

STAFF

July 7, 2017

Jennifer R. Clarke *Executive Director* Ms. Bonnie M. Hoffman
Hangley, Aronchick, Segal, Pudlin, & Schiller

Lee Awbrey *Staff Attorney* One Logan Square
27th Floor

Michael Churchill *Of Counsel* Philadelphia, PA 19103-6933
(215) 568-0300

Benjamin D. Geffen
Staff Attorney

Re: C.H. v. School Dist. of Phila. Notice of Violations of Settlement Agreement

Ebony Griffin
Staff Attorney

Dear Ms. Hoffman:

Mary McKenzie
Legal Director

I am replying to your letter of June 20, 2017. We appreciate your looking into our concerns but unfortunately your response does not resolve the dispute.

Daniel Urevick-Ackelsberg
Staff Attorney

As an initial matter, we reject the characterization of your letter as a confidential settlement document subject to Fed. R. Evid. 408. The parties executed a settlement agreement and that agreement was incorporated into the Court's order of February 2, 2017. Nothing in our communications should be construed as an offer to compromise claims. To the contrary, we write to enforce the settlement agreement.

Edwin D. Wolf
Executive Director
1974-1976

Your letter does not adequately address the instances that we reported in which District personnel on IEP teams are telling parents they do not have authority to independently approve ESY services outside of the District's six-week program. While you acknowledge that this would be "inconsistent with the District's procedures and practices," you gave us no assurance that the District took steps to reinforce this message with the school personnel who are actually in the IEP meetings. These incidents constitute a violation of the most fundamental undertaking of the settlement agreement; the District's undertaking in Section III of the agreement to individualize the determinations of ESY services.

You do acknowledge that the notices required by the settlement are one important way to ensure that parents are equipped to detect these misstatements by school personnel. This is precisely why it is highly problematic that the District did not provide the required ESY Services Notice to parents at the three schools we identified—Nebinger, McCall, and Vare-Washington. You also suggest that the District did not provide the ESY Services Notice during February conferences at other schools. The District's failure to provide the ESY Services Notices to parents is

a separate violation of Section II.B.1 of the settlement agreement. (The fact that the District complied with the obligation under Section II.C to provide notice via the District's website after receiving Jennifer Clarke's March 24, 2017 letter does not excuse the noncompliance with Section II.B.1).

Your letter also mischaracterized and disregarded our concerns about the quality of trainings received by District personnel and similarly dismissed the reported violations from parents as "one offs." But those "one offs" arose in multiple schools, reflect ongoing problems with the District's implementation of its obligations under Section III of the agreement, and raise questions as to the adequacy of training. The District's apparent failure to take this concern seriously—by claiming that the violations do not reflect systemic deficiencies—reveals the District's overall lack of serious commitment, particularly when coupled with the failure to provide notice and the fundamental misstatements by District IEP participants.

Finally, your letter states that you trust we will let you know if a particular student is not receiving appropriate ESY services. We will not be doing that. We raise these matters to enforce a settlement agreement which required the District to take steps to remedy system-wide violations. As you know and as set out by the settlement agreement, we are not representing individual parents in their specific requests for certain services. So while we agree that these parents should also seek redress with OSS and/or through due process hearings with the assistance of other counsel in order to resolve their individual matters, we also expect the District to take notice and appropriate remedial action when the agreed-upon procedures for individualized ESY determinations are not practiced by District personnel.

Corrective Measures:

1. The District will identify the schools that did not provide ESY Services Notices during the February conferences. For each school, the District will identify what action it took to ensure that the school subsequently provided the ESY Services Notice to parents/guardians and to ensure the notice was provided in the relevant language as required under the settlement agreement.
2. The District will prominently post the esy@philasd.org e-mail address on the Extended School Year Services webpage and clearly explain that the address is to be used for parents seeking to report ESY issues.
3. The District will provide to the Law Center a copy of the online tutorial regarding ESY that is referenced in your letter, as well as information with regard to what percentage, if any, of the Special Education Directors, SELS, and teachers actually viewed the training. To the extent the training was not conducted by a PaTTAN instructor, we reiterate our demand of March 24, 2017 that the District schedule training for Special Education Directors with a PaTTAN trainer.
4. In light of the ongoing violations, we reiterate our demand that you provide the data requested by Jennifer Clarke in her March 24, 2017 letter.

5. Given the District's violations of the most basic provisions of the settlement agreement, the District will agree to petition the Court to extend the term of the settlement agreement by one year.

Kindly respond by July 21, 2017.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lee Awbrey".

Lee Awbrey

Cc: Miles Shore, Esq.