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March 24, 2017

Miles H. Shore
Interim General Counsel
The School District of Philadelphia
440 N. Broad Street
Philadelphia, PA 19130

**Re: C.H. v. School District of Philadelphia/ Notice of Violation of
Settlement Agreement**

Dear Miles:

Pursuant to Paragraph VI.B.1 of the Settlement Agreement and Release in the above-referenced case, I write to inform you of the following breaches of the agreement and request that you take the remedial steps outlined below. We consider these breaches taken together to be of sufficient gravity to warrant an enforcement action if the matters are not corrected immediately.

Background

As you know, plaintiffs brought this case to change the once-size-fits-all practice by the School District of Philadelphia in determining Extended School Year (ESY) services for children with disabilities. Rather than the individualized determinations required by the IDEA, state law and accompanying regulations, the complaint alleged that the School District of Philadelphia was shoehorning all children into a "program" with a set number of dates, times and locations, regardless of the child's needs. Parents were being told that they did not have other options, even if their children required services that involved more or fewer dates or times, or different locations and programming.

The settlement of the case was based upon the claim by your client that the District had changed this practice. Indeed, the District affirmatively agreed that "ESY services will not be predetermined or limited to those services that may be provided within the School District's planned ESY summer schedule for students who need additional or different services to receive FAPE."

But it was important that *all* of the players in a very large system—parents, teachers, special education professionals, administrators—were informed that

whatever their understanding had been in the past, the one-size-fits-all practice was no longer acceptable. The various trainings, notices and oversight that form the core obligations in the Settlement Agreement were intended to make sure that everyone heard this message loud and clear.

This is not happening and, instead, it appears that the District is continuing as it has in the past.

Violation 1: Parent Education

Paragraph IV.D requires the District to provide training to parents about ESY. The purpose of the training is to ensure that, even if a teacher, special education professional or other administrator has not yet grasped the change in the District's practice, a parent would be armed with an understanding that a child's Extended School Year services must be individually determined. If the child needs more, or different services than those which are in the District's "program," those services must be made available. The Settlement Agreement required the District to use "best efforts" to have the training provided by a representative of the state training agency, the Pennsylvania Training and Technical Assistance Network (PaTTAN). The trainer was to use pre-existing PaTTAN slides as well as two additional slides which made clear that a child may be entitled to more or different services than those set out in the "program."

I attended a parent training by the District on Monday, March 20, 2017. That training violated, in every material respect, the requirements, as well as the spirit of the settlement agreement.¹ The violations are:

- The trainer was not from PaTTAN, but instead was a Special Education Director employed by the District.
- The trainer began her presentation by giving the fixed dates for the District's "program" then continued to repeat and emphasize this "program" throughout the presentation. The agreed-upon slides did not reference the "program." See Exhibit 5 of the Settlement Agreement.
- An agreed-upon slide explained various options a child might have for extended school year services, including dates, frequency and location of the services. (That is, the slide headed "Information on the IEP format.") The trainer added commentary --not on the slides--to convey the impression that a parent does *not* have options. Specifically, with respect to the option for different dates, the trainer added the commentary that "this is just an example, our program is..." and then listed the fixed dates of the District's "program."
- In response to a question from a parent about whether the dates of the "program" were the *only* dates available for extended school year services, the trainer responded: "these are the dates of the ESY program."²

¹ In addition to these specific violations of the settlement agreement, the training included mis-statements. For example, the trainer asserted that extended school year is only during the summer. This is incorrect.

- A parent asked about inclusion as a possibility for a child's extended school year services: that is, whether a child whose goals required inclusion in a regular education setting could receive ESY services in such a setting. The trainer informed the parent that this was not possible; only later was the parent told, correctly, that this would be an individualized determination.³
- The trainer initially concluded the session without discussing or showing two slides that are mandated parts of the curriculum. See Exhibit 6 of the Settlement Agreement. These slides specifically spell out the requirement that, if needed for the child, additional or different services must be provided. Among the words on those omitted slides were: "It is important to remember that the District's typical ESY schedule does not limit the ESY services that may be provided."⁴ When a parent pointed out the omission, the trainer eventually did put the slides on the screen. However, the trainer did not explain them.⁵
- The settlement includes a provision that calls for a second IEP team meeting if a parent or any other person on the IEP team thinks the child needs services that are more or different from those in the "program." During settlement negotiations the District claimed this provision was needed for it to track of the number of requests for different services. The trainer, when asked about the second meeting, did not explain this reason, causing further confusion among parents.
- Although the Settlement Agreement did not specify the advance publicity that must be provided for the parent training, a level of good faith in complying with the agreement was assumed. It appears, however, that only the barest of efforts was made to inform any parents that such a training was available. The training is not listed on the District's calendar of events for family trainings: <http://www.philasd-parentuniversity.org/class-calendar> nor can it be located anywhere on the District's website.

² At the conclusion of the presentation, I asked the trainer to confirm that this statement was incorrect. She did so, causing confusion among parents about what, in fact, the situation is.

³ The agreed upon slides state that the District is not required to create a new program merely to provide ESY services in integrated settings if it does not already provide services for non-disabled children. But this does not preclude ESY services in an integrated setting, particularly where there are existing services for non-disabled children.

⁴ These mandated slides were again omitted from a follow up email from an employee from the Office of Specialized Services dated March 23, 2017. That email purported to distribute the materials shown at the training.

⁵ Paper copies of the materials, which were distributed to participants, included these slides. The slides on the paper copies were out of order.

Even more concerning was the fact that the Deputy Chief of the Office of Specialized Services, an official who participated in the negotiations and is responsible for the ESY program, sat through the entire presentation and did not offer any corrections.

Violation 2: Training of Special Education Directors

Paragraph IV.A of the Settlement Agreement called for training of Special Education Directors. Again, the District was to use best efforts to have PaTTAN provide that training. Again, the training was to consist of the agreed-upon slides. This was important for all the reasons that the parent training was needed; the people most responsible for extended school year planning themselves must understand the new rules; namely, that teams assembling to decide upon a child's services (IEP teams) are not limited to the days or hours of the District's "program." Again, a child's program should be individualized and if a child needed more or different services, those services must be arranged.

It is not clear whether the March 20, 2017 training session was intended to meet this requirement. But regardless of the District's intent on this point, the training was attended by the District's nine special education directors. Thus, the special education directors—the people for whom a correct understanding is most important—also received information that is directly contrary to the letter and the spirit of the settlement agreement and in direct violation of the law.

Violation 3: Publicizing the Settlement Agreement

Paragraph XI of the Settlement Agreement required both parties, within five business days of the date of signature, to publish an agreed-upon statement about the settlement of the lawsuit. The statement was intended to inform people involved in determining children's services, namely, parents and school personnel that "the ESY services must be individualized for each eligible student, and that the ESY services provided by the School District will not be predetermined or limited by the School District's ESY summer schedule." The District failed and refused to do so.

Violation 4: Information on the District's Website

Paragraph II.C requires the District to provide information consistent with the terms of the settlement on its website. Specifically, the Settlement Agreement requires the District to publish the information from an agreed-upon notice which includes the following language: "The amount, type, and duration of services that are provided during ESY will depend on the individual needs of the student, and are determined by the IEP Team..." and "there is no fixed amount, type, or duration of ESY services; each student is entitled to receive the services necessary to ensure he/she receives an appropriate education based on his/her needs."

The District's website includes this information on one web page. However, the required language on that page is overshadowed, and contradicted by the heading of the page, which continues to suggest the unlawful one-size fits all program: "Extended School Year (ESY) from July 11th to August 17th". And below the agreed-upon language is the statement: "The student day is from 9:00 A.M. to 1:00 P.M. ESY begins on Tuesday, July 11, 2017, and ends on

Thursday, August 17, 2017.” <http://webgui.phila.k12.pa.us/offices/s/oss/2014-esy-extended-school-year> (visited on March 22, 2017).⁶

Enforcement

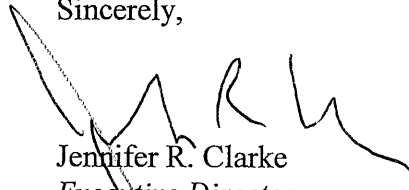
On behalf of plaintiffs and pursuant to the dispute resolution procedures spelled out in Paragraph VI.B.1 of the Settlement Agreement, we request the District immediately take the following steps to correct the harms caused by the ongoing violations of the law and of the Settlement Agreement:

1. Schedule a new training for parents, to be held within two weeks. Secure a PaTTAN trainer to ensure that the information is conveyed correctly and in good faith. The new training should be publicized on the District’s “For Parents” web page, on the Office of Family Services and Community Engagement Calender, through the special education Local Task Force and through any district wide vehicle for communicating with teachers and administrators.
2. Separately schedule a separate training for special education directors, again with a PaTTAN trainer. This, too must happen within two weeks.
3. Within two weeks, circulate to the Special Education directors a letter, signed by the Deputy Chief of the Office of Specialized Services, which includes the initially-omitted slides, and states that they contain important information that the directors should be aware of.
4. Inform the Public Interest Law Center in advance of such trainings and provide a copy of the letter described in paragraph 3 above.
5. By next Wednesday, March 29, post the agreed upon notice required in Paragraph XI, include the required language in Paragraph II.C on every page describing ESY services, and qualify every reference to the summer “program” with the agreed upon language.
6. It is now urgent that we determine whether the violations described above have thwarted the ultimate goal of the settlement—to secure individualized determinations about the extended school year services for children. We therefore demand that the District provide the data required by Paragraph V.A.1-5 of the Settlement Agreement by the following dates: 1) April 1 with respect to the children whose IEP team meetings were to have occurred by the end of February (the Armstrong group); and 2) June 1 for all other IEP meetings that took place during the period between the execution of the Settlement Agreement and the date of this letter.

⁶ Worse yet, other pages that describe the summer “program” omit the required information altogether. <http://webgui.phila.k12.pa.us/offices/s/oss>.

We expect you to respond promptly. We do not want to waste another summer in children's lives. If we have not resolved these issues within 60 days we will, as set forth in paragraph VI.B.2, seek an order of enforcement from the Court and attorneys fees.

Sincerely,



Jennifer R. Clarke
Executive Director

Cc: Bonnie M. Hoffman, Esq.