

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

T.R., a minor, individually, by and through her parent, Barbara Galarza, and on behalf of all others similarly situated,

Barbara Galarza, individually, and on behalf of all others similarly situated,

A.G., a minor, individually, by and through his parent, Margarita Peralta, and on behalf of all others similarly situated,

Margarita Peralta, individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

The School District of Philadelphia,

Defendant.

Civil Action No. _____

CLASS ACTION COMPLAINT

I. PRELIMINARY STATEMENT

1. The School District of Philadelphia (“District”), like the City of Philadelphia, is a richly diverse community and includes at least 26,000 students from families who speak languages other than English. A significant percentage of these families include children with disabilities who are entitled to individualized education programs. Yet, the parents are unable to participate meaningfully in the development of their children’s education programs, because the District has systematically failed in its legal duty to translate essential planning documents and to provide sufficient interpretation services.

2. Plaintiff T.R., who does not speak English fluently, was improperly evaluated only in English, leading to her being incorrectly identified as having an intellectual disability. Her parent, Barbara Galarza, was deprived of sufficient oral interpretation and translation of that

evaluation. As a result, T.R. did not receive appropriate educational services and was left without any educational services for a prolonged period of time. In the case of Plaintiff A.G., the District did not evaluate him for disabilities until after a Family Court order notified the District that A.G.'s family was Spanish speaking and that A.G. needed to be evaluated. Despite prior notice from A.G.'s family requesting that documents be sent home in Spanish, the District failed to communicate with his family in Spanish. Meanwhile, A.G. was wrongly retained in ninth grade, deprived of special education services, and left without any schooling for several months while recuperating from leg surgery.

3. This case is filed on behalf of thousands of students like Plaintiffs A.G. and T.R. with disabilities who have parents like Plaintiffs Barbara Galarza and Margarita Peralta who are "Limited English Proficient" ("LEP").¹ To communicate effectively with school personnel, these LEP parents and their children, who often have limited English proficiency themselves, need oral interpretation services (the act of restating spoken language in a different language) and translation services (the act of rewriting a document in another language).² Yet, despite the overwhelming and accumulating evidence of need, the District has systematically and with deliberate indifference denied essential translation and interpretation services to LEP parents of children with disabilities, as well as to the children themselves.

¹ The term "Limited English proficient" is the terminology used in both the Elementary and Secondary Education Act, § 9101(25) and the Individuals with Disabilities Education Act, 20 U.S.C. § 1401(184). When applicable to a student, the term LEP, or its derivative, student with "Limited English Proficiency" is synonymous with English Language Learner ("ELL") or English Learner ("EL"). While the term ELL or EL is favored and should be used because it accurately connotes that a student is learning English rather than labeling the student limited or deficient, the term LEP remains applicable to parents in the context of identifying and addressing language barriers to ensure parent participation. The term "native language," when used with respect to an individual who is limited English proficient, means the language normally used by the individual or, in the case of a child, the language normally used by the parents of the child. 20 U.S.C. § 1401(20).

² See Ex. A, FF ¶ 1, 2. References to the Hearing Officer's explicit findings in the decisions are referred to as "FF" (findings of fact) or as "CL" (conclusions of law). References to the underlying administrative hearing transcript are "N.T." for Notes of Transcript.

4. By law, meeting the educational needs of children with disabilities occurs within a process of written notice, parent consent, a non-discriminatory evaluation, creation and review of documents, development of a plan, and meetings with school staff and parents – all of which is outlined in the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq., and is referred to as the Individualized Education Program (or “IEP”) process. LEP parents³ and their children with disabilities have been deprived of meaningful participation in the IEP process because the District provides insufficient oral interpretation services and refuses to timely provide completely translated documents. These deficiencies violate the IDEA, 20 U.S.C. §1400 et seq.; 34 C.F.R. Part 300; 22 Pa. Code Chapter 14; the Americans with Disabilities Act as Amended; Section 504 of the Rehabilitation Act; 22 Pa. Code Chapter 15; the Equal Opportunities Act; and Title VI of the Civil Rights Act of 1964.

5. Because the special education process is a parent-driven system, LEP parents, like all parents, must be fully informed in order to provide consent. They also must be able to participate meaningfully in the IEP process through the timely receipt of completely translated documents and sufficient interpretation services. Parent participation is essential to ensuring that a child with a disability receives a free appropriate public education in the least restrictive environment.

6. Throughout the IEP process, school staff and parents rely on certain IEP documents. These documents include the Individualized Education Programs (“IEPs”), Notices of Recommended Educational Placement (“NOREP”)/Prior Written Notice, Procedural Safeguards Notice, IEP Team Meeting Invitations, Manifestation Determinations, Permission to Evaluate, Permission to Re-Evaluate, Evaluation Reports, Re-Evaluation Reports,

³ The word “parent” or “parents” as used in this Complaint includes all persons included in the definition of parent set forth in the IDEA at 20 U.S.C. § 1401(23).

Psychoeducational Reports, progress reports, and Medicaid Consent Forms (referred to collectively as “IEP process documents”). In addition, certain regular education form documents which are readily available to non-LEP parents are critical to the parent’s knowledge of his or her child’s educational progress, placement, and services. These include: report cards, homebound forms, pre-English Language class placement letters, and progress reports (referred to collectively as “regular education forms”).

7. These documents are so essential that they must be provided in writing and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. In contravention of these requirements, the District has refused to timely and completely translate IEP process documents and regular education forms. The District also has failed to provide sufficient comprehensive oral interpretation services and to conduct bilingual evaluations as required by law. As a result, LEP parents of children with disabilities have been shut out of the IEP process and denied their right to notice, informed consent, and meaningful participation, in violation of governing laws and to the significant detriment of their children.

8. Named Plaintiffs, on behalf of themselves and the thousands of members of the “Parent Class” and the “Student Class,” defined below, file this action to require the District to provide legally-mandated translation and interpretation services, so that LEP parents and their children can participate meaningfully in the IEP process. Plaintiffs also seek to ensure that all students who have disabilities are properly evaluated in their native language as required by law.

II. JURISDICTION AND VENUE

9. The claims in this action arise under the IDEA, 20 U.S.C. §§ 1400 et seq., and 34 C.F.R. Chapter 300; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; the Equal Education Opportunities Act, 20 U.S.C. § 1703(f); Title VI of the Civil Rights Act of 1964, 42 U.S.C.

§ 2000d; and 22 Pa. Code 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 for declaratory and injunctive relief 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 which implements the IDEA and contains additional provisions concerning education for students with disabilities. 22 Pa. Code § 14.1 et seq.

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

13. Plaintiffs have exhausted administrative remedies to the extent required by the IDEA, 20 U.S.C. §§ 1415(i)(2) and 1415(i)(3)(A). Plaintiffs A.G. and T.R. have completed the IDEA hearing process, each of them receiving a due process hearing decision dated May 26, 2015, attached hereto as Ex. A and Ex. B, respectively. *See* Ex. A, *T.R. v. SDP*, ODR No. 15181-13-14 and Ex. B, *A.G. v. SDP*, ODR No. 15166-13-14. In those decisions, the Hearing Officer held that Plaintiff Parents Barbara Galarza and Margarita Peralta were denied meaningful participation in the federally mandated IEP process, due to the District's failure to provide timely and complete translations of vital IEP documents. Specifically, the Hearing Officer concluded:

The purpose of an IEP meeting is to develop an IEP for the student. This requires more than a recitation of an IEP. Rather, it requires a conversation about the Student's needs, and what program and placement will satisfy those needs. Reading a mostly-English document in [Spanish], is not the dialogue contemplated by the IDEA. The Parent's ability to follow along in documents while participating in the required dialogue is essential.

.....

District witnesses agreed, and I explicitly find, that having the documents in an accessible form either during the meeting, or prior to the meetings when mandated, is critical to meaningful participation. The Parent was placed at an obvious disadvantage by effectively not having access to these documents.

Ex. B, CL at 11 (citations omitted); *see also* Ex. A, CL at 9-10.

The Hearing Officer also concluded, however, that he did not have the power to order a District-wide systemic change, which is the necessary and appropriate remedy. *See* Ex. C, Consolidated Pre-Hearing Order, *T.R. v. SDP*, ODR No. 15181-13-14 and *A.G. v. SDP*, ODR No. 15166-13-14. As a result, the Hearing Officer awarded limited compensatory education of one hour of time for each IEP process team meeting where he determined there were violations of the parents' meaningful participation due to translation issues, but did not order any corrective action, including requiring the District to timely and completely translate IEPs and other documents for Plaintiffs in the future. Ex. A, CL at 13 (awarding one hour); Ex. B, CL, at 13 (awarding three hours). This Complaint constitutes an appeal from the administrative proceedings by Plaintiffs A.G. and T.R., who remain subject to the District's legally-deficient IEP process, as well as a class action lawsuit on behalf of LEP parents and students with disabilities who are similarly situated.

14. Exhaustion of administrative remedies is not required for other class members because, as the administrative proceedings of A.G. and T.R. reflect, administrative remedies are inadequate to address Plaintiffs' allegations of systemic failures and to afford the system-wide relief requested.

15. The Americans with Disabilities Act as Amended and the Rehabilitation Act incorporates the remedies and procedures of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq. *See* 29 U.S.C. § 794a; 42 U.S.C. § 12133. The EEOA and Title VI have no exhaustion requirement. *See* 20 U.S.C. § 1706; *Herring v. Chichester Sch. Dist.*, No. 06-5525, 2007 WL 3287400 (E.D. Pa. Nov. 6, 2007).

III. THE PARTIES

16. Plaintiff T.R. is a 17-year-old tenth grade student living within the boundaries of the District. She is not fluent in either English or Spanish, speaking a mix of the two languages. Ex. A, FF ¶¶ 3, 4. T.R. has ADHD, a learning disability, and Mood Disorder, and she is currently a special education student. T.R. is enrolled in English for Speakers of Other Languages (“ESOL”) classes.

17. Plaintiff Barbara Galarza (“Ms. Galarza”) is T.R.’s mother. Her native language is Spanish and she is limited English proficient. Ex. A, FF ¶ 3. Ms. Galarza speaks and reads Spanish.

18. Plaintiff A.G. is an 18-year-old twelfth grade student living within the boundaries of the District. A.G.’s native language is Spanish and he is limited English proficient within the meaning of the IDEA. *See* 34 C.F.R. § 300.27, incorporating by reference § 9101(25) of the Elementary and Secondary Education Act; Ex. B, FF ¶ 4. A.G. has a Specific Learning Disability and a Speech and Language Disorder, and he is currently a special education student. A.G. is enrolled in ESOL classes.

19. Plaintiff Margarita Peralta (“Ms. Peralta”) is A.G.’s aunt and legal guardian. Her native language is Spanish and she is limited English proficient. Ex. B, FF ¶ 6. Ms. Peralta speaks and reads Spanish.

20. T.R. and A.G. are referred to collectively as the “Student Plaintiffs”; Ms. Galarza and Ms. Peralta are referred to collectively as the “Parent Plaintiffs.”

21. Defendant, the School District of Philadelphia, is a school district within the Commonwealth of 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 receives federal funds pursuant to the IDEA and is bound by the IDEA. The District is the Local Educational Agency (“LEA”) responsible for ensuring that Plaintiffs receive a free appropriate public education pursuant to the IDEA and Chapter 14. The District, as a public entity, receives federal funds and is subject to the Americans with Disabilities Act as Amended, Section 504 of the Rehabilitation Act, the Equal Education Opportunities Act, and Title VI of the Civil Rights Act of 1964. The District is also required to comply with state education law within 22 Chapter 14 and 22 Chapter 4 of the Pennsylvania Code.

IV. STATUTORY FRAMEWORK

IDEA Statutory Framework

22. The IDEA requires LEAs and other public agencies to provide a free appropriate public education (“FAPE”) to all students with disabilities ages 3 to 21. By definition, a FAPE requires adherence to state agency educational standards. The IDEA seeks to prepare students with disabilities for further education, employment, and independent living, and specifically delineates the rights of children with disabilities and their parents in the special education IEP process and based on IEPs developed through that process. *See* 20 U.S.C. §§ 1401, 1402, 1412(a)(1)(A), 1414(d), 1415; 34 C.F.R. Part 300. The IEP is the “modus operandi” of the IDEA that is to be developed jointly with the parent, the student, and the school staff. *Sch. Comm. of Burlington, Mass. v. Mass. Dep’t of Educ.*, 471 U.S. 359, 368 (1985). The IEP is the “primary vehicle” for implementing the IDEA. *Honig v. Doe*, 484 U.S. 305, 311 (1988).

23. Student Plaintiffs and members of the Student Class qualify as “child[ren] with a disability” under the IDEA statute, and each therefore must be provided with an IEP that governs his or her education and afforded meaningful participation in the IEP process. *See* 20 U.S.C. §§ 1401(3), 1414(d), 1415.

24. Parent Plaintiffs and members of the Parent Class qualify as “parents” of a child with a disability as defined by 20 U.S.C. § 1401(23), which includes a natural, adoptive, foster parent, legal guardian or person acting as a parent in the absence of a parent with whom the child lives or individual assigned as a surrogate parent.

25. Each Student Plaintiff and member of the Student Class has or should be provided with an IEP team that is comprised of his or her parent and school staff who are to work collaboratively together to make educational decisions for the child.

26. The IDEA requires that educational decisions about a child’s evaluation, educational program, and school placement are made through the IEP team process with the parent’s meaningful involvement. 20 U.S.C. § 1414; *see also id.* § 1415; 34 C.F.R. § 300.327. The educational program is then detailed in the IEP document which is legally defined as “a *written* statement for each child that is developed, reviewed and revised” through the mandated notice and meeting process. 20 U.S.C. § 1414(d)(1)(A)(i) (emphasis added). The District must give the parent *a copy* of the child’s IEP at no cost to the parent. *Id.* §1414(d)(1)(B)(i); 34 C.F.R. § 300.322(f). If changes are made to the IEP, and upon request, the parent must be provided with a *revised copy* of the IEP with the amendments incorporated. 20 U.S.C. §1414(d)(3)(F).

27. The IDEA expressly includes certain procedural safeguards, requirements, and duties of the LEA to ensure meaningful parental participation, notification, and consent throughout the special education process, including protections for parents whose native language is not English. 20 U.S.C. §§ 1400, 1412(a), 1414, 1415; *see also* 34 C.F.R. Part 300.

28. The District must obtain informed written parental consent in order to support an initial evaluation of a student and initial provision of special education services. Parental

consent is required to continue to provide special education services and re-evaluations. Parental consent means the parent has been “fully informed of all information relevant to the activity for which consent is sought, *in his or her native language*, or through other mode of communication” and that the parent “understands and agrees” in writing to the carrying out of the activity for which his or her consent is sought. *See* 20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.9 (emphasis added).

29. The District must ensure that the parents of a child with a disability are invited to each IEP team meeting to decide the program and placement of a child and that the parents are afforded the opportunity to participate, including: (1) notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; (2) providing information to parents; and (3) affording parents the opportunity to know the purpose of the meeting, who will participate, and to identify other representatives who should be invited. 20 U.S.C. §§ 1400, 1412(a), 1414, 1415; *see also* 34 C.F.R. §§ 300.321, 300.327, 300.501(c).

30. The District must take “*whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter at the IEP team meeting for parents with deafness or whose native language is other than English*, and the District must give the parent *a copy* of the child’s IEP. *See* 20 U.S.C. § 1414(d)(1)(B)(i); 34 C.F.R. § 300.322 (emphasis added).

31. The IDEA also requires that parents of a child with a disability receive prior written notice within a reasonable time before the public agency (1) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or (2) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. *See* 20 U.S.C.

§ 1415(b)(3). In Pennsylvania, the form utilized to provide prior written notice is called a Notice of Recommended Educational Placement (“NOREP”).

32. Such required prior written notice must be (1) written in language understandable to the general public; and (2) *provided in the native language of the parent or other mode of communication used by the parent*, unless it is clearly not feasible to do so. *See* 20 U.S.C. § 1415(b)(4); 34 C.F.R. § 300.503(c). If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure that (1) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (2) the parent understands the content of the notice; and (3) there is written evidence that the notice requirements have been met. *See* 34 C.F.R. § 300.503(c).

33. The IDEA also requires that a child suspected to have a disability must be evaluated “in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.” 20 U.S.C. § 1414(b)(3)(A); 34 C.F.R. § 300.304(c)(1)(ii). Federal regulations require an IEP team to take the language needs of the child into account. 34 C.F.R. § 300.324(a)(2)(ii).

Section 504 and ADA Statutory Framework

34. Section 504 of the Rehabilitation Act prohibits disability discrimination in federally funded programs. It mandates that “[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a). The District is a federal funds recipient within the meaning of 29 U.S.C. § 794(b)(2)(B). Student Plaintiffs and members of the Student Class are entitled to the protection of Section 504.

35. The Americans with Disabilities Act prohibits disability discrimination, including discrimination against those who are associated with individuals having or suspected of having disabilities. 42 U.S.C. § 12101 et seq. The District is subject to the ADA. Student Plaintiffs and members of the Student Class are entitled to the protection of the ADA.

EEOA Statutory Framework

36. The Equal Education Opportunities Act provides that “[n]o State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f).

Title VI Statutory Framework

37. Title VI of the Civil Rights Act prohibits discrimination within any program or activity receiving federal financial assistance. It states that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The District specifically receives federal funding for participating in the IDEA, a program designed to assist students with disabilities.

Pennsylvania State Code Statutory Framework

38. Title 22, Chapter 14 of the Pennsylvania Code governs all Pennsylvania school districts and is the Commonwealth’s affirmation that it will fully implement the IDEA statute and accompanying regulations. Section 14.102 states that Pennsylvania will adopt federal regulations to satisfy “the statutory requirements under the IDEA.” Sections 14.123 (governing evaluations) and 14.124 (governing re-evaluations) both require that “Copies of the evaluation report and re-evaluation report shall be disseminated to the parents at least 10 school days prior

to the meeting of the IEP team, unless this requirement is waived by a parent in writing.”

Section 14.131(a) of Title 22 adopts 34 C.F.R. § 300.320(a), which defines an IEP as “a written statement for each child with a disability that is developed, reviewed, and revised in a meeting,” and 34 C.F.R. § 300.27-300.30.

39. Title 22, Chapter 15 of the Pennsylvania Code governs all Pennsylvania school districts and requires them to not discriminate against students with disabilities. Chapter 15 operationalizes Section 504 and the ADA for school districts in Pennsylvania and sets forth specific protections and procedures to inform parents and students of their rights to be provided an education free from discrimination based on their disabilities.

40. Title 22, Chapter 4 of the Pennsylvania Code governs academic standards and curriculum requirements generally in Pennsylvania. Sections 4.26 and 4.52 of Title 22, respectively, express the state standards for English language instruction and assessments and are clarified by the Commonwealth in official guidance. *See* Basic Educ. Circular, “Educating Students with Limited English Proficiency (LEP) and English Language Learners (ELL),” Pa. Dep’t of Educ. (July 1, 2001) (hereinafter “Basic Educ. Circular”).

V. CLASS ACTION ALLEGATIONS

41. Plaintiffs bring this suit individually and as a Class Action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of all similarly situated individuals.

The classes that Plaintiffs seek to represent are composed of:

A. All parents as defined by 34 C.F.R. § 300.30(a) with limited English proficiency and whose children now or in the future are enrolled in the School District of Philadelphia and identified or eligible to be identified as children with a disability within the meaning of the IDEA and/or Section 504 and related state laws (“Parent Class”); and

B. All students who now or in the future are enrolled in the School District of Philadelphia in grades kindergarten through the age of legal entitlement who are identified or eligible to be identified as children with a disability within the meaning of the IDEA and/or Section 504 and related state laws, whether or not they are classified as

English language learners and whose parents as defined by 34 C.F.R. § 300.30(a) are persons with limited English proficiency (“Student Class”).

42. Each class is so numerous that joinder of all members is impracticable. During the 2013-2014 school year, the District reported that there were approximately 19,670 families who requested to receive documents in a language other than English; approximately 25,990 families who had a primary home language other than English; over 1,500 ELL students receiving special education services; and 1,887 students with IEPs whose documents stated that their home language was not English. The exact number of members of each class is not fully known to Plaintiffs at the current time, but the members of each class can be ascertained by the District.

43. There are questions of law and fact common to each class. Specifically, there are questions as to whether the District’s systemic refusal to provide sufficient interpretation services and to completely and timely translate IEP process documents and regular education forms for parents who are LEP violates the IDEA, ADA, Section 504, the EEOA, Title VI, and provisions of Chapter 14, Chapter 15, and Chapter 4 of the Pennsylvania School Code. Another common question of law is whether the failure to provide an evaluation of a child with a disability in that child’s native language violates the IDEA.

44. Plaintiffs’ claims are typical of the claims of the classes as all members are similarly treated and affected by the District’s conduct in violation of the law that is complained of herein.

45. Plaintiffs T.R. and A.G. and their guardians seek common injunctive relief to have the District adopt and implement a new written special education plan and policy to (1) provide legally mandated translation and interpretation services to members of the Parent Class and the Student Class, including the timely and complete translation of IEP process

documents; and (2) require evaluations to be conducted in a child's native language unless it is clearly not feasible to do so.

46. Plaintiffs will fairly and adequately protect the interests of the classes. Student Plaintiffs each qualify as a "child with a disability" under the IDEA, and each has or should be provided an IEP that governs his or her education. 20 U.S.C. §§ 1401(3), 1414(d), 1415. Parent Plaintiffs each qualify as "parents" of a child with a disability. *Id.* § 1401(23). All individually named students and parents are limited English proficient and have experienced a common harm and seek a common remedy. The District's failure to provide sufficient interpretation services and to completely and timely translate IEP process documents extends to all foreign languages, including but not limited to Spanish.

47. Counsel for Plaintiffs are experienced in handling federal class action litigation and will adequately and zealously represent the interests of the classes. The Public Interest Law Center and Education Law Center have litigated numerous civil rights claims on behalf of persons and children with disabilities. Drinker Biddle & Reath LLP is likewise experienced in complex federal litigation and class action litigation, including representing plaintiffs in class actions asserting civil rights claims.

48. The District has acted or refused to act on grounds that apply generally to the classes, so that final injunctive relief or declaratory relief is appropriate respecting the classes as a whole. T.R. and A.G. filed administrative hearings in June 2014 challenging the legality of the District's policy regarding sufficiency of interpretation and the translation of IDEA-related documents. On May 26, 2015, the Hearing Officer found that the District violated the IDEA by failing to translate a variety of documents during the IEP process. Ex. A, CL at 10; Ex. B, CL at 11. The Hearing Officer also expressly found that his authority was limited, and that he could

not issue systemic relief. Ex. C. Subsequently, the District has not changed its policy regarding the sufficiency of interpretation or the complete and timely translation of documents critical to the IEP process.

49. Upon information and belief, no similar litigation concerning the claims herein has already begun by any Class Member.

50. It would be futile to require these named Plaintiffs or other members of the Classes to exhaust or re-exhaust administrative remedies, pursuant to the IDEA, since the District has adopted a systemic policy of failing to provide sufficient interpretation services and to timely and completely translate IEP process documents and regular education forms. As a result, Pennsylvania's special education administrative hearing system cannot, as expressly noted by the Hearing Officer, adequately remedy the systemic problem. Furthermore, upon information and belief, there are not enough special education hearing officers available to handle the number of due process hearing requests that would be necessary.

VI. FACTS

General Facts and District Practices and Policies.

51. As of November 2013, the District reported that there were approximately 25,990 families whose primary home language was not English and some 19,670 families of students in the District who had expressly requested documents in a language other than English.

52. As of November 2013, the District also reported that there were more than 1,500 ELL students receiving special education services across the District. At that time, the District acknowledged that there was a higher than anticipated number of students who had IEPs and whose parents were LEP and required translation and interpretation services. As of November 2013, there were 1,887 students with IEPs whose records indicated that their home language was

not English, but it is not clear that this number captured all of the students with IEPs whose LEP *parents* required sufficient oral interpretation and translated IEP process documents.

53. The District's data reported that, during the 2012-2013 school year, only 487 special education documents of *any type* had been orally interpreted. The District's oral interpretation services are provided primarily by Bilingual Counseling Assistants ("BCAs"). The District employs only 54-55 BCAs to serve all schools across the District. BCAs, among other job duties, provide limited interpretation services but do not provide translation services. *See* Ex. B, FF ¶ 24.

54. Additional special education documents might have been translated by an outside contractor during the 2012-2013 school year, but upon information and belief, the outside contractor did not translate IEP process documents for all of the parents who are LEP. Further, by the 2013-2014 school year (and despite its knowledge that a large number of parents needed IEP process documents translated for them), the District no longer had arrangements with that outside contractor to assist with translation. While the District has a Translation and Interpretation Center which routinely translates documents used throughout the school district for students without disabilities, this office has never completely translated an IEP in its entirety. N.T. 422, 461. Moreover, parents cannot request translation services.

55. Despite these numbers and its knowledge of the problem, the District has adopted a policy in which it does not timely and completely translate IEPs, NOREPs, evaluations, re-evaluations, progress reports, assessments, and other IEP process documents outlining students' procedural and educational rights into the native languages spoken and/or read by LEP students and their parents.

56. Further, the District does not provide completely translated evaluations and re-evaluations to parents at least ten school days prior to IEP team meetings, in contravention of 22 Pa. Code Chapter 14, the state's special education law.

57. As evidenced by the experience of Parent Plaintiffs and Student Plaintiffs, the District has attempted to provide some oral interpretation during some IEP team meetings, but this incomplete, inconsistent effort has not and cannot facilitate the requisite meaningful parent participation. It also does not comport with state law requirements that parents have copies of the multiple-page evaluations and re-evaluations at least ten school days prior to IEP team meetings.

58. In the absence of receiving required information in a manner they can comprehend, uninformed parents enter meetings with no knowledge of evaluation reports, IEPs, and other documents and are unable to make informed decisions or provide legally viable consent. The District's policy has denied Parent Plaintiffs and members of the Parent Class their right to informed consent, notice, decision making regarding program and placement, and meaningful participation in the IEP process, including IEP team meetings.

59. The District also has thereby denied members of the Student Class who are LEP equal educational opportunities to participate fully and equally in the IEP process and in the District's educational programs, including programs to address the student's disabilities. The District's policy also has resulted in the inability of Student Plaintiffs and members of the Student Class to receive adequate IEP-related services and has significantly undermined and impaired the ability of members of the Student Class to receive a FAPE or other educational services available to other students.

60. The District deliberately and inexplicably chooses not to utilize TransAct, which is a translation program provided by the Commonwealth of Pennsylvania to school districts to enable them to translate documents.

61. Upon information and belief, the District conducts bilingual evaluations for some but not all LEP students in contravention of the IDEA.

Class Representatives' Experiences – T.R. and Barbara Galarza.

62. T.R. attended elementary school in the District, where she was instructed only in Spanish, and then attended a charter school from 5th to 8th grade. The charter school conducted a bilingual evaluation of T.R. in the spring of 2013, determined that T.R. qualified for special education services under the “Other Health Impairment” category based on an ADHD diagnosis, and created an IEP for her. The IEP for T.R. included goals for improving her reading and math skills and to decrease truancy. In 2013, Ms. Galarza sought to transfer T.R. back to the District. Despite making this request in writing, there was a delay in arranging for T.R. to return to the District, due in part to the promise of translating IEP process documents. Throughout the fall of 2013, T.R. was deprived entirely of any educational programming at all, and the parties could not come to an agreement regarding her high school placement. Additionally, in the fall of 2013, T.R. became pregnant and needed services at home, which were delayed.

63. On February 26, 2014, the District’s non-bilingual school psychologist and non-bilingual speech therapist evaluated T.R. in English. The District’s Reevaluation Report and the psychologist’s Psycho Educational Evaluation report were provided to Ms. Galarza in English only. The report determined that T.R. had an “Intellectual Disability,” a substantial change from her prior designation of “Other Health Impairment.” A follow-up meeting was held nearly a month later, on March 25, 2014, to discuss the Reevaluation Report and the Psycho Educational

Evaluation. Despite a specific written request for the evaluation and all documents to be provided in Spanish, the District did not provide the Meeting Invitation, Psychoeducational Report, or Evaluation Report to Ms. Galarza in Spanish either before or during the meeting. Ms. Galarza was therefore unable to participate fully in the meeting, during which an oral interpreter informed her for the first time that T.R. had an intellectual disability. Additionally, at the meeting, Ms. Galarza requested home instruction for T.R. due to complications related to her pregnancy. The District provided a Physician's Referral Form for homebound instruction in English only, causing delay in the services.

64. Despite the District's awareness that Ms. Galarza only spoke and read Spanish, at a subsequent IEP meeting on June 12, 2014, the District provided Ms. Galarza with a 52-page draft IEP, again in English only. The District proposed an Approved Private School for T.R., removing her from a regular high school. An interpreter was present at the meeting via telephone but did not orally interpret the entire 52-page IEP and other documents or completely translate the IEP. The District did not provide documents related to T.R.'s placement, such as the NOREP/PWN, APS Recommendation Form, or APS Directory in Spanish. Ms. Galarza was therefore unable to understand the IEP or the placement options provided to her and was unable to participate meaningfully in the meeting.

65. The District provided a NOREP to Ms. Galarza on June 17, 2014 in English only. Ms. Galarza rejected the NOREP and filed a Due Process Complaint.

66. On June 27, 2014, four months after the February 26, 2014 evaluation identifying her daughter as having an intellectual disability, the District finally provided Ms. Galarza a Spanish version of the District's February 2014 Evaluation Reports of her daughter.

67. Throughout the 2014-2015 school year, and despite repeated parental requests, the District did not completely translate IEP process documents in a timely manner, such that Ms. Galarza was unable to participate meaningfully in the IEP process. The District also provided insufficient oral interpretation services during the IEP team meetings; in particular, the interpreters did not fully and completely orally interpret each IEP process document.

68. As part of T.R.'s IEP, she was entitled to receive a "transition assessment" by the District. Transition services are designed to ensure a coordinated set of activities to help the student move on to postsecondary education, or employment. The student's and parent's involvement is an important part of this process. No information, however, about transition services, including a transition services packet or handout, was provided to T.R. or Ms. Galarza in Spanish, and T.R.'s transition assessment was completed by an English speaking teacher.

69. Ms. Galarza was denied sufficient oral interpretation services to enable her to speak with school personnel about various everyday educational problems, such as transportation and math class issues that T.R. was experiencing. Ms. Galarza was denied translation of report cards and ESOL progress reports.

Class Representatives' Experiences – A.G. and Margarita Peralta.

70. A.G. was born in the Dominican Republic on September 24, 1996. He was enrolled in ninth grade in the Dominican Republic when his mother passed away in August 2010. He came to the United States in 2011 and has lived in Philadelphia continuously since the fall of 2012.

71. The District refused to place A.G. into eleventh or twelfth grade until May 2015. Instead, A.G. was assigned to ninth grade in 2012-2013 at one high school, and again assigned to ninth at another high school for the 2013-2014 school year. Although A.G. was enrolled in

English language classes in the fall of 2012, he was never formally tested for English language placement until the following year, in November of 2013. In addition, progress testing for his ESOL classes was done incorrectly.

72. A.G.'s Parent (first his uncle, and currently Ms. Peralta, his aunt and legal guardian), notified the District in October 2012 and in September 2013, by way of the District's Home Language Questionnaire, that the family is Spanish speaking and requested documents be provided in their native language of Spanish. In March 2014, Ms. Peralta provided an order from a Philadelphia Family Court judge and a letter to the District requesting that A.G. be evaluated for special education services and again explicitly informing the District that the family's native language was Spanish.

73. Despite the family's notifications to the District about their native language and need for language assistance, and despite A.G.'s participation in ESOL classes, the District failed to provide sufficient oral interpretation and timely and complete translation of IEP process documents. For example, in response to the request for special education evaluation, Ms. Peralta met with a non-Spanish speaking teacher, ESOL grade reports were provided only in English, and communications about evaluating A.G. for special education were conducted primarily in English.

74. On June 23, 2014, Ms. Peralta filed a Due Process Complaint on behalf of A.G., resulting in the decision at Ex. B.

75. Even after the filing of the Due Process Complaint, the District continued to issue documents to Ms. Peralta in mostly English or partially in English. Throughout the 2014-2015 school year, Ms. Peralta attended IEP meetings for A.G. in an effort to establish a program for him. Despite both oral and written requests, the District repeatedly refused to provide complete

and timely translations of IEP process documents and regular education forms and refused to provide sufficient oral interpretation services. On September 3, 2014, the District sent Ms. Peralta a letter, in English, stating that A.G. would be attending another high school “due to ESOL services [A.G.] require[d].” During the 2014-2015 school year, A.G. underwent intensive surgery on his leg, necessitating his need for homebound instruction provided by the District. Information about homebound instruction was initially not provided completely in Spanish, causing a substantial delay in the provision of services. In addition, Ms. Peralta was not provided a Spanish version of A.G.’s evaluation report prior to the October 16, 2014 IEP team meeting, and at the meeting, she received a draft IEP in English, with only the generic headings of the paragraphs translated into Spanish. On November 21, 2014, the District created an updated IEP and NOREP, which were again only partially translated. Despite a prior written request for a completely translated IEP, on December 2, 2104, the District once again provided an IEP with headings in Spanish and the majority of the IEP in English. A District employee provided on-the-spot, oral interpretation (also referred to as “sight translation”) during the December 2, 2014 IEP meeting. Because the “sight translation” process took so long, the District’s employee had only “sight translated” three of the forty-four pages of the IEP by the end of the meeting. The pages that were sight translated related to the Medical Assistance Program Billing Notice, a standard form, rather than the substantive content of the IEP addressing A.G.’s special education needs and proposals to meet those needs. At the end of the meeting, Ms. Peralta still did not have a completely translated IEP or a translated copy of the Medical Assistance Program Billing Notice to read at the meeting or take home to review.

76. As part of A.G.’s IEP, he was entitled to receive a “transition assessment” by the District, which was completed in January 2015. No information, however, about transition

services, including a transition services packet or handout, was provided to A.G. or Ms. Peralta in Spanish. The District continues to refuse to provide A.G. with a completely translated IEP and to ensure such translations in the future.

VII. LEGAL CLAIMS

**Count One: Violation of the Individuals with Disabilities Education Act:
Failure to Provide Meaningful Parental and Student Participation
(On Behalf of the Parent Class and Student Class)**

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

78. Parent Plaintiffs and members of the Parent Class have not received legally-mandated written information regarding their children's education in their native language and at times, if written information was received in their native language, it was not provided at the same time the rest of the IEP team received the information and in a manner to ensure meaningful parent and student participation in the IEP process. These documents include IEP-process documents and regular education forms as defined herein.

79. Student Plaintiffs and members of the Student Class were injured by the inability of their LEP parents to participate meaningfully in the IEP process. In addition, Student Plaintiffs and members of the Student Class who are LEP have been deprived of legally-mandated written information, including evaluations, re-evaluations, transition services information, assessments relating to transition planning and services, and their IEPs, prohibiting them from participating in the IEP process, including engaging in transition planning.

80. The practice of providing sporadic and incomplete oral interpretation of IEP process documents during an IEP meeting is not an adequate substitute for timely receipt of completely translated, IEP process documents. It is also contrary to 22 Pa. Code 4.26 and state educational standard interpretations. *See* Basic Educ. Circular.

81. The District has denied Parent Plaintiffs and members of the Parent Class the right to participate meaningfully in their children's IEP process.

82. The District's refusal to translate IEPs and other IEP process documents has resulted in a lack of special education services for Student Plaintiffs and members of the Student Class. As a result of the inability of Parent Plaintiffs and members of the Parent Class to participate adequately in the formation and execution of their IEP plans, Student Plaintiffs and members of the Student Class have been denied a free appropriate public education guaranteed to them under the IDEA. Many students have been denied special education services designed to enable them to make progress, such as specially designed instruction, transition planning services, related services, and proper school placement to meet the students' academic needs.

83. Plaintiffs secured the services of the Public Interest Law Center of Philadelphia and Drinker Biddle & Reath LLP to represent them in the due process hearings and are entitled to their fees at same as prevailing parties, in part. 20 U.S.C. § 1415(c). The Law Center incurred approximately \$120,117.00 in representing T.R. and \$78,724.00 in representing A.G. in the administrative due process hearings. Drinker Biddle & Reath incurred approximately \$264,617.50 in representing T.R. and A.G. in the due process hearings. As Plaintiffs were prevailing parties, in part, the District is responsible for these fees, which can be resolved after the merits of this matter.

84. Wherefore, Parent Plaintiffs, members of the Parent Class, Student Plaintiffs, and members of the Student Class demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

**Count Two: Violation of the Individuals with Disabilities Education Act:
Failure to Conduct Evaluations of Students in Native Language
(On Behalf of the Parent Class and Student Class Members Who Are LEP)**

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

86. Student Plaintiffs and some members of the Student Class who are LEP were never evaluated or were not timely evaluated for special education services in their native language. The District's failure to conduct timely evaluations for every LEP child in his or her native language to determine eligibility for special education services deprived Student Plaintiffs and members of the Student Class who are LEP of their rights under the IDEA to receive a non-discriminatory, accurate evaluation to inform the IEP process. As a result, Student Plaintiffs and members of the Student Class who are LEP were inappropriately assessed and failed to receive needed special education services or said services were wrongfully delayed.

87. The District's failure to conduct evaluations in a student's native language and in the form most likely to yield accurate information violated the IDEA. *See* 20 U.S.C. §1414(b)(3)(A); 34 C.F.R. § 300.304(c)(1)(ii).

88. Wherefore, Student Plaintiffs and members of the Student Class who are LEP demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

**Count Three: Violation of the Section 504 of the Rehabilitation Act, Americans with
Disabilities Act as Amended, and 22 Pa. Code Chapter 15
(On Behalf of the Student Class)**

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

90. Student Plaintiffs and members of the Student Class are students with disabilities who were otherwise qualified to participate in school activities and receive equal benefit from them as non-disabled students pursuant to the protection of Section 504.

91. By failing to translate regular education forms for the members of the Parent Class, including homebound forms and information about those services, the District has substantially undermined the ability of members of the Student Class to receive equal access to education services on the same basis as students without disabilities.

92. Wherefore, Student Plaintiffs and members of the Student Class demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

Count Four: Violation of the Equal Education Opportunity Act
(On Behalf of the Student Class)

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

94. Federal law provides that: “No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f).

95. National origin discrimination has been defined to include but is not limited to, the denial of equal opportunities due to an individual’s, or his or her ancestor’s, place of origin; or because an individual has the physical, cultural, or linguistic characteristics of a national origin group, including limited English proficiency. The District has denied equal education opportunity to Student Plaintiffs and members of the Student Class on account of their race and/or national origin or that of their parents by failing to take appropriate action to overcome

language barriers of these students and/or their parents. This failure has impeded equal participation by Student Plaintiffs and the members of the Student Class in the District's special education and other instructional programs.

96. Wherefore, Student Plaintiffs and members of the Student Class demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

Count Five: Violation of Title VI of the Civil Rights Act of 1964
(On Behalf of the Parent Class and Student Class Members Who Are LEP)

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

98. The District has been aware of the widespread need of LEP parents and LEP students to obtain timely and complete translations of IEP process documents in order to participate meaningfully in the IEP process and to ensure access to appropriate education services for their children. Despite this knowledge, the District has acted intentionally, repeatedly, and with deliberate indifference by refusing to timely and completely translate IEP process documents and by refusing to provide sufficient oral interpretation services, in order to ensure meaningful participation by Parent Plaintiffs and members of the Parent Class and in order to ensure access to appropriate educational services for their children.

99. The District has been and continues to be aware that LEP parents and LEP students need timely and complete translations of regular education forms that pertain to their children's educational placement and needs, such as home instruction forms, ESOL placement letters, and progress reports. Instead, the District has adopted a policy and procedures which are ineffective to provide adequate support and which it knows does not fulfill its obligations or fails

to meet the needs of Parent Plaintiffs, members of the Parent Class, Student Plaintiffs, and members of the Student Class who are LEP.

100. The failure to assist Parent Plaintiffs, members of the Parent Class, Student Plaintiffs, and members of the Student Class who are LEP to participate effectively in or benefit from federally assisted programs and activities violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and Title VI regulations prohibiting discrimination against LEP persons on the basis of race and national origin. Recipients must take appropriate action to ensure that such persons have meaningful access to the programs, services, and information those recipients provide. *See, e.g.*, 34 C.F.R. Part 100.

101. Regulations promulgated pursuant to Section 602 of Title VI forbid the District from utilizing methods of administration which subject individuals to discrimination because of race and/or national origin or that have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin. These regulations provide in part that no person shall, on the ground of race or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program; be denied a benefit which is different, or is provided in a different manner, from that provided to others under the program; or restrict an individual from receiving any service, financial aid, or other benefit under the program. 34 C.F.R. § 100.3.

102. The District failed in its obligation to avoid discrimination against LEP persons on the grounds of race and/or national origin by failing to take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information the District provides to others.

103. By refusing to completely and timely translate IEP process documents necessary for Parent Plaintiffs, members of the Parent Class, Student Plaintiffs, and members of the Student Class who are LEP to participate meaningfully in the District's IEP process on the same basis as their counterparts who speak and read English, refusing to provide sufficient oral interpretation, and refusing to provide them with the necessary regular education forms in their native language, the District has intentionally discriminated against Parent Plaintiffs, members of the Parent Class, Student Plaintiffs, and members of the Student Class who are LEP on account of their race and/or national origin. Such actions are also contrary to 22 Pa. Code § 4.26 and state educational standard interpretations. *See* Basic Educ. Circular.

104. Wherefore, Parent Plaintiffs, members of the Parent Class, Student Plaintiffs, and members of the Student Class who are LEP demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

Count Six: Violation of 22 Pennsylvania Code Chapter 14
(On Behalf of the Student Class and Parent Class)

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

106. By failing to provide complete and timely translated evaluations and re-evaluations ten days prior to IEP team meetings, or to make any attempt to interpret evaluations at any time prior to the IEP team meetings, the District has violated 22 Pa. Code §§ 14.123 and 14.124.

107. By its failure to provide sufficient oral interpretation and complete and timely translated IEP process documents, the District has violated and is continuing to violate the IDEA and Chapter 14, especially the state's educational standards for special education. 20 U.S.C. § 1401(9)(A-D); 22 Pa. Code Chapter 14; 22 Pa. Code § 4.26.

108. Wherefore, Parent Plaintiffs, members of the Parent Class, Student Plaintiffs, and members of the Student Class demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

Count Seven: Violation of 22 Pennsylvania Code Chapter 15
(On Behalf of the Student Class and Parent Class)

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

110. By failing to provide complete and timely translated regular education forms as defined herein, including those for home instruction, the District has violated 22 Pa Code Chapter 15.

111. Wherefore, Parent Plaintiffs, members of the Parent Class, Student Plaintiffs, and members of the Student Class demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

VIII. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Assert jurisdiction over this matter and certify the two classes as defined herein.
2. Order that the District adopt and implement a new written special education plan and District policy to provide legally mandated translation and sufficient interpretation services to members of the Parent Class and the Student Class. This policy shall delineate all documents to be completely and timely translated and the protocol for requesting and obtaining translations and interpretation services.
3. Order that the District develop a method and written protocol to proactively identify all LEP Parents who may need translation and interpretation services.

4. Order that the District timely translate and deliver all IEP process documents to all members of the Parent Class and the Student Class as needed in the appropriate native language in advance of IEP meetings to ensure meaningful participation.
5. Order that the District notify all parents at the time of enrollment of their right to receive translated IEP process documents and interpretation services if their child is entitled to services as a student with a disability. This notice shall be provided in the parent's native language if the parent notifies the District that he or she does not read English but does read another language. Alternatively, if the parent notifies the District that he or she does not read or speak English and speaks a language that is not a written language, this notice and future communications shall be provided through sufficient oral interpretation, recorded for the parent, and a copy of the recording provided to the parent.
6. Order that, at any time a student becomes entitled to an evaluation for special education services pursuant to IDEA, or becomes entitled to a 504 Plan, the District shall provide notice to the LEP parent and student that they are members of, respectively, the Parent Class and the Student Class, and are entitled to certain documents in his or her native language pursuant to court order.
7. Order that the District shall conduct evaluations to determine eligibility for special education services in the native language of the LEP student to the extent required by the IDEA and shall revise its Special Education Plan and policies accordingly.

8. Appoint Plaintiffs' counsel to monitor the Order identified above.
9. After adjudication of the merits, award Plaintiffs their costs and attorneys' fees for the underlying required due process administrative hearings.
10. Award to Plaintiffs their costs and attorney fees for the bringing of this action.
11. Retain jurisdiction over this matter until such time as the District demonstrates full compliance.
12. Grant such other and further relief as may be just and proper.

Dated: August 21, 2015



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