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

T.R. et al., Plaintiffs, v. **The School District of Philadelphia**, Defendant.	Civil Action No. 15-04782-MSG

PLAINTIFFS' REPLY MEMORANDUM
IN SUPPORT OF CLASS CERTIFICATION

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Plaintiffs L.R., D.R. and J.R. and their mother, Madeline Perez, and R.H. and his mother, Manqing Lin (collectively, "Plaintiffs"), on behalf of themselves and others similarly situated, submit this reply memorandum in support of their Motion for Class Certification.

I. INTRODUCTION

In its Response in Opposition to Plaintiffs' Motion for Class Certification (the "Response"), Defendant School District of Philadelphia (the "District") contests each and every element of Rules 23(a) and 23(b)(2). The breadth of their arguments does not overcome the deficiencies in their opposition to class certification.

First, the District disputes that the element of numerosity has been satisfied by erroneously contending that the term "limited English proficient" ("LEP") is too vague and undefined. To the contrary, the term (and, by extension, the membership in the putative classes) is well-defined and well-understood by the District. Indeed, the District's insistence that it must maintain discretion in the allocation of language services is premised on its acknowledgement that there are large numbers of LEP parents and students who need such services.

Also, even though the claims in this case stem from systemic deficiencies in the policies, practices and procedures for translating Individualized Education Plan ("IEP") documents and interpreting at IEP meetings, and notwithstanding that Plaintiffs seek common injunctive relief, including improvements in the hiring and training of interpreters, which would benefit all of the putative class members, the District disputes that the elements of commonality and typicality have been met. In particular, the District maintains that, by retaining the subjective discretion to award or deny language services, it negates the elements of commonality and typicality, as well as the standard for awarding injunctive relief pursuant to Rule 23(b)(2). The case law does not support this argument. In fact, as discussed below, the District's lack of appropriate objective

standards in allocating language services is one of the common problems in the system and grounds for, rather than an obstacle to, class-wide relief.

Finally, the District contests the adequacy of the Named Plaintiffs as class representatives, based on factual circumstances such as their degree of English proficiency and their resolution of earlier disputes with the District, and the adequacy of counsel. Each of these arguments is meritless and should be rejected. For the reasons discussed below and in their initial Memorandum of Law, Plaintiffs' Motion for Class Certification should be granted.

II. ARGUMENT

A. The Definitions of "Parent Class" and "Student Class" Are Objective and Clear.

The District asserts that the proposed classes are "ambiguous, unworkable, and do[] not allow the court to determine readily who is a member of the class[es]." Def.'s Resp. in Opp. to Pls.' Mot. for Class Certification at 7 [ECF No. 87] ("Def.'s Resp."). The premise is that the phrase "limited English proficient" is not sufficiently well-defined or well-understood. *Id.* at 8.

Notably, the District has not had any difficulty with the phrase "limited English proficient" or "LEP" before – not in its Answer, in its Motion to Dismiss, or in responding to written discovery or deposition questions. Indeed, the District's professed confusion about the meaning of "limited English proficient" or "LEP" is particularly perplexing in light of the District's obligations under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, the EEOA, 20 U.S.C. § 1701 *et seq.* and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* The District is required to determine whether parents and students *are* LEP and, if so, to ensure meaningful communication in a language they understand. *See Lau v. Nichols*, 414 U.S. 563 (1974); 42 U.S.C. § 2000d *et seq.*; Exec. Order No. 13166, 65 Fed. Reg.

50121 (Aug. 11, 2000). The District maintained throughout discovery that it consistently met these obligations, yet now contends that the term "LEP" is ambiguous and unclear.

Courts have relied upon the term "limited English proficient" or "LEP" to define and certify classes in other cases. *See, e.g.*, *United States v. Berks County, Pa.*, 250 F. Supp. 2d 525, 530 (E.D. Pa. 2003) (certifying class of LEP voters to challenge lack of bilingual poll workers and voting materials where named plaintiff was born in Puerto Rico, spoke little English, and was unable to read the English-language ballot or navigate the voting machine); *Almendares v. Palmer*, 222 F.R.D. 324 (N.D. Ohio 2004) (certifying class of Ohio LEP persons or households whose primary language was Spanish and received Food Stamps).[1]

Similarly, the use of the term "LEP" in the class definitions in this case is appropriate because it "enables the court to determine whether a particular individual is a class member." *Stanford v. Foamex L.P.*, 263 F.R.D. 156, 175 (E.D. Pa. 2009); *see also Chester Upland Sch. Dist. v. Pennsylvania*, No. 12-132, 2012 WL 1450415 (E.D. Pa. Apr. 25, 2012).

B. Plaintiffs Have Demonstrated the Element of Numerosity.

To satisfy the element of numerosity, plaintiffs are not required to offer an exact number of class members; rather, plaintiffs may show "sufficient circumstantial evidence" specific to the problems, parties and geographic area covered by the class definition to allow a court to make a

[1] While case law, statutes and federal guidance utilize different wording in varying contexts to define "limited English proficient," the definitions share common characteristics: (1) English is not the person's primary language, and (2) the person has limited ability to read, write, speak or understand English. *See* Dept. of Justice & Dept. of Educ., *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents*, at 37 (Jan. 7, 2015), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf (defining LEP parents as "parents or guardians whose primary language is other than English and who have limited English proficiency in one of the four domains of language proficiency (speaking, listening, reading, or writing)"); *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 67 Fed. Reg. 41455, 41457 (June 18, 2002) (explaining obligation of federal agencies to LEP individuals to assist them in overcoming language barriers and defining LEP individuals as those for whom English is not their primary language *and* who have a limited ability to read, write speak, or understand English). *See also Court Interpreters Act*, 28 U.S.C. § 1827(d)(1)(A) (mandating that interpretation be provided in judicial proceedings where a party's primary language is other than English so as to inhibit such party's comprehension); *see also* Statement of Interest filed by the United States of America, at 3–4 [ECF No. 19].

factual finding that joinder is impracticable. *Mielo v. Steak 'n Shake Operations, Inc.*, 897 F.3d 467, 484 (3d Cir. 2018) (citation omitted).

Unlike the plaintiffs in *Mielo*, the Named Plaintiffs have provided ample support for a finding that membership in each of the two proposed classes exceeds the common numerosity thresholds. For example, the District admitted in its Answer that as of November 2013, 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. *See* Def.'s Answer to First Am. Compl. ¶ 61 [ECF No. 54]. The District further admitted that as of November 2013, there were 1,887 *students* with IEPs whose records indicated that their home language was not English. *Id.* ¶ 62. More recently, District records disclosed that in the 2015–2016 school year, there were 3,507 special education students who lived in a household with a home language other than English as determined by the home language survey. Pls.' Mem. of Law in Supp. of Mot. for Class Certification [ECF No. 83-1] ("Pls.' Mem.") at Ex. 6.

The District's reliance on *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 357 (3d Cir. 2013) is misplaced. Unlike the plaintiffs in *Hayes*, the Named Plaintiffs have presented ample evidence that many other members of the putative classes suffered harm from the District's deficiencies in language services. For example, Ms. Lin,[2] advocate Anna Perng[3] and advocate Bonita McCabe[4] have identified LEP parents of students with disabilities who were denied access to translated documents and quality interpretation services. Additionally, the District's own records demonstrate that while 3,507 households of students with disabilities were

[2] Deposition of Manqing Lin at 91:15–93:13, attached hereto as Exhibit A.
[3] *See generally* Pls.' Mem. at Ex. 19.
[4] *See generally* Pls.' Mem. at Ex. 20.

identified as needing documents in a language other than English in the 2015–2016 school year, the District only translated a combined total of 63 documents in 2015 and 2016. Pls.' Mem. at Ex. 6.

C. The Challenged Conduct Is the Result of Common Policies and Practices.

The District misconstrues and misapplies the law regarding the commonality element of Rule 23, arguing that because its policies, practices and procedures for providing translation and interpretation services to LEP parents of special education students are "discretionary," there are not "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). But this construction of Rule 23(a) is contrary to the case law of this District and the Third Circuit. For example, in *P.V. ex rel Valentin v. Sch. Dist. of Phila.*, 289 F.R.D. 227, 233 (E.D. Pa. 2013),[5] the court reaffirmed that "[t]he commonality requirement will be satisfied if the named plaintiffs share at least ***one question*** of fact or law with the grievances of the prospective class." (emphasis added) (internal quotation marks omitted) (quoting *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)). In granting plaintiffs' motion for class certification, the court rejected defendants' argument that "[p]laintiffs will have to obtain individualized proof of how each class member was affected by the School District's 'policy' of upper-leveling" and found that "[d]efendants fail[ed] to recognize . . . that the central tenet of [p]laintiffs' [c]omplaint allege[d] a systemic failure, not a failure of the policy as applied to each member individually." *Id.* at 233–34. That "systemic challenge," the court held, "require[d] a number of factual and legal determinations, common to all class members," including "whether the School District upper-levels autistic students without meaningful parental involvement, whether the School District

[5] That case involved a challenge to defendants' "treatment of, and policies governing, school children with autism"—in particular, the defendant school district's "upper-leveling" policy of transferring students requiring autism support services—pursuant to numerous statutes including the IDEA, Section 504, and the ADA. *Id.* at 227, 231.

upper-levels autistic students without providing prior written notice to the parents, whether the School District considers the individual needs of autistic students prior to deciding where to upper-level that student, and whether the School District's 'policy' of upper-leveling deprives putative class members of a free and appropriate public education." *Id.* at 234.

Similarly, here, Plaintiffs' systemic challenge "requires a number of factual and legal determinations, common to all class members," *P.V.*, 289 F.R.D. at 234,[6] including whether the District's practices, policies and procedures are sufficient to ensure meaningful participation in the special education process, whether the District effectively notifies parents of their right to request translation and/or interpretation of IEP process documents, whether the District has sufficient resources—including qualified and trained interpreters—to provide effective language services to the Parent Class at IEP meetings, and whether the District's policies, practices, and procedures deprive the Student Class of a free and appropriate public education and subject the

[6] The District also repeats its incorrect contention that Plaintiffs have not alleged a "systemic" violation. Def.'s Resp. at 5–6. But the cases the District relies upon for this proposition are easily distinguishable, and most are not binding on this Court. *Id.* (citing cases from the Eighth, Tenth, and D.C. Circuits and the District of Minnesota). For example, *J.T. ex rel. A.T. v. Dumont Pub. Schs.*, 533 F. App'x 44 (3d Cir. 2013), is an unpublished decision in which the court ruled on defendant's motion for summary judgment that plaintiffs, who "conceded [that] they suffered no substantive harm," did not have standing and had not exhausted their administrative remedies. *Id.* at 49. The portions of the decision that the District relies upon were made in response to plaintiffs' argument that they should not have to exhaust their administrative remedies because the administrative process could not "provide class-wide discovery and grant the class-wide declaratory and injunctive relief they [sought]." *Id.* at 54. As noted previously, the Hearing Officer in the administrative cases involving T.R. and A.G. found that the parents/guardians were denied meaningful participation under the IDEA due to the District's failure to provide timely and complete translations of IEP-related documents. He also held that he did not have the authority to order system-wide changes in the District's policies or practices. *See* Pls.' Mem. at 5–6. These findings render the administrative process futile for all other Plaintiffs and proposed class members who challenge the policies, procedures and practices that resulted in these failures. As a result, the District's argument that "[a] claim 'is not systemic' if it involves only a substantive claim having to do with limited components of a program, ***and if the administrative process is capable of correcting the problem***," is inapposite here. *J.T.*, 533 F. App'x at 54 (emphasis added) (citation omitted); *see also Blunt v. Lower Merion Sch. Dist.*, 559 F. Supp. 2d 548, 559 (E.D. Pa. 2008), *aff'd*, 767 F.3d 247 (3d Cir. 2014) ("Requiring administrative exhaustion does not prejudice the plaintiffs' right to bring a civil action for the additionally requested relief if they remain dissatisfied at the close of the administrative hearings."). Furthermore, the *J.T.* plaintiffs challenged the defendant's alleged failure "to individually consider educational placements for kindergartners in need of special education." *J.T.*, 533 F. App'x at 49. Thus, it makes sense that the court would need to conduct individual inquires in order to resolve their claims. By contrast, the resolution of Plaintiffs' claims here involve a number of common questions that require no individual inquires. *See, e.g.*, Pls.' Mem. at 17 (identifying as one common question whether there are a sufficient number of qualified and trained interpreters available to provide effective language services).

Parent and Student Classes to discrimination on the basis of race and/or national origin. *See also* Pls.' Mem. at 15–17; Pls.' First Am. Compl. ¶¶ 107–141 [ECF No. 53].

Furthermore, contrary to the District's contention, the Third Circuit's decision in *Baby Neal* is directly applicable. In reversing the district court's decision, the Third Circuit emphasized that the commonality element can be satisfied "even if [class members] have not all suffered actual injury; demonstrating that all class members are *subject* to the same harm will suffice." *Baby Neal*, 43 F.3d at 56.[7] By contrast, the cases cited by the District are distinguishable. For example, *Rodriguez v. Nat'l City Bank*, 726 F.3d 372 (3d Cir. 2013), involved a motion for class certification in which the issue of commonality was not fully briefed by the plaintiffs. *Id.* at 380. The court held that because plaintiffs alleged that a discretionary loan pricing policy "had the effect of" discriminating against African-American and Hispanic borrowers, plaintiffs needed to show that the bank's "grant of discretion to individual loan officers constitute[d] a 'specific practice' that affected all the class members in the same general fashion." *Id.* at 384. Furthermore, the court focused on the fact that plaintiffs were seeking to certify a national class, but, in relying on "regression analyses" did not account for the fact that the alleged harm could have had regional variances. *Id.* at 385.

Mielo is also readily distinguishable. There, the court, relying primarily on *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), held that the class plaintiffs sought to certify was too broad because it encompassed persons who could suffer a wide variety of accessibility barriers at defendant's restaurants nationwide, whereas the named plaintiffs only experienced mobility

[7] *See also id.* ("Challenges to a program's compliance with the mandates of its enabling legislation, even where plaintiff-beneficiaries are differently impacted by the violations, have satisfied the commonality requirement."); *id.* at 60 ("[T]he commonality standard requires only that a putative class share either the injury or the immediate threat of being subject to the injury."); *id.* at 61 ("The differing degree and nature of the plaintiffs' injuries also do not preclude a finding of commonality.").

barriers within parking facilities. *Mielo*, 897 F.3d at 487–90. It was not enough for plaintiffs to invoke the same legal provision of the ADA to remedy each of the various discriminatory facilities. Here, as a factual matter, the members of the putative classes are all subject to the same policies and practices, including the absence of objective standards with respect to translation and interpretation services, as well as the District's systemic deficiencies in such language services, including the lack of a sufficient number of trained interpreters and the lack of adequate resources to provide translations of IEP documents.[8]

D. Named Plaintiffs' Claims Are Typical and They Are Adequate Class Representatives.

Each of the District's arguments that Ms. Lin and Ms. Perez are atypical of class members and cannot serve as class representatives should be rejected.

1. Plaintiffs need not exhaust administrative remedies.

The District wrongly asserts that this Court's prior decision on exhaustion of administrative remedies should be reconsidered based on the Court's statement that "a developed record may not establish Plaintiffs' systemic legal deficiency theory." Def.'s Resp. at 5 (*quoting T.R. v. Sch. Dist. of Phila.*, 223 F. Supp. 3d 321, 330 (E.D. Pa. 2016)). The District fails to establish any basis for reconsideration. *See M.A. ex rel. E.S. v. Newark Pub. Sch.*, No. CIV. A. 01-3389SRCQ, 2009 WL 4799291, at *3, n.2 (D.N.J. Dec. 7, 2009) (denying reconsideration of exhaustion argument at class certification stage). Moreover, in making the argument, the District

[8] *See also S.R. ex rel. Rosenvbauer v. Pennsylvania Dep't of Human Servs.*, 325 F.R.D. 103, 110 (M.D. Pa. 2018) (distinguishing *Dukes* and holding that plaintiffs' allegation "that systemic deficiencies in the availability of placements and services cause each violation of Title XIX, and that the policies and practices for allocating placements and services in general cause discrimination under the ADA and Section 504" was "exactly the type of 'common mode' or practice predicating each alleged violation that was noticeably absent from *Dukes*"); *Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 308 (E.D. Pa. 2012) (distinguishing *Dukes* and holding that regardless of whether "alleged common timekeeping and payroll policies that precluded proper compensation for [different types of] overtime work," commonality was satisfied because the existence of the policies was the "common answer" that gave plaintiffs "the potential to recover").

fails to cite to the discovery record at all. *See* Def.'s Resp. at 5–6. In contrast, Plaintiffs have cited extensive support in the record of their claims of systemic deficiencies. *See* Pls.' Mem. at 16–17, n.10–14.

2. Ms. Lin is qualified to represent the Class.

First, the District attempts to disqualify Ms. Lin as a class representative based on a Mediation Agreement, dated August 18, 2016, which related specifically to her request for an independent educational evaluation ("IEE"). Pls.' Mem. at Ex. 5. The District contends the agreement raises a unique defense that threatens to become a major focus of the litigation. Given the limited scope of the mediated dispute, however, the Mediation Agreement with the District cannot reasonably be construed to preclude Ms. Lin from seeking the same type of language services that Plaintiffs are seeking for the classes as a whole, and it cannot reasonably be expected to become a focus of the litigation.[9]

In the 2016 Mediation Agreement, the District agreed to "fund an IEE" and "implement the early intervention IEP . . . until such time that the IEE is completed." Pls.' Mem. at Ex. 5. The District further agreed to furnish Ms. Lin with "a hard copy and email copy of *the* IEP and any reports. . . ; competent language interpretation service to review *these* documents; . . . [and] *the* final copy of *the* IEP." *Id.* (emphasis added). By its clear terms, the Mediation Agreement only contemplated and addressed the IEE and explicitly references the development of the subsequent IEP emanating therefrom: The Agreement does not address, as the District contends, all of R.H.'s special education documents in perpetuity.

[9] Courts have also held that IDEA's prohibition against disclosure of mediation discussions precludes the use of mediation agreements in subsequent proceedings. *See* 20 U.S.C. § 1415(e)(2)(G); *see also J.D. ex rel. Davis v. Kanawha Cty. Bd. of Educ.*, 571 F.3d 381, 386 (4th Cir. 2009) (mediations must "stand free and clear of later proceedings"); *Bethlehem Area Sch. Dist. v. Zhou*, No. CIV. A. 09-03493, 2012 WL 930998, at *2–3 (E.D. Pa. Mar. 20, 2012).

The limited scope of the Mediation Agreement is further supported by the fact that, since she executed it, Ms. Lin has continued to request that the District provide her with *draft* translated documents not contemplated by the Agreement. In sum, the Mediation Agreement did not permanently determine the language access services provided to Ms. Lin and thus does not bar her claims in this case or preclude her from serving as an adequate class representative.

Second, in a further attempt to characterize Ms. Lin as an inadequate class representative, the District has disputed Ms. Lin's status as a parent with limited English proficiency. Specifically, the District falsely claims that Ms. Lin "speaks terrific English" based on a single email from a nonparty. Def.'s Resp. at 20. Here, the evidence in the discovery record substantiates Ms. Lin's status as an LEP parent.

Ms. Lin's native language is Mandarin and she reads in traditional Chinese. Pls.' Mem. at 10. These assertions are consistent with Ms. Lin's deposition testimony and are well documented in the record. *See* Ex. A at 8:21–23, 34:10–19, 169:15–16. Also, Ms. Lin's status as limited English proficient has been communicated to and acknowledged by the District on numerous occasions. *See*, *e.g.*, June 22, 2016 Email from B. McCabe to M. Capitolo at TR000016523, attached hereto as Exhibit B ("Please understand that we want Mandy to be able to fully participate in Ryan's IEP meetings and because she does not read English I don't see how we can move forward."); June 13, 2016 Email from M. Capitolo to M. Lin at PSD017484, attached hereto as Exhibit C[10] (highlighting in original) ("I feel uncomfortable writing to you in English, but I am willing to speak with you via telephone or with interpreters for your full understanding."); Dec. 16, 2016 Evaluation of R.H. by Melissa Brand, Psy. D. at TR000014870,

[10] Notably, this email chain contains global statements by Ms. Capitolo indicating that LEP parents receive translations of *all* documents, engage in IEP meetings over days, etc. There is no evidence to support such claims.

attached hereto as Exhibit D ("[R.H.'s] family speaks Mandarin in the home and required an interpreter for the purposes of this evaluation.").

The District has pointed to no statements or documents that demonstrate Ms. Lin's ability to speak English without limitations, much less read it with comprehension, which is the pertinent issue. Instead, the District relies on an email from Anna Perng, a community advocate who assists Ms. Lin in her interactions with the District. In the email, Ms. Perng writes to an attorney on behalf of herself and Ms. Lin in hopes of setting up a call to discuss their issues with the District. Ms. Perng writes:

> Do you have any availability to talk by phone? Would you like to meet with Mandy and me? I think Mandy speaks terrific English, but she would be comfortable if I was present for the discussion to assist. I speak conversational-level Mandarin.

Def.'s Resp. at Ex. P. The District's quotation from this email is a red herring. First, when Ms. Perng's statement is read in context, it is clear that Ms. Lin is not comfortable speaking English and would like Ms. Perng to assist her because she speaks "conversational-level Mandarin." Second, in numerous other emails produced to—but not mentioned by—the District, Ms. Perng expresses her belief that Ms. Lin does not speak fluent English and needs an interpreter. *See* Aug. 16, 2016 Email from A. Perng to B. McCabe, attached hereto as Exhibit E (discussing mediation, Ms. Perng states "Mandy Lin does not speak English as her first language. It is critical that an accommodation be made so she can take notes in Mandarin.").[11]

[11] The District cites to two other emails from Ms. Perng. In the first, Ms. Perng circulated a workshop agenda for parents with autistic children. *See* Def.'s Resp. at Ex. Q. For part of the agenda, Ms. Perng wrote "Dr. Nure presents information about evaluation process, parts of an IEP, answers questions with an interpreter (Bilingual parent leader Mandy Lin will serve as a facilitator)." Although Ms. Perng labeled Ms. Lin as a "bilingual parent leader" here, there is nothing in the email stating what constitutes "bilingual" for the purpose of this informal agenda or stating that Ms. Lin is fluent in English. In this informal setting, the term "bilingual" was likely used to describe Ms. Lin's ability to comprehend conversational English. The second email the District cites is an application from Ms. Lin to serve on the McCall School Advisory Council. Def.'s Resp. at Ex. S. Notably, Ms. Lin signed the email

The District also relies on forms Ms. Lin signed for which she declined interpretation services during two of her many meetings with the District. It is notable that the District omits Ms. Lin's deposition testimony discussing these forms. In regard to the form signed on June 9, 2017, Ms. Lin explained that a BCA was not made available to her for interpretation and she was told that an interpreter was not necessary because the meeting involved "simple information." Ex. A at 35:11–37:6; *see also id.* at 38:7–12 (the District did not inform her at this meeting that language line interpretation was available). Furthermore, Ms. Lin testified that she did not know what she was signing. *Id.* at 35:11–37:6. Similarly, for the form signed on September 8, 2016, Ms. Lin testified that no interpretation services were made available to her at the meeting and that she believed she had no other option than to sign the form because she did not have an interpreter with her. *Id.* at 58:24–59:19.

Last, the District cites to the testimony of Marie Capitolo, the Special Education Director for the District. Def.'s Resp. at 20–21. However, as Ms. Capitolo explained, Ms. Lin's English was not sufficient enough to allow her to communicate with the District regarding the special education process for R.H. Deposition of Marie Capitolo at 63:11–64:10, attached hereto as Exhibit F ("I was trying to get a feel for if the special education process was now a new entity for Mandy, therefore, now requiring her to need deeper levers of interpretation . . . [w]hich I had ultimately made the decision that it did.").[12]

"Mandy Lin (transcribed to English by Anna Perng)." In addition, speaking fluent English is not a prerequisite for serving on the School Advisory Council.

[12] The three cases cited by the District offer no support for its argument. All of these cases involve named plaintiffs found to be inadequate class representatives after they made multiple material misrepresentations under oath. *See Dotson v. Portfolio Recovery Assocs., LLC*, No. CIV. A. 08-3744, 2009 WL 1559813, at *4 (E.D. Pa. June 3, 2009); *Karnuth v. Rodale, Inc.*, No. CIV. A. 03-742, 2005 WL 747251, at *3 (E.D. Pa. Mar. 30, 2005); *Coyle v. Hornell Brewing Co.*, No. CIV. 08-2797 JBS JS, 2011 WL 2147218, at *5 (D.N.J. May 26, 2011). Although courts may consider the credibility of a named plaintiff in some instances, "only significant credibility concerns that 'go to the heart of the claims or defenses' at issue in the case will create a risk of inadequate representation." *Williams v. Sweet Home Healthcare, LLC*, 325 F.R.D. 113, 123 (E.D. Pa. 2018), *leave to appeal denied*, No. 18-8014, 2018 WL

3. Ms. Perez is also an adequate class representative.

The District argues that lack of familiarity with the litigation particulars disqualifies Ms. Perez as a class rep. However, "[a] class representative need only possess a minimal degree of knowledge . . . to meet the adequacy standard." *See, e.g.*, *Oetting v. Heffler, Radetich & Saitta, Llp*, No. CV 11-4757, 2016 WL 1161403, at *8 (E.D. Pa. Mar. 24, 2016) (citation omitted).

During her deposition, Ms. Perez explained her understanding that the District failed to meet its obligations to LEP parents and students. Deposition of Madeline Perez at 46:9–47:24, attached hereto as Exhibit G ("When we asked documents to be translated into Spanish, mostly what they translate is only the headings, the titles to Spanish, and the summary comes in English nonetheless. I don't think that's translation into Spanish. To me, to translate it to Spanish is that everything is in Spanish."), *id.* at 52:2–13 ("Q: What do you want out of this case? A: To have the documents in Spanish in order to get more help for my children."). Ms. Perez also actively participated in discovery by collecting over one thousand pages of documents from her records and providing information to counsel for written discovery responses. *Id.* at 75:3–12. The District's charge that the response to the First Set of Interrogatories was never "translated" and she was "unfamiliar" with the responses (Def.'s Resp. at 22) was flatly contradicted by her statement that an interpreter read them to her and her deposition review of each item where she stated she had provided that information. Ex. G at 91:8–23, 103:13–106:11. Also, while Ms. Perez did not know the legal definition of a class action, she demonstrated her knowledge that she would be representing other similarly situated parents from the District. *Id.* at 46:9–21 (stating that her case would "be a help for those parents who speak only Spanish").

4008363 (3d Cir. Mar. 6, 2018) (citations omitted). A named plaintiff should not be dismissed as a class representative simply because there is evidence that may be used to impeach some part of their deposition testimony. *Sherman v. Am. Eagle Exp., Inc.*, No. CIV. A. 09-575, 2012 WL 748400, at *7 (E.D. Pa. Mar. 8, 2012); *Fickinger v. C.I. Planning Corp.*, 103 F.R.D. 529, 533 (E.D. Pa. 1984).

Under the applicable case law, Ms. Perez clearly has the "minimal degree of knowledge" to serve as a class representative. *See Oetting*, 2016 WL 1161403, at *8 (class representative reviewed the complaint and understood the basic facts); *In re Processed Egg Prod. Antitrust Litig.*, 312 F.R.D. 171, 181 (E.D. Pa. 2015) (class representatives reviewed pleadings and discovery, searched through their own files, assisted counsel and sat for depositions); *Allen v. Holiday Universal*, 249 F.R.D. 166, 185 (E.D. Pa. 2008).[13]

E. Plaintiffs Seek Relief Applicable to the Classes as a Whole.

The District argues erroneously that Plaintiffs do not seek relief applicable to the classes as a whole, citing inapposite case law where plaintiffs sought individual monetary relief or individual medical monitoring. *See* Def.'s Resp. at 23–24 (*citing Dukes*, 564 U.S. at 360, and *Gates v. Rohm & Haas Co.*, 655 F.3d 255, 264 (3d Cir. 2011)). There, the classes lacked the cohesion required for Rule 23(b)(2) because of the individual quality of the requested relief. Here, Plaintiffs here seek common injunctive relief well-suited for Rule 23(b)(2) treatment – specifically, to adopt policies and procedures to ensure the timely translation of IEP documents and quality interpretation services for LEP parents and students, and to notify them about their rights. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997); *see also Baby Neal*, 43 F.3d at 59; *P.V.*, 289 F.R.D. at 236. Here, the requested relief will benefit the classes as a whole, and no individual relief is sought for class members at all.

Moreover, contrary to the District's contentions, disparate factual circumstances related to the harm suffered by the class members does not preclude certification under Rule 23(b)(2).

[13] The District cites to only a single case from the Eastern District of Louisiana to support its arguments that Ms. Perez is an inadequate class representative. Def.'s Resp. at 21. That case, *Byes v. Telecheck Recovery Servs.*, 173 F.R.D. 421 (E.D. La. 1997), involved the communication of legitimate settlement offers and is distinguishable. In particular, there is no basis for the District's suggestion that there was a court order for the Named Plaintiffs to attend a settlement conference or that there was any final settlement offer for them to consider.

See Baby Neal, 43 F.3d at 59. Similar classes of parents and students with IDEA rights have been certified under Rule 23(b)(2), notwithstanding factual distinctions with regard to injuries, as long as such injuries stemmed from a common discriminatory policy or practice and plaintiffs sought common systemic injunctive relief. *See P.V.*, 289 F.R.D. at 236 (seeking greater parental involvement); *see also LV v. New York City Dep't of Educ.*, No. 03 CIV. 9917(RJH), 2005 WL 2298173, at *6 (S.D.N.Y. Sept. 20, 2005) (seeking timely enforcement of IDEA decisions); *Andre H. ex rel. Lula H. v. Ambach*, 104 F.R.D. 606, 612–13 (S.D.N.Y. 1985) (seeking individualized education programs). As in this case, those classes were composed of members who had individualized injuries stemming from the same systemic policies or procedures.[14]

III. CONCLUSION

Plaintiffs respectfully request that this Court grant their Motion for Class Certification.

Dated: September 21, 2018

Respectfully submitted,

s/ Paul H. Saint-Antoine

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[14] The District's suggestion that it must assess literacy levels, capacity for understanding and parental interest before determining whether to translate documents or provide interpretation services is offensive and ignores Plaintiffs' legal claims. *See* Def.'s Resp. at 25. The District's legally-mandated obligation to provide translation and interpretation is created by parents' limited English proficiency, not their level of education or cognition. To the extent English proficiency must be assessed, the lack of objective procedures to do so is part of the class problem.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' Reply in Support of Class Certification has been served via ECF upon counsel for Defendant School District of Philadelphia on the date indicated below at the following addresses:

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