate with regular education teachers to ensure supplementary aids and services within the regular education classrooms. While we applaud the suggestion that this Plan will address pre-K-grade 3 teams, it is not clear whether all schools serving children up through third grade (a total of some 150 schools) will receive such training and support throughout the three year life of the Plan.

We realize this is a huge commitment of resources, and we appreciate the dilemma in the need for the training; however, we do



not see any particular method of which schools will be chosen if less than all are to receive the training.

Suggestion: The District should make a commitment to all schools, not "some schools." In addition, children grades 4-12 will be left without any intentional planning for these services. This is not acceptable as it means that students in those grades are less likely to be included with their peers in the Least Restrictive Environment.

**Identification of Children with Disabilities/Child Find (Plan, pg. 20)**

According to the most recent Penn Data for the District, the District identifies about the same percentage of students with disabilities overall as the state average – 14% vs. 15.3%. However, within the identification of students are two curious phenomena which we bring to the District's attention. First, the District has identified twice as many children as having an Intellectual Disability as the state average (14% vs. 7%). The District has also not identified a single child with Traumatic Brain Injury. The incidence of children with TBI in Pennsylvania is nearly 26,000 per year.<sup>1</sup> Thus, it is unlikely that in a District the size of the District there is no child identified as having experienced a TBI.

Suggestion: The District should investigate these statistics and ensure accurate identification in these areas.

**Identification of Children with SLD- Discrepancy Model. (Plan, pg. 6)**

We are disappointed to see the District's formal adoption of a vague Discrepancy Model in regard to identification of children with specific learning disabilities. First, while the Individuals with Disabilities Education Act permits school districts to continue to use the Discrepancy Model, peer-reviewed research has long suggested that this is not an effective means of identification and many states have wholly rejected the model. One reason for the rejection is the lack of reliability of the discrepancy model to accurately identify students. Second, if the District is going to use a Discrepancy Model, then the amount of the "severe discrepancy" should be explicitly identified to ensure consistency in identification.

Suggestion: Overall, we urge the District to form a taskforce comprised of parents, experts, and district staff that will be specific to the consideration of a different and more research-based approach to

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<sup>1</sup> [www.biapa.org](http://www.biapa.org), last visited 14.04.21.

the identification of children with specific learning disabilities, to ensure accurate identification.

**Extended School Year Services (Plan, pg. 19).**

Surprisingly, although many of the children within the 19,260 children may require Extended School Year Services, the only reference to ESY within the entire Plan is a suggestion that teachers will be trained in the ESY process. But it is the District's ESY process itself that is flawed. Both the federal IDEA, and Chapter 14 require that a child's ESY program be individually determined in terms of eligibility, type, amount and length of services. For example, this year, the District's ESY form announces the exact same amount and length of the program (3 hours a day, four days a week for a few weeks). The District persists in a practice of predetermining the type, amount, and length of ESY services, and announcing this to IEP teams.

Suggestion: The District should cease using a predetermined form that identifies length of day, and length of services and ESY program.

**Behavior Supports, Out of District Placements and LRE (Plan, pg. 12-17)**

The District's plan emphasizes behavioral supports and training which is appreciated. Individual IEP teams have responsibilities to provide Functional Behavioral Assessments (FBAs) and to create Behavior Support Plans (BSPs) for students. However, teams are frequently confused about the relationship between PBIS and the individual behavioral planning. About five years ago, the District announced its intention to use PBIS in all of its buildings; it is not entirely clear currently what buildings are using or should be using PBIS nor whether there is an effective plan to be sure all buildings are using it. (It appears perhaps 10-20 buildings are receiving the Devereux training).

Suggestion: The District should develop an effective plan to ensure that all staff have easy access to trained staff who can assist with both creation of FBAs, BSPs as well as PBIS in all buildings.

**Conclusion.**

The Law Center appreciates that the District has many challenges to providing special education services. However, some of the challenges are those which the District has itself created (i.e. the

Comments on 2014-2017 SDP Special Education Plan  
April 21, 2014  
Page 5

ESY approach, the use of services/term in IEPs for related services, the lack of a comprehensive plan to foster inclusion). We look forward to working with the District to improve not only its plan but more importantly, the tangible results for the children with disabilities in the District.

Very truly yours,

*s/Sonja D. Kerr*

Sonja D. Kerr  
Director, Disability Rights

# EXHIBIT G

OFFICE FOR DISPUTE RESOLUTION  
DUE PROCESS HEARING FOR  
CHRISTIAN HAYES

MONDAY, MAY 19, 2014

VOLUME I

FILE #14530-13-14

Transcript of proceedings held  
before LINDA VALENTINI, Esquire, hearing  
officer at Philadelphia School District,  
440 North Broad Street, Philadelphia,  
Pennsylvania, commencing at 10:00 a.m.  
before Jennifer Douglas, Court  
Reporter/Notary Public.

## 1 APPEARANCES:

2

Linda Valentini, Esquire, Hearing Officer

3

4

Jason Fortenberg, Esquire

Sonja Kerr, Esquire

5

Public Interest Law Center

1790 Benjamin Franklin Parkway, 2nd Floor

6

Philadelphia, Pennsylvania 19103

215-627-7100 x 229

7

skerr@pilcop.org / mreichow@pilcop.org

Counsel for Parent

8

9

Brian Subers, Esquire

Fox Rothschild LLP

10

10 Sentry Parkway

Suite 200, PO Box 3001

11

Blue Bell, Pennsylvania 19422-3001

610-397-6516

12

bsubers@foxrothschild.com

Counsel for

13

School District of Philadelphia

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23

24

1 HEARING OFFICER: Just be sure to  
2 wait for the question to be completed  
3 before you give your answer. If you don't  
4 understand the question, tell the person  
5 you don't understand it and ask them to  
6 please repeat it. I don't know is an  
7 acceptable answer if you really don't know.  
8 Keep your voice up so the court reporter  
9 can hear you. And that's really all you  
10 need to know. So we will swear in and then  
11 we will have examination.

12 Whereupon JAMILA BALLARD was duly  
13 sworn and testified as follows:

14 MR. FORTENBERG: I would like to  
15 first request that the witness be  
16 considered an adverse witness.

17 HEARING OFFICER: Let's hear the  
18 testimony. Just ask your questions.

19 BY MR. FORTENBERG:

20 Q. Good morning. Is it Ms. Johnson?

21 A. I was recently married, so you may hear my  
22 name referenced as Ms. Ballard and/or Ms. Johnson or  
23 Ballard-Johnson.

24 HEARING OFFICER: Let's have your



1 first name.

2 THE WITNESS: Jamila J-A-M-I-L-A.

3 HEARING OFFICER: You're either  
4 Jamila Johnson or Jamila Ballard or Jamila  
5 Ballard-Johnson?

6 THE WITNESS: Yes.

7 HEARING OFFICER: I have the same  
8 problem with my name. One advice, don't  
9 change your name.

10 Go ahead, Mr. Fortenberg.

11 BY MR. FORTENBERG:

12 Q. Ms. Johnson, by answering my questions  
13 today, you agree by answering you understand the  
14 question?

15 A. Yes.

16 Q. If you need me to repeat any question at  
17 any time, just let me know. All right?

18 A. Yes.

19 Q. What is your position on the IEP team?

20 A. I am the SEL in Roxborough High School.

21 Q. Is that a full-time position?

22 A. Yes, it is.

23 Q. What is does SEL stand for?

24 A. Special education liaison.

1 A. I don't know.

2 Q. As the SEL, would it be your responsibility  
3 to know that?

4 A. I don't coordinate or oversee or run the  
5 ESY program.

6 Q. Who does that?

7 A. Whoever the ESY coordinator is.

8 Q. Who's the ESY coordinator?

9 A. Her name is Liz Thompson.

10 Q. Was she at this meeting?

11 A. No.

12 Q. Why not?

13 A. Her attendance at this meeting wasn't  
14 necessary.

15 Q. Who would be qualified to discuss ESY?

16 A. Sonya Barry.

17 Q. Now, you testified earlier that ESY offered  
18 certain days of the week?

19 A. Yes.

20 Q. What days was that?

21 A. Tuesday, Wednesday, and Thursday.

22 Q. How is it decided that Tuesday, Wednesday,  
23 and Thursdays are appropriate for Christian's  
24 individual needs?

1 A. I don't make that decision. That's not my  
2 decision. That's what the District offers.

3 Q. Is that a team decision?

4 A. ESY participation is a team decision. The  
5 ESY program, the ESY program is something that the  
6 District has outside of the school base level. The  
7 school team decides whether that child is eligible  
8 or not to attend, and then we discuss what that  
9 child attendant can look like and what the program  
10 can be. But outside of that, I don't know exactly  
11 how the ESY program works. That level is above me.

12 Q. So if you discussed art service during ESY,  
13 how would those get into to the program if it's  
14 above you?

15 A. We -- at the team meeting we discuss that  
16 to the extent that we could find out how we can  
17 incorporate art into the ESY program.

18 Q. Who would be necessary to implement any  
19 decision on art in order to receive the art services  
20 because you're discussing eligibility, correct?

21 A. Yes.

22 Q. The program is determined by someone else,  
23 right?

24 A. Yes.

1 Q. So you're saying somebody else is  
2 determining --

3 A. No.

4 Q. Can you turn to Exhibit P-12?

5 A. (Complies.)

6 Q. Have you seen this document before?

7 A. Uh-huh.

8 Q. What is this?

9 A. This is the ESY form, parent form.

10 Q. What is this, is this the description of  
11 the ESY program?

12 A. It gives you a brief description.

13 Q. Who decides that Christian needs ESY on  
14 Tuesday, Wednesday, and Thursday from 9:00 to 1:00?

15 A. Someone at the District level.

16 Q. They have access to Christian's records  
17 when they made that decision -- strike that. Who  
18 made the decision that ESY should run July 1, 2014,  
19 through Thursday, August 7, 2014?

20 MR. SUBERS: Objection; it's been  
21 asked and answered.

22 HEARING OFFICER: Sustained.

23 MR. FORTENBERG: I don't recall  
24 asking that question regarding Christian

1 specifically.

2 HEARING OFFICER: She talked  
3 about the decisions about the days of the  
4 week and programming being above her level.

5 You can ask if the IEP team had any  
6 discussions about adding or subtracting.

7 BY MR. FORTENBERG:

8 Q. Did the IEP team discuss adding -- could  
9 you change the start and end dates for ESY at an IEP  
10 meeting?

11 A. We couldn't do it at the team meeting. No.

12 Q. Could you at the IEP meeting team change  
13 the amount of hours that Christian received per  
14 week?

15 A. The amount of minutes?

16 Q. Yeah; amount of minutes, the 9:00 to 1:00.

17 A. At the meeting; no.

18 Q. Could you turn to Exhibit P-36, please?

19 A. (Complies.)

20 Q. Who decided 60 minutes per month of speech  
21 and language services was appropriate for a child  
22 with severe speech and language delays?

23 A. The speech therapist and the team did.

24 Q. Is the parent a member of the team?

1 A. Yes.

2 Q. Did Ms. Williams agree to that?

3 A. She did not agree to it. This is proposed.

4 Q. Who made the decision, that 16 minutes a  
5 month of speech and language wage is appropriate for  
6 a child with severe speech and language delays?

7 MR. SUBERS: Objection; it's been  
8 asked and answered.

9 HEARING OFFICER: Sustained.

10 BY MR. FORTENBERG:

11 Q. When you said the team made that decision,  
12 did Ms. Williams -- Ms. Williams was a part of that  
13 team, right?

14 A. Yes.

15 MR. SUBERS: Objection; asked and  
16 answered.

17 HEARING OFFICER: Sustained;  
18 asked and answered. I heard it the first  
19 time, counsel.

20 BY MR. FORTENBERG:

21 Q. It's really Ms. McClain's recommendation,  
22 wasn't it; 60 minutes per week -- or per month.

23 Sorry?

24 A. No. It was a team decision.

## 1 CERTIFICATION

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I, JENNIFER DOUGLAS, Court Reporter,

4

Notary Public, hereby certify that the foregoing

5

transcript is a true and accurate transcript of the

6

above hearing at the time, place and on the date

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herein before set forth. I further certify that I

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am neither attorney nor counsel for, not related to

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or employed by any of the parties to the action in

10

which this deposition was taken, nor am I

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financially interested in the outcome of this

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action.

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JENNIFER DOUGLAS  
Court Reporter/Notary Public

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reporter.

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# EXHIBIT H



OFFICE FOR DISPUTE RESOLUTION

DUE PROCESS HEARING FOR

CHRISTIAN HAYES

Wednesday, June 11, 2014

Volume III

FILE No. 14530-13-14 KE

Transcript of proceedings  
held before Linda Valentini, Hearing  
Officer at the Philadelphia School  
District, 440 North Broad Street,  
Philadelphia, Pennsylvania,  
commencing at 3:40 p.m. on the day  
and date above set forth.

Reporter: Emilie Posnan

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agency.

1 A P P E A R A N C E S:

2

3 LINDA VALENTINI, Hearing Officer

4

5 PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

BY: JASON FORTENBERRY, ESQUIRE

6 SONJA KERR, ESQUIRE

United Way Building

7 1709 Benjamin Franklin Parkway, Second Floor

Philadelphia, Pennsylvania 19103

8 (215) 627-7100

jfortenberry@pilcop.org

9 skerr@pilcop.org

10 Parent Representative

11

12 FOX ROTHSCHILD

BY: BRIAN E. SUBERS, ESQUIRE

13 1250 South Broad Street

Suite 1000

14 P.O. Box 431

Lansdale, Pennsylvania 19446

15 (215) 699-6000

bsubers@foxrothschild.com

16

School District Representative

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1                   HEARING OFFICER: That's  
2                   not terribly unusual. Every once in  
3                   a while a union rep will be present  
4                   at the request of the teacher, not  
5                   for the reasons that this may be but  
6                   just generally.

7                   Thank you all for  
8                   cooperating, and I want to thank  
9                   this witness who appeared kindly,  
10                  has been here since 3 o'clock, and  
11                  has not raised any concerns about  
12                  her hours, and we really appreciate  
13                  that. So let's get underway so that  
14                  we can have her testimony.

15                  So before we start, would  
16                  you please say and spell your name  
17                  for the record?

18                  THE WITNESS: Sonya,  
19                  S-O-N-Y-A, Berry, B-E-R-R-Y.

20                  HEARING OFFICER: Would you  
21                  please swear in the witness?

22                  - - - - -

23                  SONYA BERRY, after having  
24                  been duly sworn, testified as

1 follows:

2 - - - - -

3 HEARING OFFICER: Proceed.

4 - - - - -

5 DIRECT EXAMINATION

6 - - - - -

7 BY MR. FORTENBERRY:

8 Q. Good afternoon, Ms. Berry.

9 A. Hi.

10 Q. I'm Mr. Fortenberry, and I'm here  
11 representing Christian Hayes and his mother,  
12 Ms. Williams.

13 Just preliminary, by answering my  
14 questions today, you acknowledge that you  
15 understand the question; okay?

16 A. Mm-hmm.

17 Q. So if you're unsure of the  
18 question, just let me know; all right?

19 A. Will do.

20 Q. You're a special education director  
21 for the District; right?

22 A. Yes, I am.

23 Q. As a special education director,  
24 you have a working knowledge of the

1 Individuals with Disabilities Education Act?

2 A. Yes, I do.

3 Q. And do you have a working knowledge  
4 of the corresponding state regulations under  
5 Chapter 14?

6 A. Yes, I do.

7 Q. How long have you worked in a  
8 special education capacity?

9 A. For about approximately 20 years.

10 Q. Based on your 20 years of  
11 experience and your knowledge of the IDEA  
12 and Chapter 14, you agree that an IEP is  
13 designed to offer the student a meaningful  
14 educational benefit; right?

15 A. Yes.

16 Q. Accordingly, to receive that  
17 benefit, the plan outlined in the IEP must  
18 be provided; right?

19 A. Yes. The IEP that's agreed upon,  
20 yes.

21 Q. You would agree that parental trust  
22 in the IEP process is important so the  
23 parties can work collaboratively on behalf  
24 of the student; right?

1 A. Yes.

2 Q. Do you recognize this form?

3 A. This is an ESY form.

4 Q. What is an ESY form?

5 A. Extended school year.

6 Q. Who prepares this form?

7 A. The school team.

8 Q. The school team? Can you define  
9 the school team?

10 A. Roxborough, his IEP team. It's an  
11 IEP decision if he needs -- if ESY is  
12 appropriate for this young man. So this  
13 form on the top is actually a parent saying  
14 that he will attend. This is an attendance  
15 form, but it's an ESY form.

16 Q. Who would have written the date in  
17 the insert date?

18 A. Up at the top of the letter?

19 Q. Yes, ma'am.

20 A. I don't know. I didn't do the  
21 form. I didn't write it so I don't know.  
22 And it's handwritten so I have no idea.

23 Q. Does the form come from the School  
24 Board downtown?

1           A.     The form comes from downtown, but  
2     it doesn't mean that that date was there.

3           Q.     Who decided that Christian was  
4     eligible for ESY?

5           A.     You would have to ask the  
6     Roxborough team.

7           Q.     Who decided that three days a week,  
8     9 to 1, is an appropriate ESY program?

9           A.     That is what the School District is  
10    offering currently, so that would have been  
11    discussed with the Parent about times, I  
12    would hope. I wasn't at the meeting, so I  
13    can't respond to that conversation.

14          Q.     When you say this is what the  
15    School District is offering, is this the  
16    program offered to every student eligible  
17    for ESY?

18          A.     We have some students that are  
19    doing different things.

20          Q.     Do you know who decided for this --  
21    this period, July 1st to August 7th, that  
22    was chosen by someone in the School Board  
23    downtown; correct?

24          A.     Yes.



1 Q. And the same for the three days a  
2 week, that was chosen by someone downtown?

3 A. I guess. I'm not on the ESY team.  
4 I don't know. You would have to ask the  
5 person who is the author of this form, who  
6 is in charge of ESY, and it would not be me.

7 Q. Who would that be?

8 A. You probably would be best directed  
9 any questions from the Office of Special Ed  
10 Services, Kim Caputo. She's the deputy  
11 chief.

12 Q. So are you saying this comes from  
13 Kim Caputo?

14 A. No, I'm not saying it. But it came  
15 from the Office of Special Ed Services. She  
16 is the deputy chief, so she would be able to  
17 probably best respond to that.

18 Q. Is it my understanding of your  
19 testimony that the Office of Special  
20 Education creates the form, sends it to the  
21 school, and the school sends it out?

22 A. I'm going to go with yes because it  
23 says at the top of it, Office of Special Ed  
24 Services.

# Exhibit I

OFFICE FOR DISPUTE RESOLUTION  
DUE PROCESS HEARING FOR  
EVAN WILLIAMS

Tuesday, July 15, 2014

Volume I

FILE No. 15180-13-14 AS

Transcript of proceedings  
held before Jake McElligott, Hearing  
Officer at the Philadelphia School  
District, 440 North Broad Street,  
Philadelphia, Pennsylvania,  
commencing at 8:25 a.m. on the day  
and date above set forth.

Reporter: Emilie Posnan

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1 A P P E A R A N C E S:

2 JAKE McELIGOTT, Hearing Officer

3 PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

BY: JASON FORTENBERRY, ESQUIRE

4 United Way Building

1709 Benjamin Franklin Parkway, Second Floor

5 Philadelphia, Pennsylvania 19103

(215) 627-7100

6 jfortenberry@pilcop.org

7 Parent Representative

8

LAW OFFICES OF BENJAMIN J. HINERFELD

9 BY: BENJAMIN J. HINERFELD, ESQUIRE

2 Penn Center

10 1500 John F. Kennedy Boulevard

Suite 1020

11 Philadelphia, Pennsylvania 19102

(215) 575-0495

12 ben@hinerfeldlaw.com

13 Parent Representative

14

15 FOX ROTHSCHILD

BY: SARAH DAVIS, ESQUIRE

16 1250 South Broad Street

Suite 1000

17 P.O. Box 431

Lansdale, Pennsylvania 19446

18 (215) 699-6000

sdavis@foxrothschild.com

19

School District Representative

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1 sworn before you answer some  
2 questions.

3 - - - - -

4 CHRISTINE KENNEY, after  
5 having been duly sworn, was examined  
6 testified as follows:

7 - - - - -

8 HEARING OFFICER: Would you  
9 spell your name, please?

10 THE WITNESS:  
11 C-H-R-I-S-T-I-N-E, K-E-N-N-E-Y.

12 HEARING OFFICER: Off the  
13 record I established the fact that  
14 no one is with you right now; is  
15 that correct?

16 THE WITNESS: Yes.

17 HEARING OFFICER: And to  
18 your knowledge, no one can hear the  
19 conversation on your end; is that  
20 correct?

21 THE WITNESS: Correct.

22 HEARING OFFICER: If that  
23 changes at any time, let us know  
24 immediately, regardless of what's





1 A. Yes.

2 Q. Can you identify it?

3 A. Sure. This is the School District  
4 of Philadelphia's intent to register parent  
5 letter. So basically, all this is asking is  
6 for the parent to provide their intent  
7 whether or not they are sending their child  
8 to the ESY program or whether they decide  
9 not to send their child to the ESY program.  
10 It's only their intent.

11 Q. Did you send out this document  
12 dated March 26th, 2014?

13 A. I did.

14 Q. And is it your understanding that  
15 this form was a definitive offer for ESY for  
16 Evan?

17 A. No, not at all. It was definitely  
18 not a definitive offer. It's an offer for  
19 ESY but that's it, not like anything  
20 specifically. I'm a little confused of the  
21 question.

22 Q. What would have been the purpose of  
23 the IEP meeting to discuss ESY?

24 A. To go over programming for Evan and

1 determine what his needs are.

2 Q. And do you know if any -- did you  
3 receive a response to this March 26th, 2014  
4 letter of intent?

5 A. Yes. Mom said she was unable to  
6 attend.

7 Q. No. The letter of intent.

8 A. No. Apparently, the letter was  
9 never given to Mom. I believe Evan lost  
10 this letter, whereas then the special  
11 education teacher then did send home a  
12 second copy and possibly even a third copy  
13 of this letter to the Parent.

14 Q. And going back to that April 9th,  
15 2014 invite, did the school team continue to  
16 try to schedule an IEP meeting to discuss  
17 ESY with the Parent?

18 A. Yes. We sent out another  
19 invitation. I believe it was on the 16th of  
20 May, and Mom, once again, said she was  
21 unable.

22 Q. Take a look at School District  
23 Exhibit 18, please.

24 A. Okay.

1 exhibit, Ms. Kenney? And at the top e-mail,  
2 the e-mail from the Parent's prior attorney  
3 to the District?

4 A. Okay.

5 Q. Would you agree this e-mail is an  
6 attempt to schedule dates for the ESY  
7 meeting?

8 A. Sure.

9 Q. Do you agree that the dates being  
10 offered are those that the attorney is  
11 available?

12 A. That's what it says, yes.

13 Q. Can you turn to Parent's Exhibit 4,  
14 please?

15 A. Okay.

16 Q. Would you agree that this form lays  
17 out the duration and time of ESY for 2014?

18 A. 2014 ESY program?

19 Q. Yes, ma'am.

20 A. Yes, per the School District. It's  
21 a standard form.

22 Q. Were you part of the IEP team that  
23 decided ESY should be July the 1st through  
24 August the 7th, 2014?

1           A.     That's the standard time. I didn't  
2     decide on that time. That's the standard  
3     time that the School District offers. It's  
4     a standard letter. It was not generated by  
5     Stephen Decatur.

6           Q.     But this is the time for Evan's  
7     individualized ESY program, July the 1st  
8     through August the 7th?

9           A.     Yes.

10          Q.     You were not part of the team that  
11     determined those dates; correct?

12          A.     I was part of the team that  
13     determined that he was eligible for ESY and  
14     we provided this letter.

15          Q.     Were you part of the team that  
16     determined ESY for Evan should be July the  
17     1st through August the 7th, 2014?

18          A.     Sure.

19          Q.     What meeting did that get discussed  
20     at?

21          A.     We made -- the school team met  
22     prior to offering a meeting with the Parent  
23     to determine if he was eligible. Once the  
24     school team met, we then tried to attempt to

1 meet with the Parent to discuss his  
2 eligibility.

3 Q. This letter was sent on or about  
4 March 26th, 2014; correct?

5 A. Yes.

6 Q. This letter is telling the Parent  
7 that ESY will be the dates and times and  
8 days of the week specified; correct?

9 A. Yes.

10 Q. And the IEP team does not have the  
11 ability to change these dates, times, and  
12 days of the week; correct?

13 A. No, absolutely not. We don't have  
14 the ability to change.

15 Q. And you were not at the June  
16 meeting where ESY was discussed; right?

17 A. I was unavailable.

18 Q. Were you involved in any of the  
19 investigations into bullying regarding Evan  
20 Williams?

21 A. I was not. I was only copied on  
22 e-mails because I'm a special education  
23 liaison; however, I played no part in it.

24 Q. Is it fair to say you had no

C E R T I F I C A T I O N

I, EMILIE S. POSNAN,

Professional Court Reporter and  
Notary Public, do hereby certify  
that the foregoing is a true and  
accurate transcript of the  
stenographic notes taken by me in  
the aforementioned matter.

---

Emilie S. Posnan

The foregoing certification  
does not apply to any reproduction  
of the same by any means unless  
under the direct control and/or  
supervision of the certifying  
shorthand reporter.

# Exhibit J

# *Extended School Year* Services in Pennsylvania



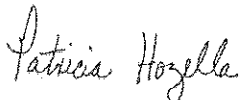


### **Message from the Director of the Bureau of Special Education**

I am pleased to provide consumers with this guide to Extended School Year (ESY) services. It is intended to be a comprehensive compilation of documents that will provide direction, respond to questions, and guide parents and local education agencies in making determinations about ESY services.

Decisions regarding a student's need for ESY services are intricately related to the progress that the student is making in his or her overall instructional program. Information about progress monitoring is available on the Pennsylvania Training and Technical Assistance Network (PaTTAN) website ([www.pattan.net](http://www.pattan.net)). Additional information is available on the Pennsylvania Department of Education (PDE) website ([www.education.state.pa.us](http://www.education.state.pa.us)).

I hope that you will find this guide useful, as we continue in the effort to provide outstanding educational programs for all students with disabilities in Pennsylvania.



Patricia Hozella  
Director, Bureau of Special Education

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## Service Delivery Models

### 13. Is there more than one type of service delivery model that can be considered?

Yes. The IEP team must determine the appropriate service delivery model based on the needs of the individual student. However, LEAs are not required to create new programs merely to provide ESY services in integrated settings if they do not provide services at that time for nondisabled children. Some common delivery models include the following:

- "Take-home" instructional materials
- Behavioral or other training for parents or program staff
- Itinerant teacher services
- Consultation
- Tutorials
- Services contracted through community or outside agencies or APSs

### 14. May the LEA unilaterally limit the ESY service's type, amount and/or duration?

No. Federal regulations at 34 CFR §300.106(a)(3) state that, "an LEA...may not unilaterally limit the type, amount, or duration of [ESY] services." OSEP has issued a policy letter stating that limiting the duration of summer services for students with disabilities "...would violate the basic requirement that programs be designed to meet the individual needs of each child" (*Letter to Baugh*, 1987). Any predetermination or set policy on the amount of time ESY will be provided is contrary to the regulations. Individual determinations of the number of weeks, days per week, and minutes per day must be based on each student's unique needs.

### 15. ESY services are often provided during summer vacation. Is this the only time these services can be provided?

No. If the IEP team determines that the student needs ESY services beyond the LEA's established 180-day school year, then a plan must be developed to provide the needed services. The comments section referencing 34 CFR §300.106 states "there is nothing in §300.106 that would limit the public agency from providing ESY services to a child with a disability during times other than the summer such as before and after school hours or during school vacations, if the IEP Team determines that the child requires ESY services during those time periods in order to receive FAPE." (*Fed. Reg, Vol. 71, No. 156, p. 46582*). This may include services beyond summer school periods or even breaks shorter than summer, if evidence suggests this is necessary. The IEP team must determine the content and time period of the ESY services, based on individual student need.

# Commonwealth of Pennsylvania

**Tom Corbett**  
Governor

## Department of Education

**Carolyn C. Dumesq, Ed.D.**  
Acting Secretary

**Patricia Hozella**  
Director, Bureau of Special Education



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