

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

PENNSYLVANIA ASSOCIATION FOR	:	CIVIL ACTION
RETARDED CITIZENS, et al.,	:	
	:	
Plaintiffs	:	
	:	NO. 71-142
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
ROBERT G. SCANLON, et al.,	:	
SCHOOL DISTRICT OF PHILADELPHIA,	:	
et al.,	:	
	:	
Defendants	:	CLASS ACTION

NOTICE OF MOTION

TO: John Alzamora, Esquire  
Pennsylvania Department of Education  
Legal Department  
P. O. Box 911  
Harrisburg, Pennsylvania 17126

Please take note that the within Motion to Compel will be filed with  
the Clerk in the United States District Court on February 26<sup>th</sup>, 1980.

By: Edward G. Titterton  
Edward G. Titterton, III, Esquire  
Thomas K. Gilhool, Esquire  
Frank J. Laski, Esquire  
Beverly J. Lucas, Esquire  
  
PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA  
1315 Walnut Street, 16th Floor  
Philadelphia, Pennsylvania 19107  
  
Attorneys for Petitioners

Dated: February 20<sup>th</sup>, 1980

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

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al.,	:	CIVIL ACTION
	:	
Plaintiffs	:	
	:	
v.	:	
	:	NO. 71-42
COMMONWEALTH OF PENNSYLVANIA, ROBERT G. SCANLON, et al., SCHOOL DISTRICT OF PHILADELPHIA, et al.,	:	
	:	
Defendants	:	CLASS ACTION

ORDER

AND NOW, this            day of            , 1980, IT IS ORDERED  
AND DECREED THAT Defendants fully and completely produce those documents  
requested in Petitioners' Request for Production of Documents, and reimburse  
Petitioners for the cost of filing and presenting this Motion to Compel this  
Production.

---

J.

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

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al.,	:	CIVIL ACTION
	:	
Plaintiffs	:	
	:	
v.	:	
	:	NO. 71-42
	:	
COMMONWEALTH OF PENNSYLVANIA, ROBERT G. SCANLON, et al., SCHOOL DISTRICT OF PHILADELPHIA et al.,	:	
	:	
Defendants	:	CLASS ACTION

MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Petitioners, by their counsel, respectfully move this Court to order the Commonwealth of Pennsylvania, Department of Education, Robert Scanlon and Gary Makuch, Defendants, to produce documents, and in support thereof allege:

1. Petitioners' Request for Production of Documents directed towards Commonwealths Defendants, was filed with this Court on January 8, 1980, and is attached hereto as "Exhibit A".
2. A copy of that request was forwarded to John Alzamora, Esquire, Counsel to the Commonwealth Department of Education, as well as other counsel in this action.
3. On February 11, 1980, without having received any communication of any nature from Commonwealth's Defendants, Petitioners received Commonwealth Defendant's answers and objections to a Request for Production of Documents.
4. Defendants' refusal to produce these documents in Petitioners Request for Production of Documents is without legal justification under the Federal Rules of Civil Procedure.

5. Since Defendants' refusal is without justification, Petitioners are also entitled, under Rule 37 (a) (4), to reimbursement for the expenses incurred in the filing and presentation of this motion.

WHEREFORE, Petitioners hereby move this Honorable Court for an Order under Rule 37 of the Federal Rules of Civil Procedure to Compel Defendants to supply those documents listed in Petitioners Request for Production of Documents, and to compel Defendants to reimburse Petitioners for the cost of filing and presenting this Motion.

Respectfully submitted,

By: Edward G. Titterton  
Edward G. Titterton, III, Esquire  
Thomas K. Gilhool, Esquire  
Frank J. Laski, Esquire  
Beverly J. Lucas, Esquire

PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA  
1315 Walnut Street, 16th Floor  
Philadelphia, Pennsylvania 19107

Dated: February 20<sup>th</sup>, 1980

Attorneys for Petitioners

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

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al. ,	:	CIVIL ACTION
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA, ROBERT G. SCANLON, et al. , SCHOOL DISTRICT OF PHILADELPHIA, et al. ,	:	NO. 71-42
	:	
Defendants	:	CLASS ACTION

MEMORANDUM OF LAW

As noted in Petitioners Motion to Compel Production of Documents Philadelphia Defendants, this is an action seeking relief and additional orders based on Defendants' failure to comply with the laws of the United States and the Education of Retarded Children living within the School District of Philadelphia is at the base of Petitioners Allegation, most particularly those children functioning within the classification of severely and profoundly impaired or multiply handicapped. Derelictions by Commonwealth Defendants have contributed to this failure to provide a free appropriate public education suited to the individual learning capacities of each retarded child.

Quite obviously, in order to establish this, Petitioners require access to complete information regarding the training, instruction, and supervision of the teachers and personnel involved in rendering services to these children. Programs and curriculum employed are equally vital. This information, necessarily, includes training materials, correspondence, and funding data.

Beyond question is the fact that the information charted seems reasonably

calculated to lead to the discovery of admissible evidence." Rule 26 (b) (1), Federal Rules of Civil Procedure. Of primary importance to the discovery rules is that parties obtain the fullest possible knowledge of issues and facts before trial. Hickman v. Taylor, 329 U. S. 495, 501 (1947); Freeman v. Seligson, 405 F.2d, 1326 (D.C. Cir., 1968) (concurring opinion). Relevancy issues, moreover, are liberally decided at the discovery stage, Reed v. Smith Barney and Company, Inc., 50 F.R.D. 128 (S.D.N.Y. 1970).

Petitioners cannot, through any legal procedure in any trial setting, have a clear opportunity to present their case without detailed documentation of Commonwealth Defendants' Special Education plans, programs, and policies. The very essence of discovery, as the above cases so clearly establish, is to gain for the party seeking disclosure, relevant facts and material in possession of the adversary. It is, therefore, ludicrous for defendants to assert these requests to be unduly burdensome because they would be required to search their files and records. That is, unquestionably, exactly what the discovery rules, and the cases under them, mandate. Equally incredulous is the assertion that material related to budgeting, staff development, the Pennsylvania Task Force on Special Education, and Commonwealth Defendants procedures for monitoring are irrelevant to the issues surrounding appropriate education for retarded children. Objections to the language employed by Petitioners in describing these documents, as being too void and vague, is also without foundation. Since Petitioners do not know the organizational format of Commonwealths Defendants' files, they can only describe the information sought. Indeed, Petitioners have done so in standard "discovery" language, designed to avoid the pitfall of second guessing Defendants' filing system. Petitioners are prompted to speculate that, without hesitation, Commonwealth Defendants would also seek to use this to their advantage if information were requested as part of a specific file or report, and were found to be contained under a wholly different category.

Petitioners contend that no sound policy reason exists for withholding the documents requested, and, accordingly, submit that the Motion to Compel Production of Documents and The Request For Award of Expenses included therein, pursuant to Rule 37 of the Pennsylvania Rules of Civil Procedure, be granted.

Respectfully submitted,

By: Edward G. Titterton  
Edward G. Titterton, III, Esquire  
Thomas K. Gilhool, Esquire  
Frank J. Laski, Esquire  
Beverly J. Lucas, Esquire

PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA  
1315 Walnut Street, 16th Floor  
Philadelphia, Pennsylvania 19107

Attorneys for Petitioners

Dated: February 20<sup>th</sup>, 1980

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

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al.,	:	CIVIL ACTION
	:	
Plaintiffs	:	
	:	
v.	:	NO. 71-142
	:	
COMMONWEALTH OF PENNSYLVANIA ROBERT G. SCANLON, et al., SCHOOL DISTRICT OF PHILADELPHIA et al.,	:	
	:	
Defendants	:	CLASS ACTION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT true and correct copies of the within  
Motion to Compel were served upon all Counsel listed below by United  
States Mail, postage prepaid this *20<sup>th</sup>* day of February, 1980.

Caryl Andrea Oberman, Esquire  
Education Law Center  
2100 Lewis Tower Building  
225 S. Fifteenth Street  
Philadelphia, Pennsylvania 19107

John Alzamora, Esquire  
Dept. of Education, Legal Department  
P. O. Box 911  
Harrisburg, Pennsylvania 17126

James C. Everett, Esquire  
1211 Chestnut Street  
2nd Floor  
Philadelphia, Pennsylvania 19107

Robert T. Lear, Esquire  
Philadelphia Board of Education  
21st and The Parkway  
Room 605-B, Legal Dept.  
Philadelphia, Pennsylvania 19103

Joseph McCann, Esquire  
Deputy Attorney General  
Department of Justice  
Strawberry Square Building  
Harrisburg, Pennsylvania 17120

Leonard M. Sagot, Esquire  
1300 Two Penn Center  
Philadelphia, Pennsylvania 19102

  
KATHLEEN A. DONNELLY

Dated: February *20<sup>th</sup>*, 1980



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

PENNSYLVANIA ASSOCIATION FOR  
RETARDED CITIZENS, et al.,

Plaintiffs

v.

COMMONWEALTH OF PENNSYLVANIA,  
ROBERT G. SCANLON, et al.,  
SCHOOL DISTRICT OF PHILADELPHIA,  
et al.,

Defendants

CIVIL ACTION

NO. 71-142

CLASS ACTION

NOTICE OF MOTION

TO: John Alzamora, Esquire  
Pennsylvania Department of Education  
Legal Department  
P. O. Box 911  
Harrisburg, Pennsylvania 17126

Please take note that the within Motion to Compel will be filed with  
the Clerk in the United States District Court on February 26<sup>th</sup>, 1980.

By: Edward G. Titterton  
Edward G. Titterton, III, Esquire  
Thomas K. Gilhool, Esquire  
Frank J. Laski, Esquire  
Beverly J. Lucas, Esquire

PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA  
1315 Walnut Street, 16th Floor  
Philadelphia, Pennsylvania 19107

Attorneys for Petitioners

Dated: February 20<sup>th</sup>, 1980

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

PENNSYLVANIA ASSOCIATION FOR	:	CIVIL ACTION
RETARDED CITIZENS, et al.,	:	
	:	
Plaintiffs	:	
	:	
v.	:	
	:	NO. 71-42
COMMONWEALTH OF PENNSYLVANIA,	:	
ROBERT G. SCANLON, et al.,	:	
SCHOOL DISTRICT OF PHILADELPHIA,	:	
et al.,	:	
	:	
Defendants	:	CLASS ACTION

ORDER

AND NOW, this            day of            , 1980, IT IS ORDERED  
AND DECREED THAT Defendants fully and completely produce those documents  
requested in Petitioners' Request for Production of Documents, and reimburse  
Petitioners for the cost of filing and presenting this Motion to Compel this  
Production.

---

J.

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

PENNSYLVANIA ASSOCIATION FOR	:	CIVIL ACTION
RETARDED CITIZENS, et al.,	:	
	:	
Plaintiffs	:	
	:	
v,	:	
	:	NO. 71-42
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
ROBERT G. SCANLON, et al.,	:	
SCHOOL DISTRICT OF PHILADELPHIA	:	
et al.,	:	
	:	
Defendants	:	CLASS ACTION

MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Petitioners, by their counsel, respectfully move this Court to order the Commonwealth of Pennsylvania, Department of Education, Robert Scanlon and Gary Makuch, Defendants, to produce documents, and in support thereof allege:

1. Petitioners' Request for Production of Documents directed towards Commonwealths Defendants, was filed with this Court on January 8, 1980, and is attached hereto as "Exhibit A".
2. A copy of that request was forwarded to John Alzamora, Esquire, Counsel to the Commonwealth Department of Education, as well as other counsel in this action.
3. On February 11, 1980, without having received any communication of any nature from Commonwealth's Defendants, Petitioners received Commonwealth Defendant's answers and objections to a Request for Production of Documents.
4. Defendants' refusal to produce these documents in Petitioners Request for Production of Documents is without legal justification under the Federal Rules of Civil Procedure.

5. Since Defendants' refusal is without justification, Petitioners are also entitled, under Rule 37 (a) (4), to reimbursement for the expenses incurred in the filing and presentation of this motion.

WHEREFORE, Petitioners hereby move this Honorable Court for an Order under Rule 37 of the Federal Rules of Civil Procedure to Compel Defendants to supply those documents listed in Petitioners Request for Production of Documents, and to compel Defendants to reimburse Petitioners for the cost of filing and presenting this Motion.

Respectfully submitted,

By: Edward G. Titterton  
Edward G. Titterton, III, Esquire  
Thomas K. Gilhool, Esquire  
Frank J. Laski, Esquire  
Beverly J. Lucas, Esquire

PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA  
1315 Walnut Street, 16th Floor  
Philadelphia, Pennsylvania 19107

Dated: February 20<sup>th</sup>, 1980

Attorneys for Petitioners

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

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al.,	:	CIVIL ACTION
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA, ROBERT G. SCANLON, et al., SCHOOL DISTRICT OF PHILADELPHIA, et al.,	:	NO. 71-42
	:	
Defendants	:	CLASS ACTION

MEMORANDUM OF LAW

As noted in Petitioners Motion to Compel Production of Documents Philadelphia Defendants, this is an action seeking relief and additional orders based on Defendants' failure to comply with the laws of the United States and the Education of Retarded Children living within the School District of Philadelphia is at the base of Petitioners Allegation, most particularly those children functioning within the classification of severely and profoundly impaired or multiply handicapped. Derelictions by Commonwealth Defendants have contributed to this failure to provide a free appropriate public education suited to the individual learning capacities of each retarded child.

Quite obviously, in order to establish this, Petitioners require access to complete information regarding the training, instruction, and supervision of the teachers and personnel involved in rendering services to these children. Programs and curriculum employed are equally vital. This information, necessarily, includes training materials, correspondence, and funding data.

Beyond question is the fact that the information charted seems reasonably

calculated to lead to the discovery of admissible evidence." Rule 26 (b) (1), Federal Rules of Civil Procedure. Of primary importance to the discovery rules is that parties obtain the fullest possible knowledge of issues and facts before trial. Hickman v. Taylor, 329 U. S. 495, 501 (1947); Freeman v. Seligson, 405 F.2d, 1326 (D.C. Cir., 1968) (concurring opinion). Relevancy issues, moreover, are liberally decided at the discovery stage, Reed v. Smith Barney and Company, Inc., 50 F.R.D. 128 (S.D.N.Y. 1970).

Petitioners cannot, through any legal procedure in any trial setting, have a clear opportunity to present their case without detailed documentation of Commonwealth Defendants' Special Education plans, programs, and policies. The very essence of discovery, as the above cases so clearly establish, is to gain for the party seeking disclosure, relevant facts and material in possession of the adversary. It is, therefore, ludicrous for defendants to assert these requests to be unduly burdensome because they would be required to search their files and records. That is, unquestionably, exactly what the discovery rules, and the cases under them, mandate. Equally incredulous is the assertion that material related to budgeting, staff development, the Pennsylvania Task Force on Special Education, and Commonwealth Defendants procedures for monitoring are irrelevant to the issues surrounding appropriate education for retarded children. Objections to the language employed by Petitioners in describing these documents, as being too void and vague, is also without foundation. Since Petitioners do not know the organizational format of Commonwealths Defendants' files, they can only describe the information sought. Indeed, Petitioners have done so in standard "discovery" language, designed to avoid the pitfall of second guessing Defendants' filing system. Petitioners are prompted to speculate that, without hesitation, Commonwealth Defendants would also seek to use this to their advantage if information were requested as part of a specific file or report, and were found to be contained under a wholly different category.

Petitioners contend that no sound policy reason exists for withholding the documents requested, and, accordingly, submit that the Motion to Compel Production of Documents and The Request For Award of Expenses included therein, pursuant to Rule 37 of the Pennsylvania Rules of Civil Procedure, be granted.

Respectfully submitted,

By: Edward G. Titterton  
Edward G. Titterton, III, Esquire  
Thomas K. Gilhool, Esquire  
Frank J. Laski, Esquire  
Beverly J. Lucas, Esquire

PUBLIC INTEREST LAW CENTER  
OF PHILADELPHIA  
1315 Walnut Street, 16th Floor  
Philadelphia, Pennsylvania 19107

Attorneys for Petitioners

Dated: February 20<sup>th</sup>, 1980

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

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al.,	:	CIVIL ACTION
	:	
Plaintiffs	:	
	:	
v.	:	NO. 71-142
	:	
COMMONWEALTH OF PENNSYLVANIA ROBERT G. SCANLON, et al., SCHOOL DISTRICT OF PHILADELPHIA et al.,	:	
	:	
Defendants	:	CLASS ACTION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT true and correct copies of the within  
Motion to Compel were served upon all Counsel listed below by United  
States Mail, postage prepaid this *20<sup>th</sup>* day of February, 1980.

Caryl Andrea Oberman, Esquire  
Education Law Center  
2100 Lewis Tower Building  
225 S. Fifteenth Street  
Philadelphia, Pennsylvania 19107

John Alzamora, Esquire  
Dept. of Education, Legal Department  
P. O. Box 911  
Harrisburg, Pennsylvania 17126

James C. Everett, Esquire  
1211 Chestnut Street  
2nd Floor  
Philadelphia, Pennsylvania 19107

Robert T. Lear, Esquire  
Philadelphia Board of Education  
21st and The Parkway  
Room 605-B, Legal Dept.  
Philadelphia, Pennsylvania 19103

Joseph McCann, Esquire  
Deputy Attorney General  
Department of Justice  
Strawberry Square Building  
Harrisburg, Pennsylvania 17120

Leonard M. Sagot, Esquire  
1300 Two Penn Center  
Philadelphia, Pennsylvania 19102

  
KATHLEEN A. DONNELLY

Dated: February *20<sup>th</sup>*, 1980