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student is conducted with little to no parental notice or involvement, and without the required consideration of the children's individualized circumstances. (Doc. No. 1, at ¶ 2).

Document 72, at 1-2. Plaintiffs asserted claims under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. and as amended ("IDEA"), Chapter 14 of the Pennsylvania Code of Education Regulations, 22 Pa. Code § 14 et seq. ("Chapter 14"), Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq. and as amended ("ADA"), and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504").

On October 31, 2011, the Court denied the Defendants' motions to dismiss and strike class allegations (Docs. 23 and 24). Discovery began in early 2012, and consisted of depositions of numerous employees of the School District, Plaintiff parents, and experts. Plaintiffs prevailed on their motion to compel during discovery (Doc. 39) and Defendants produced over 17,000 documents. Discovery closed on June 11, 2012.

The Parties engaged in lengthy class certification and summary judgment briefing, including surreplies. By Orders and Memorandum Opinions entered on February 19, 2013, the Court granted in part and denied in part cross motions for summary judgment (Docs. 74 and 75) and granted Plaintiffs' motion for class certification under Federal Rules of Civil Procedure 23(a) and 23(b)(2) with respect to the claims on which summary judgment was entered for Plaintiffs (Docs. 72 and 73). The Court granted summary judgment in favor of the Defendants on Plaintiffs' claims that the School District transfers students with autism automatically from one school to another, simply because they complete a certain grade, more frequently than the School District transfers non-disabled students who therefore, unlike children with autism, enjoy continued, uninterrupted attendance in K-5 schools or K-8 schools. The Court granted summary judgment in favor of the Plaintiffs on Plaintiffs' claims that the decision-making process leading up to the transfer of a student with autism is conducted with little to no parental notice or involvement, and

without the required consideration of the child's individualized circumstances. Accordingly, the Court ordered the School District to "alter its upper-leveling process for children with autism to provide prior written notice and a level of parental participation that complies with the procedural requirements under the IDEA." (Doc. 74).

Defendants filed a motion for reconsideration (Doc. 76) on February 27, 2013 and the Court held a hearing on the motion on April 16, 2013. On August 14, 2013, after denying the Defendants' motion for reconsideration (Doc. 101), the Court re-opened this matter (Doc. 100) to determine the "specific contours of injunctive relief" or alternatively to give the Parties an opportunity to settle. *Id.* The Parties began settlement negotiations in May 2013.

The Parties' settlement negotiations progressed and after enlisting the help of Magistrate Judge Rice, the Parties have negotiated a comprehensive Settlement Agreement dated April 15, 2014 covering the issues in the case. *See Ex. A.* The negotiations were at arm's length. Each side fully understands the terms, and has compromised to reach the Agreement.

As noted above, the remaining issues in this lawsuit relate to notice and participation by parents in decisions to upper-level their children (grades K-8) with autism. The Settlement Agreement provides three ways that parents of class members will receive this critical information.

First, although the Court had granted summary judgment for Defendants on this issue, Defendants have agreed to publish annually a list of all the schools within the School District that have Autistic Support ("AS") classrooms in grades K-8.¹ Plaintiffs regard this list as an integral piece of information necessary to enable parents to effectively understand and potentially engage the School District about upper-leveling decisions.

¹ The list may be published with appropriate disclaimers regarding its accuracy and that school configurations are subject to change at any time throughout the year.

The School District has also agreed to provide two letter notices to class members who will likely be upper-leveled the following school year in a manner consistent with the sample notice letters attached hereto at Exhibit C.

The first letter will be sent on or about January 17 and will notify parents of the transfer and inform them that they can talk to a School District designee or their child's classroom teacher about upper-leveling or request an IEP meeting to discuss their child's needs.

A second letter will be sent on or about June 1² and include building assignment information, enclose the most current version of "Parents' Rights: Understanding the Procedural Safeguards Notice" booklet and inform parents they can contact a School District designee, call the Office for Dispute Resolution or contact any organization listed in the booklet for more information about mediation or filing a due process request.

Thus, the terms of the proposed Settlement Agreement provide notice and an opportunity for parental participation. Indeed, because the Court did not order the School District to provide a public list of classrooms, the Settlement exceeds the relief received by Plaintiffs. Two notices, giving parents two opportunities to provide input into the upper-leveling decision process, is consistent with and satisfies the Court's order that parents be given prior written notice. Prior written notice, as defined by 34 C.F.R. § 300.503 requires that parents receive notice of an action proposed or refused by the School District, an explanation of the action proposed or refused, and information about their rights and sources for assistance a reasonable time before the School District acts to propose or refuse an action affecting the child's special education. By providing

² As the effective date of the Settlement Agreement is April 2014, class members will only receive the June notice for the current (2013-2014) school year and that letter will not include the language from the sample at Exhibit C that prior notice was given. Furthermore, because June 1, 2014 is a Sunday, the notice letters will be sent by June 2, 2014.

parents two separate notices, one in January and one in June, the School District will afford parents with information in the spirit of the prior written notice required.

Although the Settlement Agreement calls for the dismissal of all claims, the Court will retain limited jurisdiction to enforce the Settlement Agreement until January 2, 2017. If the Parties believe that the Settlement Agreement has been breached, they must meet and confer in good faith and if they are unable to resolve the issue, the matter will be referred to Magistrate Judge Rice to enforce the Settlement Agreement and apply an appropriate remedy. The release provisions cover all claims that were or could have been brought by Plaintiffs for prospective injunctive relief challenging the School District's policy or practice, but exclude all individual claims by class members regarding upper-level transfers that they have a statutory right to bring. Finally, the Settlement Agreement provides for \$325,000 in attorneys' fees and expenses to class counsel (payable in three installments), which are at a substantial discount from the lodestar. Thus, the settlement will "remedy current conditions and provide[] a viable mechanism" for compliance in the future. *See Collier v. Montgomery County Hous. Auth.*, 192 F.R.D. 176, 186 (E.D. Pa. 2000). Notice will be provided via first-class mail, and publication via newspaper and website.

Given that the Settlement Agreement will terminate this lengthy litigation and will benefit class members fairly and adequately, for the reasons expressed more fully below, the School District and Plaintiffs jointly request the Court preliminarily approve the Settlement Agreement and notice to the Class.

ARGUMENT

I. The Settlement Agreement Fully Satisfies The Standards For Preliminary Approval Of A Class Action Settlement.

When approving a class action settlement, the court must ultimately evaluate “whether the settlement is fair, adequate, and reasonable.” *Walsh v. Great Atl. & Pac. Tea Co.*, 726 F.2d 956, 965 (3d Cir. 1983). “The law looks favorably upon class action settlements because avoiding a trial [and appeal] conserves scarce judicial resources.” *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 114 (E.D. Pa. 2005). The Court must give its “initial blessing” to the preliminary settlement, i.e., before class notice is given and a formal fairness hearing is held. *See id.*

“In evaluating a proposed settlement for preliminary approval . . . the Court is required to determine only whether ‘the proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval.’” *Mehling v. New York Life Insur. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007) (quoting *Thomas v. NCO Fin. Sys.*, 2002 U.S. Dist. LEXIS 14157, at *14 (E.D. Pa. July 31, 2002)). Courts also typically evaluate if the settlement resulted from serious arm’s-length negotiations. *Id.* at 472.

The Settlement Agreement meets the standard for preliminary approval. Class members have obtained the relief to which the Court found they were entitled—parental notice prior to transfer, an opportunity for parental participation in the transfer decision, and, in addition, some of the relief to which the Court found they were not entitled—information regarding where K-8 AS classrooms are located within the School District. The Settlement Agreement also provides a mechanism for enforcing the Settlement Agreement by allowing this Court and by extension

Magistrate Judge Rice to retain limited jurisdiction until January 2017. A separate enforcement action can be brought after that time.

The Settlement Agreement should be preliminarily approved for the following reasons.

A. The Settlement Negotiations Were Serious, Informed And At Arm's-Length.

The negotiations that led to the proposed Settlement Agreement were undoubtedly at arm's length. It came only after lengthy vigorously contested litigation, with extensive briefing including motions to strike, dismiss, compel, class certification, summary judgment and reconsideration. The Parties also had the advantage of a review of the evidence by autism and special education experts.

The Parties first engaged in settlement negotiations after the Court held a hearing on the School District's motion for reconsideration. To avoid a time-consuming and costly appeal, the Parties began settlement negotiations in May 2013 and, with the assistance of Magistrate Judge Rice, reached a preliminary settlement of the merits in late December 2013. The Settlement Agreement reflects not only the interests of the class, but importantly maintains the statutory rights of individual class members. Settlement of the substantive provisions was completed in principle prior to final determination of any payment of attorneys' fees and costs on February 28, 2014.

Clearly, this Settlement Agreement did not come early in the litigation, but only after extensive discovery, merits briefing and, indeed, substantive class and merits rulings by this Court. Thus, the Parties were able to evaluate their respective positions based on the robust amount of information available to them.

B. The Proposed Settlement Agreement Contains No Obvious Deficiencies.

The proposed Settlement Agreement contains no obvious deficiencies such as preference to certain class members or excessive attorneys' fees, and is within the range for approval. The Settlement Agreement provides the Plaintiff class with a remedy that exceeds the relief ordered by this Court: (1) the School District will publish a list of all the schools within the School District that have AS classrooms³ and the grade range of those classrooms; (2) the School District will provide two letter notices to class members prior to transferring them; and (3) the School District will inform parents that they can discuss the proposed transfer at an IEP meeting and retain their rights to challenge their own individual transfer. The relief gained through this Settlement Agreement benefits each class member and will be applied uniformly to all class members. This settlement proposal is certainly within the range of possible approval.

Attorneys' fees are reasonable as class counsel will obtain \$325,000 in fees and costs from the School District, which is substantially less than their lodestar rate. *See Samuel v. Equicredit Corp.*, 2002 U.S. Dist. LEXIS 8234 at *5 n. 4 (E.D. Pa. May 6, 2002) (a \$625,000 settlement preliminarily approved where fees were equal to or less than plaintiffs' lodestar). Class counsel will receive no additional fees or costs for monitoring implementation of the Settlement Agreement.

C. The Settlement Agreement Is Fair And Reasonable.

After notice and a fairness hearing are provided, a court must determine if the final settlement is fair and reasonable. A court "should presume a class settlement is fair when four factors apply: '(1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a

³ Classrooms serving children in grades K-8.

small fraction of the class objected.” *Chester Upland Sch. Dist. v. Commonwealth*, 284 F.R.D. 305, 323 (E.D. Pa. 2012) (quoting *In re Warfarin*, 391 F.3d 516, 535 (3d Cir. 2004)).

Here, the Settlement Agreement easily satisfies the fairness presumption. As discussed *supra*, the negotiations were at arm’s-length. Moreover, settlement occurred after discovery which included the production of thousands of documents and numerous depositions of School District representatives, Plaintiff parents, and experts. The Parties’ counsel are experienced in similar litigation as PILCOP has litigated many federal class actions to protect the civil rights of individuals with disabilities. Dechert LLP is an international law firm with 26 offices in the United States, Europe, Asia and the Middle East. Dechert is highly experienced in handling complex litigation and class action matters. Schnader Harrison Segal & Lewis LLP is a reputable mid-sized law firm with many decades of experience in class action litigation. As this action was for injunctive relief, the class has not yet had an opportunity to object or react to the settlement.

Additionally, to determine if a proposed settlement under Federal Rule of Civil Procedure 23(e) is fair, reasonable, and adequate, the Third Circuit in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975) enumerated nine factors courts should consider:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through trial;
- (7) the ability of the defendants to withstand a greater judgment;

(8) the range of reasonableness of the settlement fund in light of the best possible recovery; and

(9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Id. at 157. An analysis of these factors confirms that the proposed Settlement Agreement is fair and reasonable.

(1) ***The complexity, expense and likely duration of the litigation.*** Although the Court granted partial summary judgment on the IDEA claim in favor of Plaintiffs and denied the School District's motion for reconsideration, the Court indicated that it would hold a hearing, if the case did not settle, to determine the exact contours of the injunctive relief requiring additional expense and effort by counsel. Furthermore, the legal issues were challenging and the possibility of appeal by the School District was strong. An appeal would have delayed the implementation of relief to the class.

(2) ***The reaction of the class to the settlement.*** This factor can only be assessed after notice and hearing; however, Plaintiffs are in favor of the settlement, and class counsel are not aware of any class members who have expressed a negative reaction to it.

(3) ***The stage of the proceedings and the amount of discovery completed.*** This factor "captures the degree of case development . . . prior to settlement" and "[t]hrough this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995). Counsel's appreciation of the merits was well-developed in the present case by at least February 19, 2013, when the Court certified the class and resolved cross motions for summary judgment, revealing the strengths and weaknesses of the case.

(4) *The risks of establishing liability.* This Court granted in part and denied in part cross motions for summary judgment. Some of the issues presented to the Court were relatively novel and untested in this jurisdiction. All parties faced significant risks in the further proceedings ordered by this Court and, if an appeal were to be filed, in the Third Circuit Court of Appeals.

(5) *The risks of establishing damages.* Because this was an action for injunctive relief, the fifth *Girsh* factor does not apply. *Hawker v. Consvooy*, 198 F.R.D. 619, 632 (D.N.J. 2001).

(6) *The risks of maintaining the class action through trial.* The class was certified prior to trial and the action was decided on cross motions for summary judgment; thus, there is little risk associated with this factor.

(7) *The ability of the defendants to withstand a greater judgment.* Because this action sought injunctive and declaratory relief, this factor is inapplicable.

(8) *The range of reasonableness of the settlement fund in light of the best possible recovery* and (9) *the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.* In evaluating these factors in a case seeking injunctive relief, courts compare the relief accorded by the settlement to the relief Plaintiffs could expect to receive after trial, in light of the risks of litigation. *D.M. v. Terhune*, 67 F. Supp. 2d 401, 410-11 (D.N.J. 1999). Here, the settlement addresses the crux of the relief ordered by the Court and, indeed, some of the relief denied by the Court. The Settlement Agreement provides a conduct-driven remedy that was specifically attuned to the unique issues presented in this case by capable parties and counsel well-versed in educational settings, processes, and law. Further, as noted above, there are risks and costs associated with continuing the litigation. Plaintiffs could lose or achieve less than this Settlement Agreement after the Court defines “the specific contours

of injunctive relief” or after the Third Circuit reviews the case. The settlement is a fair resolution of Plaintiffs’ claims, in light of all the attendant risks of litigation.

II. The Proposed Notice To Class Members Is Adequate.

The Parties propose that notice be given to class members through a variety of methods, including notifying identifiable parents of students with autism in grades K-8, and identifiable parents of rising kindergarten students currently enrolled in early intervention, by first class mail by the School District, additionally through publication in the Philadelphia Inquirer, the Philadelphia Daily News, the Philadelphia Tribune, and the Notebook (an educational newspaper) as well as publication on the School District’s website and PILCOP’s website. The School District shall bear the costs, other than for PILCOP’s website.

As this class action was certified under Federal Rule of Civil Procedure 23(a) and 23(b)(2) (Doc. 72), the notice requirements are less stringent than for Rule 23(b)(3) class actions which typically involve money damages. Rule 23(c)(2)(A) states that “[f]or any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class.” Rule 23(e) governs proposed settlements and requires the court to “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1); *see also Daniel B. v. O’Bannon*, 633 F. Supp. 919, 926 (E.D. Pa. 1986) (“The court complied with Fed. R. Civ. P. 23(e) by ordering notice of the proposed settlement sent by first class mail to all class members as well as to parents, guardians or family representatives. Any additional notice in a Rule 23(b)(2) case is not obligatory but discretionary with the court.”). Generally to comply with Rule 23(e) the notice must be reasonable and “the best practicable under the circumstances.” *Daniel B.*, 633 F. Supp. at 922; *Harris v. City of Phila.*, No. 82-CV-1847, 2000 U.S. Dist. LEXIS 12579, at *34 (E.D. Pa. Aug. 30, 2000).

Here the notice is fair and reasonable and the best practicable under the circumstances. Dissemination is more than satisfactory—not only will the vast majority of class member receive the notice by mail, but the School District’s website, PILCOP’s website and four Philadelphia newspapers will also contain the notice. Finally, the form of notice is adequate to inform class members of their rights. The notice provides a summary of the content of the lawsuit and its procedural history, details the history of settlement negotiations, and explains the settlement terms in simple/plain language. The notice also provides instructions on obtaining information relevant to the litigation, gives contact information for inquiries concerning the Settlement Agreement, sets forth the process for objecting to the Settlement Agreement, and explains that individual claimants reserve their rights.

CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court preliminarily approve the proposed Settlement Agreement, approve the Parties’ proposed form of notice and proposal for providing notice, and set this matter for a fairness hearing.

Dated: April 15, 2014

Respectfully,

/s/ Sonja Kerr

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Counsel for Defendants

Exhibit A

SETTLEMENT AGREEMENT

AND NOW, this 15th day of April, 2014, the undersigned parties, as further described herein, in consideration of the mutual promises and covenants further contained herein, and intending to be legally bound, hereby agree as follows:

I. BACKGROUND

A. Parties. This Settlement Agreement (“Agreement”) is made by and between: (1) the School District of Philadelphia (the “School District”) and the School Reform Commission (“SRC”)¹ (collectively “Defendants”) and (2) P.V., M.M., J.V., and R.S., by and through their parents (“Plaintiffs”) and the class certified by the Court in *P.V. v. The School District of Philadelphia*, 289 F.R.D. 227, 236 (E.D. Pa. 2013):

All children with autism in the School District of Philadelphia in grades kindergarten through eight (“K-8”) who have been transferred, are in the process of being transferred, or are at risk of being transferred, as a result of the School District’s upper-leveling process, the parents and guardians of those children, and future members of the class.

(the “Class” or “Plaintiff Class”).

B. Terminology. As used herein, the term “Upper-Leveling” or “Upper-Level Transfer” refers to when a student whose Individualized Education Program (“IEP”) requires use of an Autistic Support (“AS”) classroom completes the highest grade level for which an AS classroom is provided in his or her current school building and the School District transfers that student to a different school where those services can continue to be provided, despite that students completing the same grade level who do not require use of an AS classroom can continue to the next grade level in the same school building.

¹ None of the individual defendants named in the complaint is currently employed by the School District.

C. Resolution of Pending Litigation and Claims. This Agreement concerns the resolution and dismissal of all Class claims seeking prospective injunctive relief challenging the School District's Upper-Leveling of class members which are or could have been asserted in *P.V. v. The School District of Philadelphia*, No. 2:11-cv-4027 (E.D. Pa.) (the "*P.V.* matter"), in exchange for the consideration specifically set forth herein.

II. SETTLEMENT TERMS

A. List of AS Classrooms. By October 15 of each school year, the School District shall publish a list of all the schools within the School District that have AS classrooms for children in grades K-8. The list may be published with appropriate disclaimers regarding its accuracy and that school configurations are subject to change at any time throughout the school year. The list shall be published on the School District's website in a conspicuous and clear manner.

B. Notice. The School District shall provide parents of children with autism two notice letters, – one in January and one in June² – prior to any potential Upper-Leveling of any Class member. The notice letters and list of classrooms (see *supra* Part II(A)), together, shall constitute and satisfy the spirit of prior written notice. All letters shall be copied ("cc'd") to the child's entire IEP team. The draft letters speak for themselves and are attached hereto as Exhibit 1, but for further clarification:

² As the effective date of the Settlement Agreement is April 2014, class members will only receive the June notice for the current (2013-2014) school year and that letter will not include the language from the sample at Exhibit C that prior notice was given. Furthermore, because June 1, 2014 is a Sunday, the notice letters will be sent by June 2, 2014.

(i) The first letter will be sent on or about January 17 and will notify parents of a potential Upper-Level Transfer and inform them that they can talk to a School District designee or their child's classroom teacher about Upper-Leveling or request an IEP meeting to discuss their child's needs.

(ii) The second letter will be sent on or about June 1 and include building assignment information, enclose the most current version of "Parents' Rights: Understanding the Procedural Safeguards Notice" booklet and inform parents that they can contact a School District designee, call the Office for Dispute Resolution or contact any other organization listed in the booklet for more information about mediation or filing a due process request.

C. Maintenance of Individual Rights. Individual Class members shall retain their statutory rights to challenge the circumstances of their own Upper-Level Transfer, including those contained within 20 U.S.C. § 1415 and 34 C.F.R. § 300, et seq.

D. Enforcement of Settlement Agreement.

(i) **Continuing Limited Jurisdiction.** The Parties agree that the Court shall retain jurisdiction through January 2, 2017, for the sole and limited purpose of enforcing compliance with this Agreement in accordance with the terms of this paragraph. Such jurisdiction shall automatically terminate effective January 3, 2017, except that with respect to any enforcement action commenced in accordance with the provisions of this section prior to January 3, 2017, but remaining open as of that date, such matter shall continue to final resolution; otherwise, after January 3, 2017, the

Court shall be fully and completely divested of jurisdiction with respect to the enforcement of this Agreement.

(ii) Enforcement. If at any time from the final Court approval of the Agreement through January 3, 2017, Class counsel have a reasonably justified and colorable grievance regarding compliance with this Agreement on a Class-wide, and not individualized, basis, Class counsel shall give written notice to the School District with a copy to counsel for the School District. The School District shall have 60 calendar days to resolve the alleged concern on the basis described in such grievance and developed through further communication between the Parties. If, after the expiration of such resolution period, Class counsel is not reasonably satisfied with any proposed action or resolution, they may make a filing with Magistrate Judge Rice to enforce the Agreement. Judge Rice shall apply an appropriate remedy with respect to the specific matters addressed in the written complaint only and no others. The mechanism set forth in this Paragraph II(D)(ii) shall not be used to resolve grievances regarding specific Class members who may invoke appropriate administrative processes regarding their individual rights. For avoidance of doubt, this Agreement survives the divestment of the Court's jurisdiction, and may be enforced after January 3, 2017 via other legal process or action.

E. Class Action Settlement Approval. The Parties agree to cooperate and cause to be filed on or before April 15, 2014, a joint motion for preliminary approval of settlement agreement, and to otherwise facilitate approval of the Agreement including the submission of a form of notice to the Class under Fed. R. Civ. P. 23 as required by

rule and/or other Order of the Court. The Parties understand and agree that the burden of proof and persuasion concerning the fairness, reasonableness and adequacy of this Agreement shall rest with the Plaintiff Class regarding approval of this Agreement. Thus Plaintiffs will take the lead in drafting and Defendants shall have the opportunity to review the motion and Class notice form prior to submission to the Court. It is further understood and agreed by the Parties that the motion for settlement agreement approval and related papers filed with the Court shall note that the Defendants join the petition of the Plaintiffs.

III. RELEASE

A. Class Claims. The Parties hereby remise, release, quitclaim and forever discharge each other and their respective successors, assigns, affiliates, employees, agents, directors, officers, boards, divisions, bureaus, sections and all other related entities, whether or not officially constituted, of and from all and any manner of actions, causes of actions, judgments, suits, debts, accounts, and claims for services or fines, monies, fees, expenses and/or other amounts, arising out of or relating to the *P.V.* matter, except as specifically outlined herein in Paragraphs II(C) and III(B).

B. No Individual Waiver. Nothing in Paragraph III(A), or anywhere else in the Agreement, shall be construed or is intended to mean that any individual Class member is waiving any right or opportunity to file an individual due process complaint or to seek other recourse with respect to any issue arising in the course of the School District's provision of special education programs and services to him or her, including, e.g., to file a special education complaint with the Pennsylvania Department of

Education, or to take any action to enforce individual rights under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. and as amended (including 20 U.S.C. § 1415), Chapter 14 of the Pennsylvania Code of Education Regulations, 22 Pa. Code § 14 et seq., Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq. and as amended, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, or other applicable rules or laws. Nothing in this Agreement shall constitute in any way a waiver of the provisions of the *LeGare Consent Decree* for those Class members in grade 8.

IV. GOVERNING LAW

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

V. ATTORNEYS' FEES AND COSTS

The Parties agree that the School District will pay the Public Interest Law Center of Philadelphia ("PILCOP"), as Class counsel, \$325,000 in attorneys' fees and costs in three installments. The School District's first payment of \$100,000 is due 60 calendar days after receiving final approval from the Court. The School District shall make its second payment of \$125,000 on or before October 15, 2014. The School District shall make its third and final payment of \$100,000 on or before July 15, 2015. Plaintiffs' counsel agree to waive and shall not be entitled to any additional fee for monitoring or administering this Agreement except to the extent it may be a prevailing party in any proceeding to enforce it, including enforcement of the attorneys' fees and costs referenced herein. With the exception of the amounts set forth in this Paragraph V, the

Parties hereto are otherwise each responsible for the payment of their own respective attorneys' fees, expenses and costs incurred in connection with the *P.V.* matter.

VI. CLASS NOTICE

The School District shall administer and bear the costs associated with disseminating notice to class members of the Agreement via first-class mail within ten business days of the Court's preliminary approval of the Agreement. Within five business days of mailing the notice, the School District shall certify in writing to Plaintiffs' counsel how many letters it has mailed. The School District also shall cause and bear the costs associated with the publication of the class notice, no less than $\frac{1}{4}$ of one page in size, in the Philadelphia Inquirer, Philadelphia Daily News, Philadelphia Tribune, and Philadelphia Notebook, to be run weekly for at least two full weeks within ten business days of the Court's preliminary approval of the Agreement. Within five business days of arranging for newspaper publication, the School District shall certify in writing to Plaintiffs' counsel the size, frequency, and run dates for the notice to be published. The School District also shall publish the class notice on its website, via a clear and conspicuous link that shall be active through final approval, within ten business days of the Court's preliminary approval of the Agreement. Within three business days of arranging for website publication, the School District shall certify in writing to Plaintiffs' counsel the link, manner, and format of the notice's publication on the School District's website.

VII. ENTIRE AGREEMENT

This Agreement is the entire agreement of the Parties with respect to the subject matter hereof, there are no other agreements, express or implied, choate or inchoate,

relating to the subject matter hereof, and, if there is, and it is not set forth and referenced specifically herein, it is hereby declared null, void and of no further force, influence, consequence or effect. No promise or inducement not herein expressed has been made to any of the Parties, by any of the Parties, and no party hereto relies on any statement or representation made by any person, whether or not a party hereto, which is not specifically set forth in this Agreement.

VIII. COUNSEL

Counsel are executing this Agreement on behalf of the Parties hereto, and counsel hereby represent and warrant that their respective clients have consulted with them or other counsel of their choice regarding the content, meaning and effect of this Agreement, and that their mutual execution on behalf of their clients indicates that they are authorized to act on their client's behalf, and that such client acted freely, willingly and upon being fully informed of its or their legal rights, without duress, coercion or otherwise. The Parties hereto agree that this Agreement was jointly drafted and that it shall not, in the event of any dispute, be construed or construable against any of them on the basis of the source of draftsmanship.

IN WITNESS WHEREOF, this Settlement Agreement has been duly executed
by counsel, authorized to do so as indicated herein:

PLAINTIFF CLASS

Dated: April 15, 2014

/s/ Sonja Kerr

Sonja Kerr, Esq.

DEFENDANTS

Dated: April 15, 2014

/s/ David Smith

David Smith, Esq.

Exhibit 1

January 17, 20__

VIA REGULAR MAIL

Parent(s) of Class Member
1234 Broad Street
Philadelphia, PA 191xx

Re: Notice of Change

Dear Parent:

Your child is currently in the **[insert current grade]** and assigned to a **[insert current classroom grade range]** Autistic Support (“AS”) classroom at **[insert name of current school]**. That school will not have an AS program available for students in grades **[insert next classroom grade range]** next year. If your child continues to need a supplemental level of autistic support for the next school year, your child will be assigned next year to a new school building that has a grade-appropriate AS classroom. The School District is currently in the process of determining a location. You will receive a letter in June notifying you of your child’s new school assignment. [Your child will be assigned to X building next year (*if known replace previous 2 sentences*)].

Please do not hesitate to contact me at **[insert designee’s telephone number]** regarding this transfer. You can also speak with your child’s classroom teacher regarding transition issues, or request an IEP meeting to discuss your child’s needs.

Sincerely,

[School District designee]

cc: IEP Team LEA, SEL, and Special Education Teacher

June 1, 20__

VIA REGULAR MAIL

Parent(s) of Class Member
1234 Broad Street
Philadelphia, PA 191xx

Re: Notice of Change

Dear Parent:

We informed you previously that your child will be assigned to a new school building next year because your child's current school building will not have a grade-appropriate Autistic Support ("AS") classroom for your child. Your child will be assigned to **[next school building]** for the 20__-__ school year.

I am available to answer questions or to discuss any concerns you may have. My telephone number is **[insert designee's telephone number]**.

I have enclosed the "Parents' Rights: Understanding the Procedural Safeguards Notice" pamphlet published by the Pennsylvania Department of Education Bureau of Special Education which can provide you with more information. You can call the Office for Dispute Resolution ("ODR") at 1-800-222-3353 or any organization listed in the pamphlet for more information about mediation or to file a request for a due process hearing. If, after talking to the ODR or other organizations listed, you intend to mediate or to file for a due process hearing, please notify me at the above number as well.

Sincerely,

[School District designee]

cc: IEP Team LEA, SEL and Special Education Teacher

Exhibit B

**Notice to Parents of Students with Autism in the
School District of Philadelphia**

Notice of Hearing to Settle Class Action Litigation:

This Notice describes a proposed Settlement Agreement between parents of students with autism who attend school in the School District of Philadelphia and the School District of Philadelphia (the “Parties”). This Notice tells you what the Parties have agreed to, how to get more information regarding the Settlement, and how to object to the proposed Settlement Agreement if you think it is not fair as it relates to the provision of special education services in the School District.

On January 20, 2011, Plaintiffs, students with autism and their parents sued the School District of Philadelphia and challenged the School District’s policy and practice of automatically transferring, or “upper-leveling,” K-8 students with autism to different schools, without prior notice or input from parents or other Individualized Education Program (“IEP”) team members. This case is called *P.V. v. The School District of Philadelphia*, No. 2:11-cv-4027 (E.D. Pa.).

By Orders and Memorandum Opinions entered on February 19, 2013, the Court granted in part and denied in part cross motions for summary judgment (Docs. 74 and 75) and granted Plaintiffs’ motion for class certification under Federal Rules of Civil Procedure 23(a) and 23(b)(2) with respect to the claims on which summary judgment was entered for Plaintiffs (Docs. 72 and 73). The Court granted summary judgment in favor of the Plaintiffs on Plaintiffs’ claims that the decision-making process leading up to the transfer of a student with autism is conducted with little to no parental notice or involvement, and without the required consideration of the child’s individualized circumstances. Accordingly, the Court ordered the School District to “alter its upper-leveling process for children with autism to provide prior written notice and a level of parental participation that complies with the procedural requirements under the IDEA.” (Doc. 74).

To avoid further litigation, the Parties have reached a Settlement Agreement and have filed a motion requesting the Court to approve it.

On _____ 2014 at ____ o’clock in Courtroom _____ of the U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106, Judge Davis will hold a fairness hearing to receive testimony on whether to approve the Settlement Agreement.

**Notice to Parents of Students with Autism in the
School District of Philadelphia**

The Settlement Agreement does not affect the rights of any individual students or their parent(s)/guardian(s) to claim the student was denied special education programs or services which he or she was entitled to receive under state or federal law and seek appropriate relief.

The Settlement Agreement simply mandates that the School District must provide notice and an opportunity for parental participation before upper-leveling class members. Once the Settlement Agreement is effective, the School District must:

(1) publish a list of all the schools within the School District that have Autistic Support classrooms, and the grade range of those classrooms, by October 15 of each year;

(2) provide two letter notices – one in January and one in June – to class members prior to transferring them; and

(3) inform parents that they can discuss the proposed transfer and their child's needs at an IEP meeting and retain their rights to challenge their child's individual transfer.

The Parties agreed to end the lawsuit in exchange for this Settlement Agreement. (Again, however, no individual student is waiving his or her right to file a due process complaint regarding his/her education.) Class counsel will receive a payment toward its fees, expenses and costs from the School District of \$325,000. Class counsel will receive no additional fee for monitoring the Settlement Agreement.

Copies of the Settlement Agreement and Complaint in the case can be found on the website of the School District, <http://www.phila.k12.pa.us/>, or class counsel, www.pilcop.org. For further information about the Settlement or fairness hearing you can contact class counsel, The Public Interest Law Center at PVAutismsettlement@pilcop.org or at 215-627-7100 ext. 258.

**Notice to Parents of Students with Autism in the
School District of Philadelphia
HOW TO OBJECT TO THIS SETTLEMENT AGREEMENT IF YOU THINK IT IS
UNFAIR**

If you do not want to object to this proposed Settlement Agreement, it is not necessary for you to do anything. If, however, you want to comment on the proposed Settlement Agreement or object to it as not being fair, you or someone on your behalf may file written comments or objections on or before _____, 2014. **Written comments and objections should be submitted to this address: Office of the Clerk, United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA 19106. Attn: _____.**

You should also send a copy of your comments to the attorneys for each party at the addresses below:

Attorneys for Plaintiff Class:

PUBLIC INTEREST LAW CENTER OF PHILADELPHIA
c/o Sonja Kerr
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103
Or via email to: skerr@pilcop.org

Attorneys for the School District:

SCHNADER HARRISON SEGAL & LEWIS LLP
c/o David Smith
1600 Market Street, Suite 3600
Philadelphia, PA 19103

Exhibit C

January 17, 20__

VIA REGULAR MAIL

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Philadelphia, PA 191xx

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Please do not hesitate to contact me at **[insert designee’s telephone number]** regarding this transfer. You can also speak with your child’s classroom teacher regarding transition issues, or request an IEP meeting to discuss your child’s needs.

Sincerely,

[School District designee]

cc: IEP Team LEA, SEL, and Special Education Teacher

June 1, 20__

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Sincerely,

[School District designee]

cc: IEP Team LEA, SEL and Special Education Teacher

General Information

Court	United States District Court for the Eastern District of Pennsylvania; United States District Court for the Eastern District of Pennsylvania
Federal Nature of Suit	Civil Rights - Disabilities - Other[446]
Docket Number	2:11-cv-04027
Status	CLOSED