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

P.V., a minor, by and through his Parents, **Pedro Valentin** and **Yolanda Cruz**, individually, and on behalf of all others similarly situated,

M.M., a minor, by and through his Parent, **Carla Murphy**, individually, and on behalf of all others similarly situated,

J.V., a minor, by and through his Parents, **Sharon Vargas** and **Ismael Vargas**, individually, and on behalf of all others similarly situated,

R.S., a minor, by and through his Parents, **Heather Sanasac** and **Matthew Sanasac,** individually, and on behalf of all others similarly situated,

Plaintiffs,

v.

The School District of Philadelphia,

Arlene Ackerman, Superintendent, in her official capacity as Superintendent of the School District of Philadelphia,

Linda Williams, in her official capacity as the Interim Deputy Chief of Special Education for the School District of Philadelphia,

The School Reform Commission, as the Board of the School District of Philadelphia,

Defendants.

Civil Action No. _____

COMPLAINT -- CLASS ACTION

I. PRELIMINARY STATEMENT

1. This action is brought on behalf of thousands of Philadelphia school children with autism seeking elimination of an illegal policy that adversely affects them. Children with autism have difficulty with transitioning from one environment to another as a result of impairments in communication and social interaction skills. In direct conflict with this well-known difficulty of children with autism, the School District of Philadelphia (the "District") transfers students with autism automatically from one school to another simply because they complete a certain grade. The District uses this Automatic Autism Transfer Policy (the "Policy") to routinely assign and/or transfer students with autism, including rising third graders with autism to different schools for grades 3 through 5, and rising fifth graders with autism to different schools for grades 6 through 8 based on their status as children with autism. Non-disabled children enjoy continued and uninterrupted attendance in K-5 schools or K-8 schools.

2. The Policy, as established and as implemented, violates the purpose and intent of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. ("IDEA") and Chapter 14 of the Pennsylvania Code ("Chapter 14") as it occurs with little or no parental notice or involvement, without required consideration of children's individualized circumstances, and in direct violation of the mandated individual planning process of the IDEA. Furthermore, this admitted policy of the District is based solely on the fact that the children have autism contrary to Section 504 of the Rehabilitation Act ("Section 504"), and Title II of the Americans with Disabilities Act ("ADA").

3. Plaintiffs bring this claim on their own behalf and on behalf of all other students within the District who are or will be subjected to the District's Policy (the "Class"). Class relief

is necessary because of the systemic nature of the Defendants' conduct and because the large number of children harmed by the Policy makes joinder of all Class members impracticable.

II. JURISDICTION AND VENUE

4. The claims herein arise under the IDEA, 20 U.S.C. § 1400 et seq. (2004) and 34 Code of Federal Regulations Chapter 300, Chapter 14, 22 Pa. Code § 14.1 et seq., the ADA, 42 U.S.C. § 12132 et seq., and Section 504, 29 U.S.C. § 794. This Court has subject matter jurisdiction over the federal law claims pursuant to 28 U.S.C. § 1331 and 20 U.S.C. §§ 1415(i)(2) and 1415(i)(3)(A).

5. The claims herein for declaratory and injunctive relief pending the resolution of this matter are authorized by 28 U.S.C §§ 2201 and 2202.

6. This Court may exercise supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. Chapter 14 of the Pennsylvania Code is the state special education law that must be consistent with the IDEA. 22 Pa. Code § 14.1 et seq.

7. The claims for injunctive relief in the form of enforcement of Plaintiffs' and the Class' right to remain in current educational placements during the pendency of this proceeding ("Stay-Put Relief") is authorized by 20 U.S.C. § 1415(j).

8. Venue in this district is proper under 28 U.S.C. § 1391(b).

9. Plaintiffs have exhausted or are not required to exhaust administrative remedies pursuant to the IDEA, 20 U.S.C. §§ 1415(i)(2) and 1415(i)(3)(A).

a. Where, as here, a district is engaged in a policy that violates the IDEA and that is inconsistent with the individualized nature of the IDEA, such a policy can evade review through the administrative process and may properly be brought before the Court without exhaustion of administrative remedies. *Honig v. Doe*, 484 U.S. 305 (1988) (state suspension policy could evade review); *Christopher S. v. Stanislaus County*, 384 F.3d 1205 (9th Cir. 2004) (shortened school day for children with autism was policy and not subject to exhaustion of administrative remedies).

b. Even if administrative exhaustion pursuant to the IDEA were required, which it is not, Plaintiffs P.V. and M.M. have already exhausted through the IDEA hearing process, each of them receiving a hearing officer decision dated April 15, 2011, attached hereto as Ex. A. and Ex. B. respectively. (Ex. A., *P.V. v. SDP,* ODR No. 01541-1011 and Ex. B., *M.M. v. SDP*, ODR No. 01539-1011.) In those decisions, the Hearing Officer ("H.O.") found for the families but ordered the District to re-propose placement for the 2011-2012 school year requiring the families to again object through the administrative hearing process for a second time. The Hearing Officer stressed that with regard to the District's Automatic Transfer Policy he ***"lack[ed] authority to order wholesale changes to the District's procedures"*** and he ***"encouraged the District to alter its procedures on a broader scope."*** (Ex. A. at 15; Ex. B. at 15) (emphasis added). This Complaint constitutes an appeal from the administrative proceedings by P.V. and M.M.

c. Furthermore, were administrative exhaustion pursuant to the IDEA required, Plaintiffs J.V. and R.S. and the rest of the Class are exempted from the IDEA's usual administrative exhaustion requirement because exhaustion is clearly futile given the District's Automatic Autism Transfer Policy and the holding of the hearing officer in the prior two cases that he does not have the power to order a District wide-systemic change, essentially requiring families to exhaust and re-exhaust indeterminably. *Beth V. v. Carroll*, 87 F.3d 80, 90 (3d Cir. 1996) (noting exhaustion not required where it would be futile or inadequate or where the agency cannot grant adequate relief, or where exhaustion would work a severe harm); *see also R.B. v. Mastery Charter Sch.*, No. 2:10-cv-06722, 2010 WL 5464892, at *6 (E.D. Pa. Dec. 29, 2010). Moreover, J.V. and R.S. together filed a joint complaint with the Pennsylvania Department of Education, Bureau of Special Education about the issues of over-enrollment as they impact transfer practices. (Ex. A. at 3-5; Ex. B. at 3-5.) Also, J.V. and R.S. each have requested an individual hearing, though they believe that as to the Transfer Policy, the hearings are futile.

10. The Rehabilitation Act and Title II of the Americans with Disabilities Act incorporate the remedies and procedures of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. *See* 29 U.S.C. § 794a; 42 U.S.C. § 12133. Title VI has no exhaustion requirement. *See Herring v. Chichester Sch. Dist*., No. 06-5525, 2007 WL 3287400 (E.D. Pa. Nov. 6, 2007).

III. STATUTORY FRAMEWORK

11. The IDEA requires public schools that receive federal funds to provide a free and appropriate public education ("FAPE") to all students with disabilities ages 3 to 21 based on the

individual unique needs of the student and subject to certain procedural requirements to ensure meaningful parental participation in the process of the child's education. 20 U.S.C. § 1400, § 1412(a), § 1414, § 1415, and see 34 Code of Federal Regulations Chapter § 300. The named minor Plaintiffs and Class members each qualify as "child[ren] with a disability" under the statute, and each has an Individual Education Plan ("IEP") that governs his or her education. 20 U.S.C. § 1401(3), § 1414(d), § 1415. The District receives federal funds pursuant to the IDEA and is bound by the IDEA.

12. Each named plaintiff and Class member has an IEP Team that is comprised of parents and school staff who are to make educational decisions for the child, including school placement. The IDEA mandates that decisions about a child's educational placement are to be made individually through the IEP team process and with the parent's meaningful involvement. Specifically, the IDEA provides that "each local educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." 20 U.S.C. § 1414(e); *see also* 20 U.S.C. § 1415; 34 C.F.R. § 300.327. The District's Automatic Autism Transfer Policy constitutes a "one-size fits all" approach which is in direct conflict with the statutory framework of the IDEA which mandates parental involvement and individual planning through the IEP team process.

13. The ADA mandates that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C § 12132. The District is a public entity within the meaning of 42 U.S.C § 1231(1). The named minor Plaintiffs and Class members are qualified individuals with a disability, protected from discrimination on the basis of their disability. 42 U.S.C. § 1231(2); 28 C.F.R. §

35.104. The District's Automatic Autism Transfer Policy excludes or limits children with autism from experiencing the typical school attendance procedures that non-disabled children enjoy which includes continued attendance at one elementary school or middle school until and through the last grade of said school absent a family move, disciplinary matter, or parental request for move.

14. Section 504 of the Rehabilitation Act prohibits disability discrimination in federally funded programs. It mandates that "[n]o otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794(a). The District is a federal funds recipient within the meaning of 29 U.S.C. § 794(b)(2)(B). The named minor Plaintiffs and Class members are "disabled" students who were otherwise qualified to participate in school activities and who are entitled to the protection of Section 504. The District's Automatic Autism Transfer Policy excludes or limits children with autism from experiencing the typical school attendance procedures that non-disabled children enjoy which includes continued attendance at one elementary school, or middle school until and through the last grade of said school absent a family move, disciplinary matter, or parental request for move.

IV. PARTIES

15. Nine year-old Plaintiff, P.V., is a third grader who resides with his parents, Plaintiffs Pedro Valentin and Yolanda Cruz ("Parents of P.V.") in Philadelphia, Pennsylvania within the boundaries of the School District of Philadelphia. He attends Richmond Elementary School, a Kindergarten through Grade 5 school. P.V. has autism and receives autistic support, necessitating his access to an autism support ("AS") classroom. P.V. is entitled to the

protections of the IDEA and is a qualified individual with a disability entitled to the protections of the Americans with Disabilities Act and Section 504. At the end of the 2009-2010 school year, the District announced to P.V.'s parents that he would not be allowed to remain at Richmond to complete his third grade year during the 2010-2011 school year because of the District's Automatic Autism Transfer Policy. Very shortly before the start of the 2010-2011 school year, it was not clear where P.V. should attend, so he returned to Richmond. P.V.'s family filed for an administrative hearing, requested "Stay Put" protection, and eventually secured a hearing officer's order which resulted in P.V.'s being allowed to stay at Richmond for the completion of his third grade year. (Ex. A, *P.V. v. SDP*, H.O. Decision, April 15, 2011.) On June 16, 2011, once again because of the District's Automatic Autism Transfer Policy, the District administration abruptly proposed P.V.'s move to McKinley Elementary School, which move will occur absent this complaint and appeal entitling P.V. to "Stay Put" pursuant to 20 U.S.C. § 1415(j). In stark contrast, non-disabled rising fourth graders are not required to transfer from Richmond Elementary or other K-5 schools in the District.

16. Nine year-old Plaintiff M.M. is currently a third grade student who resides with his parent, Plaintiff Carla Murphy ("Parent of M.M") in Philadelphia, Pennsylvania within the boundaries of the School District of Philadelphia. He attends Richmond Elementary School. M.M. has autism and receives autistic support, necessitating his access to an autism support classroom. M.M. is entitled to the protections of the IDEA and is a qualified individual with a disability entitled to the protections of the ADA and Section 504. In late spring 2010, the District advised M.M.'s mother via his home-school notebook that he would not be allowed to remain at Richmond to complete his third grade year during the 2010-2011 school year because of the District's Automatic Autism Transfer Policy. In the fall of 2010, it was not clear where

M.M. was to attend school, so M.M. returned to Richmond. In early September 2010, M.M.'s family filed for an administrative hearing, requested "Stay Put" protection, and eventually secured a hearing officer's order which resulted in M.M.'s being allowed to stay for the completion of the year. (Ex. B, *M.M. v. SDP*, H.O. Decision, April 15, 2011.) As of the filing of this complaint, Ms. Murphy presently does not know if M.M. will be allowed to return to Richmond for his fourth grade year, absent this complaint and appeal entitling M.M. to "Stay Put" pursuant to 20 U.S.C. § 1415(j). Nondisabled rising fourth graders are not required to transfer out of Richmond Elementary School or other K-5 schools in the District.

17. Eight year-old Plaintiff J.V. is currently a second grade student who resides with his parents, Plaintiffs Sharon Vargas and Ismael Vargas ("Parents of J.V.") in Philadelphia, Pennsylvania within the boundaries of the District. He currently attends Richmond Elementary School, a Kindergarten through Grade 5 school. J.V. has autism and receives autistic support, necessitating his access to an autism support classroom. There is no dispute that J.V. is entitled to the protections of the IDEA and is a qualified individual with a disability entitled to the protections of the Americans with Disabilities Act and Section 504. As of the filing of this complaint, J.V.'s parents have received no Notice of Recommended Educational Placement/Prior Written Notice ("NOREP/PWN") that J.V. will be allowed to return to Richmond for the 2011-2012 school year, absent their acceptance of a "settlement" offer made by the District in connection with a due process complaint that is currently pending. In contrast, non-disabled rising third graders are not required to leave Richmond, a K-5 school.

18. Eight year-old Plaintiff R.S. is a second grade student who resides with his parents, Heather Sanasac and Matthew Sanasac in Philadelphia, Pennsylvania within the boundaries of the District. He is presently attending Richmond Elementary School. R.S. has

autism and receives autistic support, necessitating his access to an autism support classroom. R.S. is entitled to the protections of the IDEA and is a qualified individual with a disability entitled to the protections of the Americans with Disabilities Act and Section 504. As of the filing of this complaint, R.S. has not received written confirmation through a Notice of Recommended Placement/Prior Written Notice ("NOREP/PWN") that he will be allowed to return to Richmond, absent a "settlement" offer made by the District in connection with a due process complaint that is currently pending. In contrast, non-disabled rising third graders are not required to leave Richmond, a K-5 school.

19. Defendant, the School District of Philadelphia, is a school district within the Commonwealth Pennsylvania organized pursuant to the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 P.S. 1-101 et seq. The District's headquarters and principal place of business is located at 440 N. Broad Street Philadelphia, Pennsylvania. The District is the Local Educational Agency responsible to ensure that Plaintiffs receive a free appropriate public education pursuant to the IDEA and Chapter 14. The District also operates as Intermediate Unit 26. The District, as a public entity, receives federal funds and is subject to the Americans with Disabilities Act and Section 504.

20. Defendant School Reform Commission ("SRC") is the five member governing body of the District. It acts as the School Board and was established in December 2001 when oversight of the School District shifted to the Commonwealth of Pennsylvania. The SRC chairman, Robert L. Archie, Jr. can be contacted at the District's headquarters, at 440 N. Broad Street, Suite 101, Philadelphia, Pennsylvania.

21. Defendant Arlene Ackerman is the Superintendent of the School District of Philadelphia and is named herein in her official capacity. Ackerman is responsible for the

effective operation of the District and the implementation of policies and procedures adopted by the District and the SRC.

22. Defendant Linda Williams is the Interim Deputy Chief of Special Education of the School District of Philadelphia and is named herein in her official capacity. Williams is directly responsible for the District's compliance with the requirements of the IDEA and Chapter 14.

V. CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this suit individually and as a Class Action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) on behalf of all similarly situated individuals. The Class that Plaintiffs seek to represent is composed of:

> All children with autism in the School District of Philadelphia in grades kindergarten through eight ("K-8") who have been illegally transferred, are in the process of being transferred, or are at risk of being illegally transferred, as a result of the District's Automatic Autism Transfer Policy, the parents and guardians of those children, and future members of the class.

24. The Class is so numerous that joinder of all members is impracticable. Currently, there are at least 3,000 to 4,000[1] students in autism support classes in the District and thousands more that will be affected by the Automatic Autism Transfer Policy in the future. The exact number of Class members is not fully known to Plaintiffs at present but can be ascertained by Defendants. Despite repeated requests for the number of students in autism support classes and a list of where those classes are located, the District has declined to provide exact information. Upon information and belief, based upon testimony of District staff during administrative hearings, there are approximately 60 autism support classrooms within the District, which

[1] Upon information and belief, there may be even more children with autism in the District. The number quoted is in reliance on the oral testimony of District representative Maria Monras-Sender during a recent hearing involving J.V.

include autism support classrooms for children grades K-2, 3-5, and 6-8. As recently as June 16, 2011, during a meeting with District representatives and their counsel, the District indicated that it did not have a list of the locations of autism support classrooms within the District.

25. There are questions of law and fact common to the Class and that predominate over any questions affecting only individual members of the Class. Specifically, there are questions as to the legality of Defendants' systemic acts or omissions with respect to the District's autism support programs, as a result of the impact of the District's Automatic Autism Transfer Policy, under the IDEA, Chapter 14, Section 504, and the ADA.

26. Plaintiffs' claims are typical of the claims of the Class as all members are similarly affected by Defendants' conduct in violation of the law that is complained of herein.

27. Plaintiffs will fairly and adequately protect the interests of the Class.

28. Counsel for Plaintiffs are experienced in handling federal class action litigation and will adequately and zealously represent the interests of the Class. The Public Interest Law Center has litigated many federal class actions to protect the civil rights of persons and children with disabilities. Dechert LLP is likewise experienced in complex federal litigation.

29. Defendants have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or declaratory relief is appropriate respecting the Class as a whole. P.V. and M.M. filed administrative hearings in early September 2010 challenging the legality of the District's Automatic Transfer Policy. On April 15, 2011, the District was warned by an IDEA administrative hearing officer that it should "alter its procedures [regarding transfers of children with autism] on a broader scope, if only ***to avoid a plethora of identical claims from similarly situated students***." (Ex. A. at 15; Ex. B. at 15) (emphasis added). The same hearing officer believed his authority was limited, thus precluding his ability to decide whether "the

District's AS ["autistic support"] programs as a whole are structurally flawed." (Ex. A. at 3; Ex. B at 3.) In May 2011, the District received J.V.'s hearing request and admitted that it still had no Grade 3-5 Autism Support classroom at Richmond Elementary School. As of June 16, 2011, despite the hearing officer's pronouncements, the District would not confirm abandonment of the faulty Automatic Autism Transfer Policy and proposed transfer (again) of P.V. The District appears committed to the Policy as a matter of administrative convenience.

30. A class action is superior to any other available method for fairly and efficiently adjudicating this controversy in that there is no interest by members of the Class in individually controlling the prosecution of separate actions; upon information and belief no similar litigation concerning the claims herein has already begun by any Class member; it is desirable to concentrate the litigation of the claims made herein in a single proceeding; and whatever difficulties may exist in the management of the Class will be greatly outweighed by the class action process, including, but not limited to, providing Class members with a method for redress of claims more fairly, efficiently, and consistently than individual litigation may provide.

31. It would be futile to require Plaintiffs to exhaust or re-exhaust administrative remedies since the District has adopted a systemic policy of transferring children with autism, and as a result Pennsylvania's special education administrative hearing system cannot, as expressly noted by the hearing officer, adequately remedy the systemic problem. Furthermore, upon information and belief, there are not enough special education hearing officers available to timely handle the number of due process hearing requests that would be necessary.

32. Plaintiffs P.V. and M.M. seek no individual compensatory education relief pursuant to the IDEA as they have been awarded compensatory education for their loss of educational benefit by the hearing officer's decisions. They seek only to have the Policy

declared illegal so that they will no longer be subject to it and will instead be treated fairly within the IDEA process as to their placements in future years.

33. Plaintiffs J.V. and R.S. seek to have the Policy declared illegal so that they will no longer be subject to it and will instead be treated fairly within the IDEA process as to their placements for third grade and in future years. Any individual compensatory education relief to which they are entitled can be ordered by a hearing officer and they have requested relief from same in the hearings now pending. The hearing officers assigned, will not, however, be able to provide them relief from being subjected to the illegal Policy now or in the future.

VI. FACTS

The Automatic Autism Transfer Policy And The Hearing Officer's Decisions Of April 15, 2011

34. Each of the named Plaintiffs and the rest of the Class have been subjected to and continue to be adversely affected by the District's Automatic Autism Transfer Policy.

35. The District operates schools that serve children grades K-5 and K-8. Nondisabled children who attend a K-5 school or a K-8 school are not transferred unless the family moves, a transfer is requested, or the child is transferred for disciplinary reasons.

36. The District maintains autism support classrooms throughout the District in its K-5 and K-8 schools. In the District, elementary autism support classes are divided based on age, specifically, Kindergarten through Second Grade ("K-2") and Grade Three through Grade Five ("3-5"). The District has some Grade six through Grade eight ("6-8") autism support classes.

37. The K-2, 3-5 and 6-8 autism support classrooms are randomly placed throughout the District. The exact number and location of autism support classrooms is not known at this

time. However, it is known that a K-5 school may not have both a K-2 and 3-5 autism support classroom and a K-8 school may not have autism support classrooms for K-2, 3-5 and 6-8.[2]

38. Children with autism are transferred from one school to another school under the Automatic Autism Transfer Policy without regard to their individual unique needs, without parental notice or participation, and outside of the IEP team process. Individuals other than the child's teacher or even school principal make the transfer decision. For example, pursuant to the District's Automatic Autism Transfer Policy, second graders in autism support placements are regularly forced to move to different schools for third grade while their non-disabled peers can continue on in their same schools until fifth grade (if a K-5 school) or eighth grade (if a K-8 school). These students with autism are forced to move solely because of their disability.

39. According to the District's website, there are more than 54 K-2 autism support classes in the District and an unknown number of 3-5 autism support classes. However, upon information and belief, there are few K-5 schools or Kindergarten through Eighth grade ("K-8") schools that have both a K-2 and 3-5 autism support classroom. District representatives assert that there are K-8 schools with a K-2, 3-5 and 6-8 classroom, but the only one identified by those representatives, McKinley Elementary School (a K-8) school was visited by the parents and does not currently have a 6-8 classroom.

40. Richmond Elementary School, a K-5 school, contains one K-2 autistic support classroom, but no 3-5 autistic support classroom. On May 5 and May 25, 2011, in answers to hearing requests from J.V. and R.S., the District twice stated that it had no 3-5 classroom at Richmond and defended its failure to have a 3-5 classroom. Recently, in June 2011, presumably

[2] For example, District representatives have asserted that McKinley Elementary School, a K-8 school "will have" a K-2, 3-5 and 6-8 autism support classroom. The latest plans submitted to the Pennsylvania Department of Education list McKinley as having only a K-2 and two 3-5 classrooms.

in response to the hearing officer's decision, District administrators suggested that they intend to develop a 3-5 autistic support classroom there during 2011-2012. However, no teacher has been hired to date and no 3-5 teachers have been trained to support inclusive opportunities for children who would attend a 3-5 autistic support classroom at Richmond. Furthermore, District administrators have proposed moving P.V. from Richmond Elementary School which is inconsistent with the creation of a 3-5 autistic support classroom at Richmond. Upon information and belief, there are other elementary schools in the District that contain either a K-2 autistic support classroom or a 3-5 autistic support classroom, but not both.

41. The District has wholly admitted to its practice of setting up K-2 autism support programs in schools separate from the 3-5 autism support programs and to implementing the Automatic Autism Transfer Policy, regardless of the fact that violates applicable federal and state law. The Hearing Officer found that in Richmond, non-disabled children start in kindergarten and transfer to another building after fifth grade unless the family moves, the parents request a building transfer or the student is moved for disciplinary reasons, but that students who require an autism support classroom are upper leveled after second grade because there is no 3-5 autism support classroom in that building. (Ex. A at 5; Ex. B at 5.)

42. Some of the details of the Automatic Autism Transfer Policy were explored at the joint administrative hearings for P.V. and M.M. that was held from December 2010 through February 2011, including the testimony of Maria Monras-Sender, the Executive Director of the Office of Specialized Instruction ("OSIS"), Cathy Roccia-Meier of the Philadelphia Right to Education Local Task Force, Anthony Ciampoli, Principal of Richmond Elementary School, and Leah Taylor, Special Education Teacher at Richmond Elementary School.

43. In the hearing decisions for P.V. and M.M., both dated April 15, 2011, Hearing Officer Ford found that "the District violated the Parents' right to participation by reassigning the Student to a different school building without sending IDEA-compliant prior written notice." The Hearing Officer further stated: "Although the Hearing Officer lacks authority to order wholesale changes to the District's procedures, it is well within the Hearing Officer's authority to compel the District to issue a NOREP and a Procedural Safeguards Notice every time it proposes a building reassignment for *this* Student." (Ex. A at 15, Ex. B at 15.)

44. At the administrative hearings for P.V. and M.M. Executive Director Monras-Sender admitted that the District does not even maintain a list of the schools that have K-2 or 3-5 autism support classes. (Transcript of Due Process Hearing Proceedings for M.M. and P.V. ("Hearing Tr."), vol. 3, 487-89, Feb. 4, 2011.)

45. Ms. Monras-Sender testified that the District does not transfer non-disabled rising third graders to different schools. (Hearing Tr. vol. 3, 477, Feb. 4, 2011). Furthermore, it already has been found in the administrative hearing process that "[w]hen a [typical] student in the District reaches the end of his or her building age level, he or she is moved to another building." This is simply not the case for children with autism because of the Automatic Autism Transfer Policy. As has been found in the administrative hearing process, at Richmond for example, "non-disabled children start in kindergarten and transfer to another building after fifth grade unless the family moves, the parents request a building transfer or the student is moved for disciplinary reasons." (Ex. A at 5; Ex. B at 5.)

46. Ms. Monras-Sender acknowledged that when a child with autism is transferred to a new building for third grade, there is no way for either a parent or an IEP team to appeal the building placement. (Hearing Tr. vol. 3, 547, Feb. 4, 2011.)

47. Ms. Monras-Sender conceded that if there was list of all the locations of the K-2 and 3-5 classes that "there's no reason that a list cannot be provided" to the parents. (Hearing Tr. vol. 3, 487-89, Feb. 4, 2011.)

48. As a result of *Pennsylvania Ass'n for Retarded Children* (*PARC) v. Commonwealth*, 334 F. Supp. 1257 (E.D. Pa. 1971), Philadelphia has a Right to Education Local Task Force. The Philadelphia Right to Education Local Taskforce's website is found at www.philadelphialtf.org. On or about 2004, the Philadelphia Right to Education Local Task Force specifically informed the District that its system of scattered K-2, 3-5 and 6-8 classes interrupted the K-5 and K-8 experience of children with autism and that such policy is contrary to appropriate programming for children with autism. Cathy Roccia-Meier of the Local Task Force testified at the P.V. and M.M. hearings that "one of the major recommendations [of the Task Force] was that any school that had an autistic support program should cover the grade ranges of students in that school. If it's K to 8, we recommended it be K to 8. If it was K to 5, it should be K to 5, of course, because ***transition is one of the most difficult areas for students with disabilities***." (Hearing Tr. vol. 1, 38-39, Dec. 10, 2010) (emphasis added).

49. The District is aware that its Policy has been criticized by the Right to Education Local Task Force, but has done nothing in the past seven years to fix the problem. (Hearing Tr. vol. 3, 493, Feb. 4, 2011.)

50. District Special Education Administrator Ms. Monras-Sender testified that she favors continuity of services and programming for children with autism. (Hearing Tr. vol. 3, 494, 533-34, Feb. 4, 2011.)

51. Ms. Monras-Sender admitted that the District has no specific plan to provide continuity of services for children with autism. (Hearing Tr. vol. 3, 495, Feb. 4, 2011.)

52. As late as May 25, 2011, the District admitted that "it has not made a decision yet whether Richmond will have an AS classroom that would serve third graders for the 2011-2012 school year." (District's Answer, May 25, 2011.)

53. Instead of involving parents in the process to determine even where a child would be transferred, through the mandated IEP team process, administrators or their staff who are not part of the IEP team and often who have never met the child unilaterally make transfer decisions without even first consulting with parents and the IEP team, including the child's teacher. "Both IEPs and NOREPs specify the building that the Student is [currently] assigned to" yet "[n]either a NOREP nor a procedural safeguards letter is sent" before transferring the child. (Ex. A at 6; Ex. B at 6.) The District takes the position that parents have no right to be involved in or even be timely informed of the location of their child's services.

54. In addition to the *per se* illegal nature of the Automatic Autism Transfer Policy, there are additional negative consequences to children with autism as a result of the haphazard nature of the District's placement of autistic support classrooms throughout the District. Children with autism are relegated to classrooms that are over-enrolled and that lack sufficiently trained staff and resources to ensure inclusive opportunities for children with autism, and children with autism are frequently not educated in the Least Restrictive Environment. In both P.V. and M.M.'s case, they were denied access to regular education settings as a result of over-enrollment, insufficient staff and insufficiently trained staff. In J.V. and R.S.'s case, their parents filed complaints with the Pennsylvania Department of Education, Bureau of Special Education. (Ex. A at 3; Ex. B at 3). Richmond Elementary School's special education autism support teacher, Leah Taylor, forthrightly testified that her K-2 autism support classroom at Richmond Elementary School was over-enrolled in December 2010 and has been for the past

three years. (Hearing Tr. vol. 1, 109-10, Dec. 10, 2010.) Ms. Taylor noted that over-enrollment causes her to be "spread too thin" (Hearing Tr. vol. 1, 128, Dec. 10, 2010) and that the children would be making more progress if her class was not over-enrolled. (Hearing Tr. vol. 2, 414, Feb. 3. 2011.) Despite the District's suggestion that it might create a 3-5 classroom at Richmond Elementary School, the District has failed to take any necessary steps to ensure District-wide that children with autism who are grades K-8 would have access to regular education classrooms with sufficient staff and resources, or taken any steps to ensure that over-enrollment does not continue as a result of the haphazard Automatic Autism Transfer Policy.

VII. LEGAL CLAIMS

Count One: Violation of the Individuals with Disabilities Education Act

55. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

56. The District's Automatic Autism Transfer Policy is established and implemented in a manner that is completely contrary to the IDEA because the decisions about the placement of children into different schools and classes are made without regard to the individual unique needs of each child, substantially infringe upon meaningful parental involvement in the process and are made wholly outside of the procedural safeguards and requirements of the IDEA. 20 U.S.C. § 1414(d); 20 U.S.C. § 1415.

57. Wherefore, Plaintiffs and the Class demand judgment in their favor and against Defendants for declaratory and injunctive relief set forth herein.

Count Two: Violation of Chapter 14

58. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

59. The District's Automatic Autism Transfer Policy is established and implemented in a manner that is completely contrary to the IDEA because the decisions about the placement of children into different schools and classes are made without regard to the individual unique needs of each child, substantially infringe upon meaningful parental involvement in the process and are made wholly outside of the procedural safeguards and requirements of Chapter 14. The Policy is contrary as well to the requirements of Chapter 14 of the Pennsylvania Code, specifically Section 14.145 that children be educated in the least restrictive environment.

60. Wherefore, Plaintiffs and the Class demand judgment in their favor and against Defendants for declaratory and injunctive relief set forth herein.

Count Three: Violation of the Americans with Disabilities Act

61. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

62. The Defendants have violated the rights of the Plaintiffs and Class by the establishment and implementation of the Automatic Autism Transfer Policy resulting in the random assignment of students into various autistic support classes. By requiring the Plaintiffs and Class to transfer to different schools at ages when non-disabled students are not required to transfer to new schools because of age, the District has discriminated against the Plaintiffs and Class because of their disability of autism.

63. Wherefore, Plaintiffs and the Class demand judgment in their favor and against Defendants for declaratory relief, injunctive relief, and damages set forth herein.

Count Four: Violation of Section 504 of the Rehabilitation Act

64. Plaintiffs incorporate the preceding paragraphs of this Complaint as if set forth in full herein.

65. The Defendants violate Plaintiffs' and the Class' Section 504 rights by requiring students with autism to transfer to a different school at a certain age solely because they are disabled as a result of autism. The Defendants have admitted that non-disabled students are not subjected to the Policy.

66. Wherefore, Plaintiffs and the Class demand judgment in their favor and against Defendants for declaratory relief, injunctive relief, and damages set forth herein.

VIII. RELIEF REQUESTED

WHEREFORE, Plaintiffs request that:

1. The Court take jurisdiction of this matter, and certify the matter as a Class Action.
2. Order that the "The Automatic Autism Transfer Policy" is illegal, and contrary to the IDEA, Section 504, the ADA, and may no longer be used.
3. Order that the named plaintiffs are protected pursuant to the IDEA's "Stay Put" provision at 20 U.S.C. § 1415(j) and permit them to stay in their placements unless otherwise agreed by the parents and the District.
4. Order that the District immediately create and publicly disseminate a list of all of the schools within the District that house any autistic support classroom for grades K-8 (K-2, 3-5, or 6-8). This list shall be provided to the Philadelphia Right to Education Local Task Force.
5. Order that consistent with the IDEA's IEP process provisions discussed *supra*, the District will establish a new written plan and pattern and policy to provide continuity of programming for students with autism. The plan shall be developed with parental involvement. The plan shall provide that as the District develops or changes classrooms, the District shall ensure that any school which contains an autism support

classroom shall offer autism programming for the same years that the school provides programming for children who are not disabled. Such programs shall cover grades K-8 to provide the same opportunity for meaningful integration into the school community for students with autism as their non-disabled peers.

6. Order that consistent with IDEA parental participation requirements, the District maintain an accurate list of where the autism support classes are currently located and this list be published annually and provided to parents of children with autism at each IEP meeting so that they may be involved in the process to determine where their child will attend school.

7. Order that consistent with IDEA parental participation/prior written notice requirements that an IEP meeting shall be held and a Notice of Recommended Educational Placement/Prior Written Notice shall be issued indicating what school the child will attend before reassigning a child with autism to another school;

8. Award to Plaintiffs their costs and attorneys fees; and

9. Grant such other and further relief as may be just and proper.

Dated: June 20, 2011

Respectfully,

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