

June 2, 2017

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

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

Dear Miles:

Pursuant to Paragraph VI.B.1 of the Settlement Agreement and Release in the above-referenced case, I write to inform you that parents and advocates continue to report to the Law Center that the District is in breach of the agreement. We request that you take the remedial steps outlined below.

Background

As you are aware, this lawsuit arose because the District refused to provide ESY services to children with disabilities other than services that were offered during the time and at the locations of the District's pre-established summer ESY program. The District claimed that it individually considers each child's needs and does not shoehorn children within the "program" regardless of need. The settlement requires the District to do that which it claims. Notwithstanding this affirmative settlement obligation, parents and advocates are contacting the Law Center about the manner in which the District is making ESY determinations. Below are violations of which we have been made aware and the remedial measures the District should take to address them:

Violation 1: IEP teams are not discussing the individualized nature of ESY at IEP team meetings—indeed, they are not discussing ESY at all:

Paragraph III.B of the Settlement Agreement mandates that "[d]uring each IEP Team meeting, SELs, (or another School District employee member of the IEP team), will discuss the individual student's ESY services, including an explanation that the type, amount, and duration of ESY services depend on the individual needs of the student, and are determined by the IEP Team based on the

individual needs of the student, and are determined by the IEP Team based on the student's skills and behaviors." This discussion was intended to alert parents to the fact that their child was, in fact, entitled to an individualized determination of ESY services. Parents report that this is not happening and, in fact, contrary to federal and state law, IEP teams are not discussing ESY at all. See 34 C.F.R. § 300.324 (b); 22 Pa. Code §14.132 (a)(1). A parent at Gen. George A. McCall Elementary and Middle School ("McCall") was instructed to sign a NOREP stating that the team discussed ESY even though they had not. An IEP team at W.B. Saul High School ("Saul") did not discuss ESY. And the parent of a child within the Armstrong group child at Fidler Academic Plus ("Fidler") reported that ESY was not discussed during two IEP team meetings in March of 2017.

Violation 2: IEP teams still believe they are powerless to determine services beyond those in the District's pre-set "program":

Paragraph III.C of the Settlement Agreement states that "[a]t each IEP team meeting, *the IEP Team* shall determine the need and extent of ESY services for students." (emphasis added). Parents are being told, however, that the Special Education Director is the only one with authority to make ESY determinations for services that are beyond the District's pre-established ESY program. In February 2017, a parent at McCall was told by the Special Education Liaison ("SEL") that the IEP team did not have authority to approve ESY programming at a location other than the District's scheduled program. Specifically, the SEL stated "that's a Marie Capitolo decision." In March 2017, a parent at Hill-Freedman World Academy ("Hill-Freedman") was told that her IEP team did not have the authority to approve ESY services other than those in the District's pre-set "program" and that they would have to get approval from the Special Education Director. This is precisely the problem that this case sought to remedy.

Violation 3: ESY determinations are not based on the student's individualized needs:

Paragraph III.A of the Settlement Agreement states that "The School District shall make individualized determinations for ESY-eligible students of the type, amount, and duration of ESY services based on the student's individual needs." The District's failure to do this was the triggering event for bringing the case in the first place. Yet the Law Center received a report that the Special Education Director at McCall told a parent that her child could either attend one of the District's pre-determined six-week, half-day programs and receive occupational and physical therapy and speech support *or* receive ESY programming from an alternative provider of a 10-week summer program without those supports, in which case the District would pay for the cost of the 10-week alternative program but would only provide up to 6 weeks of a 1:1 aide within that program. The Special Education Director explained that the District would not provide occupational therapy, physical therapy, speech therapy, or the additional four weeks of 1:1 supports with the alternative program due to cost. ESY determinations must be based on a child's individualized needs, not the District's costs.

Violation 4: Inadequate notice to parents:

Paragraph II.B.1 of the Settlement Agreement states that the District will provide the ESY Services Notice to all parents or guardians of students with disabilities during the February report

card conferences. Parents at George W. Nebinger Elementary School (“Nebinger”), McCall, and The Vare-Washington School (“Vare-Washington”) reported to the Law Center that they received no notices at all regarding ESY.

Violation 5: Inadequate training for Special Education Directors:

Although you state in your letter of March 31, 2017, that Special Education Directors received training on September 29, 2016 and January 8, 2017, both of those trainings preceded the execution of the Settlement Agreement and were apparently insufficient to prevent the violations described above and in Ms. Clarke’s letter of March 24, 2017.

Corrective Measures:

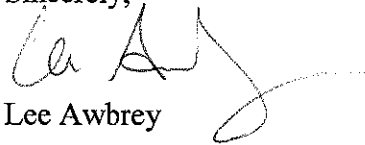
1. The District will contact the SELs and Special Education Directors responsible for McCall, Hill-Freedman, Nebinger, Fidler, Saul, Vare-Washington, and Juniata schools to confirm that they received the requisite training set forth in Section IV of the Settlement Agreement. The District will specifically review with each of these SELs and SEDs the IEP team’s obligation to discuss and determine individualized ESY services based on the need of each child and to utilize diverse service-provision models beyond the District’s preplanned summer program where appropriate.
2. The District will make the contact information for Ms. Abena Osei, who is tasked with overseeing the School District’s compliance with the Settlement Agreement, available to parents and the Law Center so that parents may bring these matters to her attention as they arise for appropriate intervention and remediation.
3. The District will provide the ESY Services Notice to parents/guardians. The Notice must be provided in English, Albanian, Arabic, Chinese, French, Khmer, Russian, Spanish, and Vietnamese and if the parents’/guardians’ native language is not one of these enumerated languages, the School District will provide these notices in the parents’/guardians’ native language upon request, as set forth in Paragraph II.B.1.3 of the Settlement Agreement.
4. The Special Education Director responsible for the Nebinger, McCall, and Vare-Washington schools will certify that ESY Services Notices were provided to all parents/guardians in those schools, specifying the timing and manner in which notices were provided and the languages in which the notices were sent.
5. We reiterate our demand of March 24, 2017, that the District schedule training for Special Education Directors with a PaTTAN trainer.
6. Similarly, in light of the ongoing violations we demand that you provide by June 15, 2017, the data requested by Jennifer Clarke on March 24, 2017, and required in Paragraph V.A.1-5 of the Settlement Agreement for all IEP team meetings that took place

during the period between the execution of the Settlement Agreement and the date of this letter.

Enforcement

We expect you to respond promptly. We would like to avoid having to seek an order of enforcement from the Court and attorneys fees. Summer is fast approaching and students are entitled to have their ESY services determined based on their individualized needs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lee Awbrey', with a long horizontal flourish extending to the right.

Lee Awbrey

Cc: Bonnie M. Hoffman, Esq.