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' MEMORANDUM OF LAW
IN SUPPORT OF CLASS CERTIFICATION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES, RULES & REGULATIONS

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 memorandum of law in support of their motion for class certification, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

I. INTRODUCTION

Plaintiffs are parents with limited English proficiency ("LEP") and their children who are eligible for special education services in the Defendant School District of Philadelphia (the "District"). The original Parent Plaintiffs in this putative class action, Barbara Galarza and Margarita Peralta, filed two administrative proceedings in June 2014 against the District, which included requests for findings that the District has a policy and practice of not providing adequate translation and interpretation services throughout the special education process, including developing and revising Individualized Education Programs ("IEPs") for children with disabilities, in violation of federal law. While finding in both administrative cases that the District did not provide IEP documents in "an accessible form" to Ms. Galarza and Ms. Peralta and that, as a result, each of these guardians was denied her right to meaningfully participate in the IEP process under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, the Hearing Officer concluded that he lacked authority to order systemic relief.

The two other Parent Plaintiffs, Madeline Perez and Manqing Lin, joined this action as part of the First Amended Class Action Complaint in March 2017 and similarly allege that they have been denied their right to participate meaningfully in the IEP process for their children.[1] To remedy the on-going violation of their rights, including under the IDEA, Plaintiffs seek

[1] Since the commencement of this action, the claims of A.G. and his guardian, Ms. Peralta, as well as T.R. and her guardian, Ms. Galarza, have become moot. A.G. and Ms. Peralta were dismissed from the action (Dkt. No. 74), and the parties have today submitted a stipulation for the dismissal of T.R. and Ms. Galarza on similar terms.

systemic relief. In particular, on behalf of themselves and a "Parent Class" and a "Student Class" (defined below), Plaintiffs seek an order requiring the District to provide qualified, trained interpreters at all special education meetings, to translate IEPs and evaluations, and to develop and implement new District-wide policies for the provision of interpretation and translation services, among other injunctive and declaratory relief.

This action seeking injunctive and declaratory relief against the District is well suited for class treatment. The Parent Class and Student Class satisfy each of the requirements of Federal Rule of Civil Procedure 23(a). There are more than a thousand members of both putative classes, thus making joinder of their claims impracticable. There are questions of law and fact common to both classes, and the Plaintiffs' claims are typical of the other putative class members', whose interests will be adequately represented by Plaintiffs and their counsel. Plaintiffs' action also satisfies the requirements of Rule 23(b)(2), because the District has acted and refused to act on grounds generally applicable to each class, "so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). As the Third Circuit has observed, the requirements of Rule 23(b)(2) are "almost automatically satisfied in actions primarily seeking injunctive relief." *Baby Neal ex rel. Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994).

Accordingly, for the reasons discussed more fully below, Plaintiffs seek class certification of a Parent Class and a Student Class pursuant to Rules 23(a) and 23(b)(2), and the appointment of the undersigned attorneys as class counsel.

II. PROPOSED CLASSES

Plaintiffs seek to certify two classes, a Parent Class and a Student Class, which respectively consist of:

> 1. 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 (the "Parent Class"); and
>
> 2. 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 (the "Student Class").

These definitions objectively define classes "in a way that 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).

III. PROCEDURAL HISTORY

A. Administrative Process

Prior to commencing this action, in June 2014, T.R.'s parent, Barbara Galarza, and A.G.'s guardian, Margarita Peralta, filed on behalf of themselves and their children two separate administrative actions against the District. While the particular special educational needs and programs of T.R. were different from those of A.G., their guardians both alleged that the District systemically failed to translate IEP documents and to provide adequate interpretation services.

In the case of Ms. Galarza and her child, T.R., the District failed to provide adequate translation and interpretation services following the District's determination that T.R. qualified for special education services. *See* First Am. Compl. ¶¶ 72–79. In the fall of 2013, Ms. Galarza

sought to enroll T.R. in the District for high school.[2] At the time, the District was aware that T.R. qualified for special education services and that T.R. and Ms. Galarza were LEP. *Id.* ¶ 72; Deposition of Barbara Galarza at 47:4–14, attached hereto as Exhibit 1. Nevertheless, despite its awareness of her language needs, when T.R. sought to enroll in high school, the District conducted an evaluation of T.R. using an English-speaking psychologist and an English-speaking speech therapist. First Am. Compl. ¶ 73; Deposition of T.R. at 188:3–10, 192:12–20, attached hereto as Exhibit 2. A meeting was scheduled for March 2014, and Ms. Galarza requested that the District's Reevaluation Report and Psycho Educational Evaluation be provided in Spanish. The District ignored this request, and it did not provide Spanish versions of the documents to Ms. Galarza before the meeting.[3] Ex. 1 at 62:6–18.

The District also failed to translate IEPs for Ms. Galarza and T.R. For example, in June 2014, the District failed to provide Ms. Galarza with a Spanish version of a 52-page IEP prior to an IEP meeting. Ex. 1 at 15:21–16:5, 45:1–13, 61:11–16, 61:24–62:18, 110:2–18, 172:22–173:5. More generally, throughout T.R.'s time at the District, it routinely failed to timely translate other IEP-related documents. *Id.*; First Am. Compl. ¶¶ 74–77. Furthermore, interpretation services were not an adequate substitute for translated IEP-related documents. When interpreters were present at the IEP meetings for T.R., they did not fully sight translate the IEP documents (i.e., translate the English text on the spot into Spanish). Ex. 1 at 63:18–22, 113:6–16, 176:2–9. Based on these deficiencies in the District's language services, Ms. Galarza was not able to participate meaningfully in IEP meetings for T.R. Ex. 1 at 110:9–18; First Am. Compl., Exhibit A at 9–10 (May 26, 2015 Decision).

[2] The school, Stetson, was a District school when T.R. began attending; while she was attending, it became a charter school operated by Aspira of PA.
[3] The District did not provide Spanish revisions of the reports until June 27, 2014.

A.G. and his guardian, Margarita Peralta, were similarly deprived of adequate language services by the District during the IEP planning process. 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 informing the District that the family's native language was Spanish. *See* First Am. Compl. ¶ 82 and Exhibit B thereto at 3 (May 26, 2015 Decision). Nevertheless, the District failed to provide timely and complete translations of IEP process documents for A.G., and communications about evaluating him for special education services were conducted primarily in English. First Am. Compl. ¶ 85 and Exhibit B thereto at 4. Even after the administrative complaint was filed against it on June 23, 2014, the District continued to issue IEP documents to Ms. Peralta primarily in English. For example, during a December 2, 2014 IEP meeting for A.G., the District provided an IEP with only the headings translated into Spanish; the majority of the document was in English. Moreover, the District employee who attended the meeting was only able because of time constraints to sight translate three of the 44 pages of the IEP for Ms. Peralta. First Am. Compl. ¶ 85 and Exhibit B thereto at 6.

The combined due process hearing processes lasted almost nine (9) months, with the Hearing Officer issuing a decision on May 26, 2015 on both administrative complaints. In each decision, he found that the guardian was denied meaningful participation under the IDEA due to the District's failure to provide timely and complete translations of IEP-related documents. *See* First Am. Compl., Exhibit A at 14; *see also* First Am. Compl., Exhibit B at 13. In the case of A.G. and his guardian, Margarita Peralta, the Hearing Officer wrote:

> 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 Students' 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 meetings, 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.

First Am. Compl., Exhibit B at 11; *see also* First Am. Compl., Exhibit A at 9–10.

The Hearing Officer awarded T.R. and A.G. compensatory education based on the District's IDEA violations. Critically, however, the decisions did not provide for systemic relief. This was based on a pre-hearing order in which the Hearing Officer explicitly held that he did not have the authority to order system-wide changes in the District's policies or practices. *See* First Am. Compl., Exhibit C at 5–6 (October 22, 2014 Consolidated Pre-Hearing Order).

B. Filing of Plaintiffs' Original Complaint

On August 21, 2015, Plaintiffs filed their original Complaint in this action on behalf of T.R. and A.G. and their parents, appealing the decision of the Hearing Officer to deny their request for systemic relief and asserting seven counts on behalf of themselves and similarly situated parents and students: (1) violation of the IDEA for failure to provide meaningful parental and student participation in IEP meetings (on behalf of the Parent Class and Student Class); (2) violation of the IDEA for failure to conduct evaluations of students in their native language (on behalf of the Parent Class and Student Class members who are LEP); (3) violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, Americans with Disabilities Act as Amended (on behalf of the Student Class); (4) violation of the Equal Education Opportunity Act (on behalf of the Student Class); (5) violation of Title VI of the Civil Rights Act of 1964 (on behalf of the Parent Class and Student Class members who are LEP); (6) violation of

22 Pennsylvania Code Chapter 14 (on behalf of the Parent Class and Student Class); and (7) violation of 22 Pennsylvania Code Chapter 15 (on behalf of the Parent Class and Student Class).

As remedies for the various violations alleged in the Complaint, Plaintiffs requested injunctive and declaratory relief, including an order that the District adopt and implement a plan and policy to provide legally-mandated translation and interpretation services to the members of the Parent Class and Student Class.

The District responded to the Complaint on November 20, 2015 by filing a Motion to Dismiss. In its Motion, the District argued that: (1) the Court did not have subject matter jurisdiction over Plaintiffs' claims because Plaintiffs failed to exhaust their administrative remedies; (2) Plaintiffs failed to allege plausible systemic claims for relief; and (3) Plaintiffs failed to state claims under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act as Amended, the Equal Education Opportunity Act, Title VI of the Civil Rights Act of 1964, and 22 Pennsylvania Code Chapter 15.

On November 30, 2016, the Court issued an Order denying the District's Motion to Dismiss in its entirety. First, the Court held that it had subject matter jurisdiction over Plaintiffs' claims because Plaintiffs adequately alleged systemic legal deficiencies with regard to the District's language services. Furthermore, the Court held that subject matter jurisdiction was proper because system-wide relief could not be provided through the administrative proceedings, as the Hearing Officer had previously ruled. Nov. 30, 2016 Mem. Op. at 8–11. Second, the Court held that Plaintiffs sufficiently alleged that the District had systemic failures in its translation and interpretation policies and practices, and that they had adequately identified corresponding relief to remedy these systemic failures. *Id.* at 11–14. Finally, the Court held that Plaintiffs sufficiently pled claims under Section 504 of the Rehabilitation Act, the Americans

with Disabilities Act as Amended, the Equal Education Opportunity Act, Title VI of the Civil Rights Act of 1964, and 22 Pennsylvania Code Chapter 15. *Id.* at 14–20.

C. Filing of the First Amended Complaint

On April 10, 2017, Plaintiffs filed their First Amended Complaint, adding six class representatives—L.R., D.R., and J.R. and their mother, Ms. Perez, and R.H. and his mother, Ms. Lin.

1. Madeline Perez and her children, L.R., D.R. and J.R.

Ms. Perez is LEP. First Am. Compl. ¶ 27. Her native language is Spanish, and she reads and writes Spanish. Deposition of Madeline Perez at 13:15–24, attached hereto as Exhibit 3. Three of her children, D.R., J.R. and L.R., are special education students. *See id.* at 16:16–17:8, 17:9–11, 20:10–19, 21:5–9. D.R. and J.R. are LEP. First Am. Compl. ¶¶ 25–26.

L.R. is fourteen years old. After the family moved from Puerto Rico to Philadelphia in 2012, he was evaluated at the Center for Autism and diagnosed with autism. First Am. Compl. ¶ 88; Ex. 3 at 17:9–18:11 (testifying that L.R. has ODD, ADHD and autism). This evaluation was provided to Ms. Perez in Spanish. First Am. Compl. ¶ 88. However, the District subsequently performed its own evaluation of L.R. and did not provide the evaluation report to Ms. Perez in Spanish, despite her request for translations. *Id.*; Ex. 3 at 13:2–8 ("When I came here to Philadelphia . . . I requested that all documents be translated.").

Between 2012 and 2016, the District refused to fully translate L.R.'s IEP process documents and would only translate the documents' section headings. First Am. Compl. ¶ 4; *see also* Ex. 3 at 43:15–44:24. Due to her lack of English proficiency, Ms. Perez was deprived of the opportunity to meaningfully participate in the planning process for L.R.'s IEP. First Am. Compl. ¶ 90. With the assistance of an attorney, in February 2017, Ms. Perez signed a settlement

agreement related to L.R.,[4] so that L.R. could move to a private school. Ex. 3 at 23:13–20, 26:13–27:11. While the agreement released the District of liability for legal claims through the date it was signed, Ms. Perez did not waive her or L.R.'s rights to future claims against the District, and the agreement did not entitle her or L.R. to any language services.

The District has also failed to timely translate D.R. and J.R.'s IEP process documents. First Am. Compl. ¶ 5. During a January 2017 IEP meeting, for example, the District ignored Ms. Perez's request for translation of J.R.'s IEP process documents and only offered to translate the headings. *Id.* ¶ 93.[5] The District has taken similar actions in regards to D.R. *Id.* ¶ 94; *see also* Ex. 3 at 71:19–73:7 (testifying that she was told she would receive a translated IEP for D.R., and that, when she only received an IEP with translated headings, the teacher apologized and acknowledged the inadequacy of the translation). Without such translations, Ms. Perez is unable to fully and meaningfully participate in her children's education. Ex. 3 at 52:2–12 ("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. I can be more helpful if I have everything in Spanish. So I say it again, it's three different children with three different needs. Having it in Spanish, I can go refer to it and know what's going on."); *id.* at 80:5–12 ("[T]he problem is, I don't have the papers to read in Spanish. . . . Yes, I can ask questions, but if something happens like I forget, I'd like to have the documents in Spanish so I can go over them.").

The District also failed to provide adequate language services to Ms. Perez at IEP meetings. First Am. Compl. ¶ 96. In several meetings, the District did not provide an interpreter

[4] Plaintiffs note that this agreement contains a confidentiality provision restricting the disclosure of its terms and contents; however, if requested by the Court, Plaintiffs will provide a copy of the agreement under seal.
[5] After the First Amended Complaint was filed, Ms. Perez received a fully translated evaluation and functional behavior assessment for J.R.; however, those documents were provided in June 2017, months after the meetings at which they were discussed and were given to her along with other documents that were only partially translated. *See* Ex. 3 at 9:23–12:7, 52:14–53:7.

or, when interpreters were present, they did not fully sight translate the IEPs. *See, e.g.*, Ex. 3 at 70:15–23, 78:3–10 (on ocassion, she had to bring her own interpreter); *id.* at 107:2–8, 108:1–109:4 (the principal served as interpreter and only offered the "gist" of what was being said).

2. Manqing Lin and her son, R.H.

Ms. Lin is also LEP. First Am. Compl. ¶ 29; Deposition of Manqing Lin at 8:21–23, 34:10–19, attached hereto as Exhibit 4. Her native language is Mandarin, and she reads in traditional Chinese. First Am. Compl. ¶ 29. Her son, R.H., who is now in first grade, has been diagnosed with Autism Spectrum Disorder and has also been found to be mentally gifted. *Id.* ¶¶ 98–99; Ex. 4 at 54:7–10. The District has similarly denied Ms. Lin the language services needed to participate meaningfully in the IEP planning process. Although Ms. Lin is able to understand and speak some English words, she has limited English proficiency and speaks only Mandarin at home with R.H.'s father and their children. First Am. Compl. ¶ 100; Ex. 4 at 169:15–16. R.H.'s father understands little English and does not read or write English. First Am. Compl. ¶ 100.

Beginning with R.H.'s transition to kindergarten in 2016, the District failed to provide Ms. Lin with translations of forms, evaluations and IEP documents and adequate oral interpretation services. *Id.* For example, in a February 2016 meeting to discuss R.H.'s kindergarten placement, the District provided Ms. Lin a Permission to Evaluate ("PTE") and other special education documents in English only and refused to translate them into Chinese and also failed to provide an interpreter. Ex. 4 at 112:17–117:8. Ms. Lin relied on a friend and an interpreter from R.H.'s early intervention provider, whose assistance was nevertheless insufficient to guide Ms. Lin in completing the PTE form. *Id.* She later signed the PTE without understanding that it gave consent for the District to conduct a limited evaluation of R.H. First Am. Compl. ¶ 101. Due to the District's lack of translation and interpretation services, Ms. Lin

requested assistance from R.H.'s preschool teacher to complete forms integral to his evaluation, but she learned later that the teacher had omitted necessary information. Ex. 4 at 180:6–22.

After the District conducted its evaluation of R.H., it sent Ms. Lin an Evaluation Report which was not translated into Chinese. *Id.* at 144:15–147:3. This report concluded that R.H. qualified for speech services, but it omitted his needs for occupational therapy and physical therapy, a functional behavior assessment or a behavior plan, and gifted programming in math. First Am. Compl. ¶ 103. With the assistance of a friend, Ms. Lin requested mediation regarding the District's evaluation of R.H. and his need for an Independent Educational Evaluation ("IEE"). Ex. 4 at 136:2–137:20. On or about August 18, 2016, the District entered into a Mediation Agreement, attached hereto as Exhibit 5, whereby the District agreed to provide translated copies of the IEE and other documents, which allowed Ms. Lin and her husband to understand R.H.'s diagnosis and complex academic and behavioral needs. The District also agreed to provide translated versions of "final" IEPs and evaluations. *Id.* However, the District refused and continues to refuse to provide translated versions of any proposed or draft IEPs or evaluations. Ex. 4 at 190:5–13. In the absence of these fully translated documents, Ms. Lin is unable to prepare for or meaningfully participate in R.H.'s IEP meetings, where these documents and proposed changes to her son's special education program are discussed. *Id.* at 172:5–21. While it is the District's policy to provide draft IEPs and evaluations to English-speaking parents prior to their attendance at IEP meetings, the District has refused to provide draft IEPs in Chinese to Ms. Lin prior to the IEP meetings for R.H. *Id.* at 142:6–24, 190:5–13. In addition, the District has failed to translate other IEP-related documents such as R.H.'s Functional Behavior Assessment, Positive Behavior Support Plan, and Progress Monitor Report. *Id.* at 68:1–69:3.

IV. ARGUMENT

A. Standard of Review

Class certification is appropriate when the four requirements of Federal Rule of Civil Procedure 23(a)—numerosity, commonality, typicality and adequacy of representation—as well as those of at least one subpart of Rule 23(b) are met. Fed. R. Civ. P. 23; *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613–14 (1997). In addition to satisfying the requirements of Rule 23(a) the two classes Plaintiffs seek to certify here also satisfy Rule 23(b)(2), because the District has acted and refused to act in a manner generally applicable to each class, "so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). As the Third Circuit has explained, Rule 23(b)(2) is "almost automatically satisfied in actions primarily seeking injunctive relief." *Baby Neal*, 43 F.3d at 58.

B. The Proposed Classes Meet the Requirements of Rule 23(a)

1. Numerosity

First, Rule 23(a)(1) requires classes to be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is no minimum number needed to meet this requirement, but generally if the potential number of plaintiffs exceeds forty (40) then the numerosity prerequisite is satisfied. *S.R. ex rel. Rosenbauer v. Pennsylvania Dep't of Human Servs.*, 325 F.R.D. 103, 107 (M.D. Pa. 2018); *In re Nat'l Football League Players Concussion Injury Litig.*, 821 F.3d 410, 426 (3d Cir. 2016). Like other Rule 23 determinations, it is the plaintiff's burden to demonstrate that the element of numerosity has been met. *Mielo v. Steak 'N Shake Operations, Inc.*, No. 17-2678, 2018 WL 3581450, at *10 (3d Cir. July 26, 2018). However, the exact number of the class does not need to be precisely certain at the class certification stage. *T.B. v. Sch. Dist.*, No. 97-5453, 1997 U.S. Dist. LEXIS 19300, at *8 (E.D.

Pa. Nov. 21, 1997). Here, both the Parent Class and Student Class are so numerous that joinder of all members is clearly impracticable. Discovery revealed that during the 2015–2016 and 2016–2017 school years, respectively, there were 3,507 and 3,783 special education students who lived in a household with a home language other than English. *See* Nov. 21, 2017 Ltr. from M. Obod to P. Saint-Antoine at 1, attached hereto as Exhibit 6.[6] The District admitted that it does not separately track how many special education students have parents who are LEP;[7] however, based upon the information received from the home language survey, it is evident that the number of members of both the Student Class and the Parent Class is in the thousands. *See* Ex. 6 at 1.[8] Thus, the record supports a finding that the number of putative class members in this case well exceeds the minimum typically employed by courts in this Circuit. *See, e.g.*, *T.B.*, 1997 U.S. Dist. LEXIS 19300, at *8, *10 (finding the requirement satisfied where the proposed class was "composed of hundreds of students, but. . . . also include[d] past members. . . . as well as future unknown members").

Furthermore, courts also consider "judicial economy, the geographic diversity of class members, the financial resources of class members, the relative ease or difficulty in identifying members of the class for joinder, and the ability of class members to institute individual lawsuits" in evaluating impracticability. *Anderson v. Pennsylvania Dep't of Pub. Welfare*, 1 F.

[6] *See also* Deposition of Natalie Hess at 31:22–24, attached hereto as Exhibit 7 ("We have English language learners across the district in . . . all of our schools."); Deposition of Allison Still at 79:23–80:13, attached hereto as Exhibit 8 (testifying that currently there are approximately 14,000 students in the District that are English language learners ("ELLs" or "ELs") and that this number has increased by about 2,000–3,000 students since 2012); First Am. Compl. ¶ 61 ("As of November 2013, the District reported that there were approximately 25,990 families whose primary home language was not English."); *id.* ¶ 62 ("As of November 2013, there were 1,887 students with IEPs whose records indicated that their home language was not English . . . .").

[7] Ex. 7 at 80:14–16 ("We don't keep track of the parents that are what you are describing as limited English proficient."); *see also id.* at 42:19–43:3 (testifying that while there are approximately 2,000 students with disabilities in Network 7, she did not know the percentage that had LEP parents); Deposition of Kimberly Caputo at 75:2–6, attached hereto as Exhibit 9 (testifying that she does not know how the District identifies LEP parents).

[8] *See also* Ex. 7 at 98:18–99:9 (discussing the increasing number).

Supp. 2d 456, 461 (E.D. Pa. 1998); *see also In re: Modafinil AntiTrust Litig.*, 837 F.3d 238, 246–60 (3d Cir. 2016). Here, all of these factors favor class certification. It would be particularly impracticable to join all class members here because by definition the Parent Class is made up of those who are limited English proficient and would be greatly challenged in bringing their own individual lawsuits. Likewise, the Student Class is made up of individuals who would rely on the Parent Class to bring suits on their behalf. The classes are also largely made up of individuals with limited financial resources, such as the named Plaintiffs, who are represented in this matter on a *pro bono* basis.

2. Commonality

Second, Rule 23(a)(2) requires there to be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality is satisfied if the "named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Baby Neal*, 43 F.3d at 56; *see also S.R.*, 325 F.R.D. at 108 ("Because the [commonality] requirement may be satisfied by a single common issue, it is easily met." (citation and internal quotation marks omitted)). The Third Circuit has stated that "[m]eeting this requirement is easy enough: '[W]e have acknowledged commonality to be present even when not all members of the plaintiff class suffered an actual injury, when class members did not have identical claims, and, most dramatically, when some members' claims were arguably not even viable.'" *In re Nat'l Football League*, 821 F.3d at 426–27 (quoting *In re Cmty. Bank of N. Virginia Mortg. Lending Practices Litig.*, 795 F.3d 380, 397 (3d Cir. 2015)).

Furthermore, different factual circumstances involving individual class members do not bar a finding of commonality for the purposes of class certification. In *Baby Neal*, which involved challenges to the policies and practices impacting foster children in the care and

custody of Philadelphia's Department of Human Services ("DHS"), defendants argued that the element of commonality was not satisfied because of the individual circumstances of the foster children and the absence of a single, common injury. 43 F.3d at 56–57. On appeal from the denial of class certification, the Third Circuit rejected that argument. It held that individualized circumstances do not negate a finding of commonality under Rule 23(a); it was enough that the foster children were harmed or threatened with harm based on DHS's common policies and practices, such as excessive caseworker-to-family ratios. Indeed, the Third Circuit went on to observe that "(b)(2) classes have been certified in a legion of civil rights cases where commonality findings were based primarily on the fact that defendant's conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct." *Id.* at 57; *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 310 (3d Cir. 1998); *P.V. ex rel. Valentin v. Sch. Dist.*, 289 F.R.D. 227, 233–34 (E.D. Pa. 2013) (finding commonality where "Plaintiffs' Complaint allege[d] a systemic failure [by a school district], not a failure of [a] policy as applied to each [class] member individually"); *S.R.*, 325 F.R.D. at 111–12.[9]

Here, there are multiple questions of fact and law common to the proposed classes, including:

- Whether the District fails on a systemic basis to provide members of the Parent Class adequate interpretation and translation services to allow them to participate

[9] The Third Circuit recently reversed a finding by the district court of commonality in *Mielo*, in which the two plaintiffs, who allegedly faced difficulty handling the slopes in defendant's parking facilities, sought certification of a class consisting of all persons with mobility disabilities who encountered any of the full range of physical barriers inside or outside of the restaurant. It was not enough for plaintiffs in *Mielo* to invoke the same provision of the ADA to remedy each of the various discriminatory facilities. *Mielo*, 2018 WL 3581450, at *14–17. Here, in contrast, the members of the putative classes are all subject to the same policies and practices with respect to translation and interpretation services, to the District's systemic deficiencies in such language services, and to a denial of meaningful participation in the IEP planning process arising from those language service deficiencies.

meaningfully in the special education planning process for their children;[10]

- Whether the current policies, procedures, and practices of the District governing the translation of various special education process documents, and provision of interpretation services (including when and how interpretation and translations services are requested by parents/guardians, and what criteria the District relies on to determine whether or not to translate these documents) are sufficient to ensure meaningful participation in the special education process;[11]

- Whether the District fails to comply with its policies and procedures with respect to the translation or interpretation of IEP process documents;[12]

- Whether the District fails to effectively notify parents of their right to request translation and/or interpretation of IEP process documents;[13]

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[10] *See, e.g.*, Deposition of Ludy Soderman at 169:6–170:7, attached hereto as Exhibit 10 (testifying that only headings and "no individual information" of IEPs is translated and that she does not believe such translation is "sufficient for a parent to understand and participate"); *id.* at 191:16–22 (testifying that she is unaware of "any kind of evaluation of whether [LEP] parents of students with disabilities are receiving the interpretation and translation services that they need to participate in the special education process"); Ex. 7 at 94:2–15 ("[T]he documents that are produced, the standard information is translated into that language, because IEP's are individualized and . . . the student-specific information is not translated."); Ex. 8 at 51:10–14 (testifying that she was not aware of a situation "where a parent's right to meaningful participation would be fulfilled even [though] they were denied access to [a] written IEP"); Declaration of Anna Perng ¶¶ 17–29, attached hereto as Exhibit 19 (describing her experiences with the District's inadequate translation and interpretation service); Declaration of Bonita McCabe ¶¶ 10–19, attached hereto as Exhibit 20 ("The District's practice of failing to provide quality interpretation services denies LEP parents the ability to engage in the special education process and the educational process of their children.").

[11] *See, e.g.*, Deposition of Christopher Marino at 33:21–34:11, attached hereto as Exhibit 11 (testifying that he is unsure whether there are policies for tracking whether required translations are completed); Ex. 10 at 51:3–23 (testifying BCAs duties and assignments are decided by their principals); *id.* at 75:5–9 (testifying that there are no "written policies or standards, regarding making decisions as to who will be assigned to a particular interpretation request"); Ex. 7 at 110:13–112:13, 114:20–116:21 (discussing the new written policy regarding interpretations and translations of documents); *id.* at 160:13–22 (testifying that if a parent has not used interpretation services, the response to that LEP parent's request for translation "depends on . . . the parent, and the IEP process so far"); Ex. 8 at 103:3–18 (testifying that the protocol for determining if an IEP process document should be translated has not substantively changed but simply recently become more formalized); Ex. 20 ¶¶ 20–26 (affirming that the District routinely fails to translate documents for non-English speaking parents despite knowing their status as LEP).

[12] *See, e.g.*, Ex. 11 at 89:7–17 (testifying that he was unaware how OSS fulfilled its role in ensuring that translations of IEP documents were completed); Ex. 7 at 140:11–141:22 (testifying that she did not know whether BCAs receive copies of necessary IEP documents in accordance with the District's written policy); Deposition of Youana Bustamante at 113:12–21, 117:18–24, 126:15–22, 133:13–20, attached hereto as Exhibit 12 (testifying that LEP parents routinely do not receive evaluations, IEPs, or NOREPs translated into their native language prior to IEP meetings, if at all); Ex. 20 ¶¶ 20–26 (affirming that the District routinely fails to translate documents for non-English speaking parents despite knowing their status as LEP); Ex. 19 ¶ 28 (stating that she is not aware of any new District policy being implemented); *see also* Footnote 13 *infra*.

[13] *See, e.g.*, Ex. 9 at 91:18–93:3 (discussing policies and procedures regarding notifying parents of their right to request translations of IEP documents and the tracking of those requests); *id.* at 106:1–112:16, 114:19–115:17 (discussing the new one page procedural safeguards document now provided to parents); Ex. 11 at 31:6–33:14 (discussing his lack of knowledge with regard to the tracking of requests for translations); Ex. 10 at 80:1–19 (testifying that schools and community-based organizations should communicate the availability of interpreters); Ex. 7 at 296:5–18 (discussing the new procedural safeguards document now provided to parents to notify them of their rights); Deposition of Marie Capitolo at 209:13–20, attached hereto as Exhibit 13 ("Q. Is it the practice of the district to tell parents with respect to IEPs or evaluations that the translation[s] of those documents is available?

- Whether there are a sufficient number of qualified and trained interpreters available to provide effective language services to members of the Parent Class at IEP meetings;[14] and

- Whether the policies, procedures, and practices of the District with respect to language services (translations and interpretations) provided to members of the Parent Class and Student Class 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.

Significantly, Ms. Lin and Ms. Perez are not seeking individualized damages or remedies of any kind based on the particular placement of their children within the District or the absence or duration of any individualized special education service. Rather, the Parent Plaintiffs seek injunctive relief requiring systemic changes to the District's provision of language services,

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[Objection omitted.] A. We wait for the parent to request the documents in translated form."); Deposition of Donna L. Sharer at 102:8–12, attached hereto as Exhibit 14 (testifying that she was not aware of "any policies or procedures that informed parents of their rights to either translation services, or interpretation services, or both"); Ex. 20 ¶¶ 20–21 ("Parents are not informed of any right to ask for translated documents and therefore they do not request translated documents."); Ex. 12 at 113:22–115:6 (testifying that LEP parents are generally not made aware of their right to receive translation and interpretation services from the District); Ex. 19 ¶¶ 7–12, 26, 28 (discussing the District's lack of communication to LEP parents and their resulting lack of awareness of services for their children).

[14] *See, e.g.*, Ex. 9 at 125:19–23, 126:21–127:10, 127:21–131:7 (discussing her lack of knowledge with regard to the adequacy and tracking the usage of Language Line services, the number of BCAs attending IEP meetings and their training and the quality of interpretations provided); Ex. 11 at 65:24–66:23 (confirming the lack of "contracts for the provision of interpretation services for LEP parents of students with disabilities); Ex. 10 at 54:10–13; 56:24–57:4 (testifying that in 2011 the District employed 102 BCAs, but this number was reduced to 57 by 2013); 64:18–65:2 (testifying that she does not know the background of Language Line interpreters); *id.* at 118:11–20 ("If all the BCAs are deployed, and someone asks for an IEP, we ask can it be moved."); *id.* at 142:4–18, 149:14–150:15 (discussing documents recording that an interpreter was not available for IEP meetings); Ex. 7 at 47:9–48:1 (testifying that "bilingual teachers, principals and staff" were used "in IEP meetings" on an "as needed" basis but they would not receive any interpretation training from the Office of Specialized Services); *id.* at 122:1–10 (testifying that she was unaware of the percentage of IEP meetings that were staffed with BCAs versus Language Line interpreters); Ex. 12 at 121:1–3, 126:23–128:3, 132:4–18 (testifying that BCAs routinely do not fully translate IEPs, that BCAs are often ineffective because they are not trained in special education, and that the District will often use school staff with no interpretation training as translators during meetings with LEP parents); *see also* Expert Report of Nelson L. Flores, Ph.D., dated April 13, 2018 at 13, attached hereto as Exhibit 15 (addressing the need for highly qualified interpreters with training in special education); Rebuttal Expert Report of Nelson L. Flores Ph.D., dated June 1, 2018 at 5, attached hereto as Exhibit 16 (raising questions about the use of Language Line); Ex. 20 ¶¶ 8–10 ("In my experience, the School District of Philadelphia uses interpreters who are untrained regarding special education terminology and, as a result, these interpreters do not fully understand the terms they are asked to interpret. As such, they are unable to fully and accurately convey those terms to LEP parents. This includes Bilingual Counseling Assistants ('BCAs'), language line interpreters, as well as school staff who are also utilized as interpreters for special education meetings."); Ex. 19 ¶ 18 ("The District doesn't consistently ensure high quality interpretation at IEP meetings.").

which will enable Ms. Lin, Ms. Perez and the other members of the putative Parent Class to participate meaningfully in the development of their children's respective IEP plans.

Plaintiffs anticipate that the District will argue that, since the commencement of this action, it has adopted new protocols that address all of the prior deficiencies in language services for LEP parents. That possible argument does not, however, defeat the element of commonality. First, the District's own witnesses have described the new protocols as simply memorializing prior policies and practices. *See, e.g.*, Ex. 7 at 130:5–6 ("It was the same practice. Now, it is put in writing. That's the difference."); Ex. 8 at 103:3–18 (testifying that the protocols have not substantively changed but have simply become more formalized). [15] Second, the new protocols do not secure the right of LEP parents to receive translated versions of IEP documents, even when requested by them; instead, the District has continued to reserve for itself the discretion based on subjective criteria to deny a parent's translation request. *See, e.g.*, Ex. 13 at 146:7–151:13; *see also* Sept. 27, 2017 Ltr. with enclosure from M. Obod to P. Saint-Antoine, attached hereto as Exhibit 17; Dec. 4, 2017 Email with attachment from D. Goebel to P. Saint-Antoine, attached hereto as Exhibit 18.

As a practical matter, there continue to be few translations of IEP process documents, *see* Ex. 6 at 2, and untrained and unqualified school staff continue to be relied upon to provide interpretation services.[16] The Declarations of Anna Perng and Bonita McCabe consistently

[15] There is a real question whether District personnel are uniformly implementing the new protocols. *See, e.g.*, Ex. 14 at 111:3–17 (testifying that as the Curriculum Specialist in the Office of Multilingual Curriculum and Programs, she was not familiar with a "quick reference guide [for] translation and interpretation services"); *see also* Ex. 19 ¶ 28 ("I am not aware of a new policy regarding the interpretation and translation services. If a new policy exists, it is not being implemented to my knowledge."); *see generally* Ex. 20 (describing practices inconsistent with the protocols).

[16] *See* Ex. 7 at 47:9–48:1 (testifying that "bilingual teachers, principals and staff" were used "in IEP meetings" on an "as needed" basis); *see also* Ex. 10 at 40:18–41:9 (decisions whether use an in-person interpreter or Language Line are left to individuals and not tracked in any way); *id.* at 51:21–23 ("I have an idea of what BCA [sic] should do, but schools will also determine how they are going to be used."); *id.* at 64:18–65:2 (testifying that she does not know the background of Language Line interpreters); *id.* at 105:18–22 (no protocols "in place with regard to how BCAs

reflect that LEP parents have not been given notice of the availability of translated documents or of intensive interpretation services by BCAs of IEP documents prior to meetings as called for by the protocols and have been and continue to be deprived of translated proposed IEP process documents and quality interpretation services, thus denying them meaningful parent participation in the special education process. Ex. 19 ¶¶ 17–31; Ex. 20 ¶¶ 20–26.

At best, the impact of the new protocols on the provision of language services is a disputed issue of fact that is common to the claims of the putative class members.

3. Typicality

Third, Federal Rule of Civil Procedure 23(a)(3) requires that the claims and defenses of the named plaintiffs to be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Like commonality, this requirement also "serve[s] as [a] guidepost[] for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Montgomery County, Pa. ex rel. Becker v. MERSCORP, Inc.*, 298 F.R.D. 202, 211 (E.D. Pa. 2014) (citations omitted). The "independent legal significance" of the typicality inquiry "derives . . . from its ability to 'screen out class actions in which the legal or factual position of the representatives is markedly different from that of other members of the class even though common issues of law or fact are present.'" *Blandina v. Midland Funding, LLC*, 303 F.R.D. 245, 251 (E.D. Pa. 2014) (citations omitted). In particular, "[t]he Third Circuit has offered 'three distinct, though related, concerns' to consider in assessing typicality: '(1) the claims of the class representative must be

provide interpretation services in the special education context"); Ex. 16 at 10 (describing need for translated versions of IEP documents with technical language).

generally the same as those of the class in terms of both (a) the legal theory advanced and (b) the factual circumstances underlying that theory; (2) the class representative must not be subject to a defense that is both inapplicable to many members of the class and likely to become a major focus of the litigation; and (3) the interests and incentives of the representative must be sufficiently aligned with those of the class.'" *S.R.*, 325 F.R.D. at 110 (quoting *In re Schering Plough Co. ERISA Litig.*, 589 F.3d 585, 599 (3d Cir. 2009)).

Furthermore, factual circumstances experienced by the named Plaintiffs and the rest of the class do not need to be identical, and "'[e]ven relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories' or where the claim arises from the same practice or course of conduct." *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d at 311 (citation omitted); *see also Baby Neal*, 43 F.3d at 63 ("[A] claim framed as a violative practice can support a class action embracing a variety of injuries so long as those injuries can all be linked to the practice."); *C.G. v. Pennsylvania Dep't of Educ.*, No. 1:06-cv-1523, 2009 WL 3182599, at *6–7 (M.D. Pa. Sept. 29, 2009) (holding that typicality requirement was satisfied in case challenging special-education funding and finding that "to the extent only some or not all students are denied" the education due to them "under the various statutes," that "is a commentary on the merits of the claim, rather than on whether the claims Plaintiffs assert are typical of those experienced by the entire class").

Here, Plaintiffs' claims that they were denied meaningful participation in the IEP process are typical of those of the putative class members. For example:

- Ms. Lin and Ms. Perez are both LEP parents of children with disabilities in special education programs in the District;

- Ms. Lin and Ms. Perez both requested to receive fully translated IEPs prior to IEP meetings but did not receive them before attending IEP meetings or during such meetings;[17]

- Ms. Lin and Ms. Perez both attended meetings with the District in which the interpreter who was used was not effective or was unqualified or untrained;[18]

- Ms. Perez was never told by the District that she needed to submit written requests for translation, and, as a result of not receiving fully translated documents, she was unaware of services that could have helped her children;[19] and

- Ms. Lin was initially denied translated documents, and was subsequently told by the District that she was not entitled to translated draft documents to assist her at IEP meetings but was only receiving "final" documents as a result of a Mediation Agreement.[20]

Plaintiffs and the other putative Class members would benefit from improved language services, including receiving translated draft IEPs, thus aligning their interests and exhibiting that the Plaintiffs will advance the interests of the classes.[21] Finally, none of the Plaintiffs is subject to a unique defense that is likely to become a major focus of the litigation.[22]

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[17] *See, e.g.*, Ex. 4 at 190:5–13; Ex. 3 at 12:21–13:8 ("Almost every time I go to the IEPs I ask for translation because they are in English."); *id.* at 72:3–73:7 (describing an IEP for D.R. for which she requested but did not receive a full translation and was told the partial translation "was the best [the District] could have translated").

[18] *See, e.g.*, Ex. 4 at 171:5–172:4, 181:10–18; Ex. 3 at 59:15–60:2 (describing J.R.'s last IEP meeting in which a Spanish teacher acted as the interpreter); *id.* at 108:1–109:4 (describing an IEP meeting for D.R. in which a principal acted as an interpreter and only provided the "gist" of what was said).

[19] *See, e.g.*, Ex. 3 at 45:14–18; *id.* at 102:1–21 (testifying that she was unaware of what D.R.'s IEP said regarding summer school but that she believes D.R. would have benefitted from summer services).

[20] *See* Ex. 4 at 190:5–13; *see also* Ex. 15 at 16 (addressing need for translations of draft IEPs).

[21] *See, e.g.*, Ex. 3 at 46:18–49:5 (testifying as to the benefits fully translated documents would provide); *id.* at 47:10–48:7 ("[T]here were several parents like me who don't get the documents in Spanish. . . . At Philadelphia HUNE there were several parents with the same problem, we talked about it there. 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 a translation into Spanish. To me, to translate it to Spanish is that everything is in Spanish. . . . [T]here were two or three parents there . . . we were talking about how important it would be to have the documents translated."); *id.* at 103:3–12 (testifying that she "could be a more effective advocate" for her children if she had translated IEP documents before IEP meetings); *see also* Ex. 15 at 13 (observing that parents consistently identify the pressing need for language services as part of IEP meetings); *see generally* Ex. 19 (describing circumstances she has observed between the District and LEP parents in which those parents experienced difficulties due to the District's inadequate translation and interpretation services).

[22] There is evidence in the discovery record that the District favors LEP parents who are represented by counsel when deciding whether to provide translations of IEP documents. *See, e.g.*, Ex. 7 at 259:8–12, 260:21–261:5, 278:23–279:4, 284:5–12, 290:2–8. However, no such favorable treatment nor any of the individual commitments made by the District to the Plaintiffs have mooted the claims of the Plaintiffs. Moreover, even if the District's favorable

4. Adequacy

Finally, "Rule 23(a)(4) requires that plaintiffs must 'fairly and adequately protect the interests of the class.'" *S.R.*, 325 F.R.D. at 111 (quoting Fed. R. Civ. P. 23(a)(4)). "Adequate representation depends on two factors: (a) the plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (b) the plaintiff must not have interests antagonistic to those of the class." *S.R.*, 325 F.R.D. at 111 (citation omitted); *see also Baby Neal*, 43 F.3d at 55. "Defendants have the burden of establishing that the representative plaintiffs will not adequately represent the class." *Kerrigan v. Phila. Bd. of Election*, 248 F.R.D. 470, 477 (E.D. Pa. 2008).

Here, Plaintiffs' interests are not antagonistic to those of the classes because they have been adversely impacted by the District's inadequate policies and practices related to language services for LEP parents who have children with disabilities, and they are all at risk of further failures in the District's provision of language services. As such, Plaintiffs would benefit from the declaratory and injunctive relief sought for themselves and the other members of the two classes, and none seek individual relief in this action. *See Kerrigan*, 248 F.R.D. at 477. Plaintiffs have also assisted counsel with this lawsuit and show a continued interest in prosecuting the case.

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treatment did at least temporarily address the language needs of the Plaintiffs, the law would still allow them to serve as class representatives – either under the "picking off" doctrine or the "capable of repetition, yet evading review" exception. *See, e.g.*, *Richardson v. Bledsoe*, 829 F.3d 273, 289–90 (3d Cir. 2016) (reaffirming the validity of the "picking off" exception to the mootness doctrine and holding that because the named plaintiff's "individual claims for injunctive relief were live at the time he filed [his] complaint, the subsequent mooting of these claims does not prevent [him] from continuing to seek class certification or from serving as the class representative"); *Jarzyna v. Home Props., L.P.*, 201 F. Supp. 3d 650, 658–59 (E.D. Pa. 2016) ("picking off" exception bars defendants from dodging class suits by mooting the claims of named plaintiffs before they have a fair opportunity to move for class certification"); *see also P.V. ex rel. Valentin v. Sch. Dist.*, No. 2:11–cv–04027, 2011 WL 5127850, at *10 (E.D. Pa. Oct. 31, 2011) (finding that "[p]laintiffs' claims fall squarely within the special 'capable of repetition, yet evading review' category of mootness cases" because there was "a 'reasonable expectation' that the plaintiffs here will be subject to the same allegedly deficient [policy] year after year, and the challenged [p]olicy will evade review due to the short amount of time between placements (one year)").

When evaluating counsel, Federal Rule of Civil Procedure 23(g) requires courts to consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). Here, class counsel is qualified, experienced and able to conduct the litigation.

All three legal organizations—The Public Interest Law Center ("PILCOP"), Education Law Center ("ELC"), and Drinker Biddle & Reath LLP ("Drinker Biddle")—have and will continue to zealously represent the classes' interests. Counsel has also devoted considerable resources to this case, including conducting the discovery phase of this litigation which lasted over one year. Furthermore, class counsel have significant experience litigating class actions as well as educational issues. For example, PILCOP has litigated numerous federal class actions in circumstances similar to this one and is a well-respected and experienced student advocate. ELC has extensive experience dealing with education issues, including in the class action context. And Drinker Biddle is nationally-recognized and one of Philadelphia's largest firms and has extensive experience litigating class actions, including for pro bono plaintiffs. *See, e.g.*, *Baby Neal*, 43 F.3d at 52.

C. <u>The Proposed Classes Meet the Requirements of Rule 23(b)(2)</u>

In addition to satisfying the requirements of Rule 23(a), a putative class must also comply with one of the parts of subsection (b). *Baby Neal*, 43 F.3d at 55–56. In this action, Plaintiffs move for certification pursuant to Rule 23(b)(2), which requires a showing that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that

final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2); *see also Amchem Prods., Inc.*, 521 U.S. at 614.

Here, as described above, the District has systematically failed to provide sufficient language services to permit LEP parents to participate meaningfully in the educational planning process and to ensure that their children receive a free and appropriate public education. In contrast to English-speaking parents, the members of the putative Parent Class are not routinely provided important IEP documents in a form that they can read, and the District has not hired a sufficient number of qualified interpreters to ensure that these same parents can participate orally in IEP meetings. In addition, the District has failed to adopt appropriate policies to ensure that LEP parents who request translations of IEP documents necessarily get them.

To remedy these systemic deficiencies, Plaintiffs seek on behalf of themselves and the two putative classes an order requiring the District to provide qualified interpreters at IEP meetings, to translate IEP plans and evaluations, and to develop and implement new District-wide policies for language services, among other injunctive and declaratory relief. *See* First Am. Compl. ¶¶ 38–40. The systemic relief Plaintiffs are seeking with respect to language services for LEP parents and students with disabilities will benefit the putative classes as a whole. *Baby Neal*, 43 F.3d at 59 ("What is important is that the relief sought by the named plaintiffs should benefit the entire class."); *Hassine v. Jeffes*, 846 F.2d 169, 179 (3d Cir. 1988) ("[W]hen a suit seeks to define the relationship between the defendant(s) and the world at large, as in this case, (b)(2) certification is appropriate.") (internal citations omitted)).

Class actions proceeding pursuant to Rule 23(b)(2) are meant to remedy just these types of systemic violations in civil rights and other institutional reform cases. *Baby Neal*, 43 F.3d at

58–59.[23] As the Court noted in *Baby Neal*, Rule 23(b)(2) was "designed specifically for civil rights cases seeking broad declaratory or injunctive relief for a numerous and often unascertainable or amorphous class of persons." *Id.* (internal citations omitted). Indeed, since the *Baby Neal* decision, courts in this Circuit have certified Rule 23(b)(2) classes in a number of educational rights cases.[24]

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion for Class Certification, designate Plaintiffs as class representatives, and appoint Plaintiffs' counsel as class counsel pursuant to Federal Rule of Civil Procedure 23(g).

Dated: August 3, 2018

Respectfully submitted,

s/ Paul H. Saint-Antoine

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[23] Class certification pursuant to Rule 23(b)(2) is particularly warranted here because, as noted above, the Hearing Officer ruled that he lacked the authority to order systemic relief in individual due process proceedings. *See* First Am. Compl., Exhibit C.

[24] *See, e.g., P.V. ex rel. Valentin*, 289 F.R.D. 227 (IDEA, Rehabilitation Act, ADA); *Chester Upland Sch. Dist.*, 2012 WL 1450415 (IDEA, Rehabilitation Act); *M.A. ex rel. E.S. v. Newark Pub. Sch.*, No. 01-3389, 2009 U.S. Dist. LEXIS 114660 (D.N.J. Dec. 7, 2009) (IDEA); *C.G.*, 2009 WL 3182599 (Rehabilitation Act); *Gaskin v. Pennsylvania*, No. 94-4048, 1995 WL 355346 (E.D. Pa. June 12, 1995) (IDEA).

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Plaintiffs' Motion for Class Certification and accompanying Memorandum of Law 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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Dated: August 3, 2018

s/ Paul H. Saint-Antoine
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