

PHILADELPHIA
1315 Walnut Street, Suite 400
Philadelphia, PA 19107-4717
T 215-238-6970
F 215-772-3125

PITTSBURGH
429 Fourth Ave, Suite 702
Pittsburgh, PA 15219
T 412-258-2120
F 412-467-8940

June 14, 2017

School Reform Commission
School District of Philadelphia
Joyce S. Wilkerson, Chair
William J. Green
Farah Jimenez
Dr. Christopher McGinley
Estelle Richman

Re: *Alternative Special Education Program for students with disabilities in grades K-12*

Dear Commissioners:

We write on behalf of the Philadelphia Coalition for Special Education Advocates and other undersigned organizations to oppose proposed Resolution IU 7: *Alternative Special Education Program for students with disabilities in grades K through 12*, which is scheduled for a vote on June 15, 2017. **We strongly urge the Commission to deny approval of this \$36 million contract that would establish a new segregated school for students with low-incident disabilities.** The new school is scheduled to accept 200 students beginning in September 2017, and would expand to serve 600 students by June 2022, with costs beginning at \$36,073,350 and increasing up to \$54,473,350 by June 2022.

The District’s proposal to place students with a wide range of diverse low-incident disabilities in an entirely segregated setting is a huge step backwards from hard-fought gains to end discrimination against and the isolation of students with disabilities. The proposal raises significant legal, educational, and financial concerns, and threatens to deny students with low-incident disabilities their legal entitlement to be educated in the least restrictive environment alongside their non-disabled peers as required by federal and state laws.

I. FACTUAL BACKGROUND

Due to the imminent nature of the proposed action and its gravity for students with disabilities, we engaged in multiple efforts to learn more about the proposed action. Despite our efforts, the only information we have obtained derives from an RFP updated on the District’s website on June 8, 2017. The proposed Resolution in question includes the following information:

IU-7 (Updated 6.8.17) IDEA: \$36,073,350 Contract with Catapult Learning, Inc. – IU Alternative Special Education Program RESOLVED, that the School Reform Commission acting in its capacity as Board of Directors of the Philadelphia Intermediate Unit 26 (IU-

26), authorizes IU-26, through the Executive Director or his designee, to execute, deliver and perform a contract with [to be determined] to provide an Alternative Special Education Program for students with disabilities in grades K through 12, and primarily for students with emotional disturbance and with severe disabilities, for an amount not to exceed \$36,073,350, for the period commencing July 1, 2017 through June 30, 2020, with the options for two one-year renewal terms for an annual amount not to exceed \$9,200,000, for a total amount not to exceed \$54,473,350, for the period through June 30, 2022.

Description: This resolution is to request authorization to contract with Catapult Learning, Inc., to provide a full-time alternative special education program for students with disabilities in grades K through 12. This Philadelphia Intermediate Unit (IU) alternative school program shall be designed to specifically fit the needs of students with disabilities and shall have strong academic, behavioral, transition from school to work, and therapeutic related services programs. Students enrolled in this program shall primarily have emotional disturbance (ED) disabilities, combined with low-incident disabilities, including intellectual disabilities, autism and multiple impairments. The program shall operate in a building or buildings approved by the IU. The approved building facility shall also optimally include The School District of Philadelphia (School District) educational programs operated by the School District for the general education student population.

The program will begin on September 5, 2017 and follow the IU calendar each year, providing the requisite number of scheduled school and staff days. The Program shall grow over a five (5) year term from educating 200 students beginning in September 2017 to 600 students by June 2022. During this five (5) year term, the Contractor shall train personnel from the School District to fully staff and operate the program, and transition the site location and program over to the IU by June 2022 as a fully functioning IU school for 600 students with special needs, staffed by School District personnel. The IU Alternative Special Education Program shall function as a dynamic best-practices training facility for School District teachers and staff, and as a model special education school for the Delaware Valley region. ABC Code/Funding Source \$36,073,350.00

Prior to this listing, an earlier entry referenced a resolution for “(Pending) \$15,000,000 ... Contract with TBD – IU Alternative Special Education Program” with no reference to a contract with Catapult Learning, Inc., a national provider of special education schools.¹ It is our understanding that under a settlement agreement with the Alliance for Philadelphia Public Schools entered in October 2016, the SRC must provide two weeks advanced notice of action items – a requirement that was certainly not met in this case. Moreover, the language of the proposal is confusing as the resolution references a program for “students with disabilities and primarily for students with emotional disturbance and with severe disabilities,” while the description references serving primarily students with emotional disturbance “combined with low-incident disabilities.” It is unclear which students will be served as we have no further information and the details of the proposal were only made public this week. In light of the aggressive timeline, lack of transparency, and absence of good-faith outreach to parent and advocacy groups, we have grave concerns about the manner in which the anticipated 200

¹ See Catapult Learning website at <https://www.catapultlearning.com/schools/>.

students will be identified and transitioned into this new segregated setting. Importantly, it is anticipated that many students will “return” from current placements in Approved Private Schools in order to attend this new school. However, many parents may resist moving back to a new unknown District school, and federal law mandates that students have the right to “pendency,” that is, the right to remain in their current school rather than being forced to change placements until an extensive legal process is completed which may include appeals to federal court. *See* 34 CFR § 300.518.

The proposal is an ill-conceived, short-sighted, and expensive Band-Aid that cannot mask the broader systemic failure to ensure that all students with disabilities are educated in the least restrictive environment. The reality is that a large number of these students are leaving District schools to be educated in private, alternative settings, not because the children need to be in such segregated settings, but because the District has failed to provide inclusive settings that meet those children’s needs. The answer for these children is not to create a District or IU-run segregated school but rather to support District-operated inclusive settings that provide appropriate programming and services, training and support for teachers and administrators to sustain an inclusive culture that models high expectations of success for all children.

II. LEGAL CONCERNS

The proposal to establish a school exclusively for children with low-incident disabilities raises important questions regarding the District’s commitment to inclusive learning and dedication to ensuring that all students – including those with low-incident disabilities – are not isolated in a segregated setting but are educated in the least restrictive environment alongside non-disabled peers. As discussed below, segregating students with disabilities in a separate school negatively impacts students with disabilities in part by depriving them of *any* opportunity to interact, learn, observe and be influenced by non-disabled peers in a regular education setting. Such segregation often deprives students with disabilities of equal access to the full range of learning opportunities available to their non-disabled peers, constituting discrimination on the basis of disability.

Violations of the Americans With Disabilities Act

The systemic and unnecessary isolation and segregation of students with low-incident disabilities contravenes Title II of the Americans with Disabilities Act (“ADA”), which prohibits such segregation of persons with disabilities in state and local programs, services, and activities. 42 U.S.C. §§ 12131-34. Regulations promulgated under the ADA expressly mandate that public entities “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d); *see also* 42 U.S.C. § 12132; *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999). “The most integrated setting” means a setting that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible. . .” *Id.* pt. 35, app. B at 690.

The chief purpose of the ADA was to end discrimination against, and the isolation of, individuals with disabilities. As Congress explained in adopting the ADA: “historically, society has tended to

isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2). Congress found that discrimination against individuals with disabilities persisted in education specifically, and that students faced various forms of discrimination, including “segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities.” 42 U.S.C. §§ 12101(a)(3), (a)(5).

The District’s proposed new school is tantamount to systemic reliance on a segregated setting to address the disparate educational needs of all students with low-incident disabilities. *See e.g., United States DOJ Investigation of Georgia Network for Educational and Therapeutic Support*, D.J. 169-19-71, available at https://www.ada.gov/olmstead/documents/gnets_lof.pdf (finding that unnecessary systemic reliance on segregated educational setting violated Title II). The proposed action moves District schools away from creating and maintaining inclusive and welcoming learning environments for students with disabilities to the great detriment of both students with and without disabilities. The new school is slated to serve a wide range of students with vastly different disabilities that require dramatically different individualized programming and services. Placing students with such varying needs in a single segregated school indicates that the purpose of the action is related to the convenience of the District rather than an effort to meet the individual needs of students and deprives them the well-documented benefits of being educated in the regular education setting to the greatest extent possible. The placement of these students also negatively impacts all students who are deprived of opportunities to be educated in inclusive learning environments.

Violations of the Individuals with Disabilities in Education Act

The Individuals with Disabilities in Education Act (“IDEA”), 20 U.S.C. §1400 *et seq.* requires that all students with disabilities be educated in the “least restrictive environment.” 20 U.S.C. § 1412(a)(5)(A). This means that “to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 300.114(a)(2). Federal and state law specifically require that all students with disabilities be offered a full continuum of placements starting with the least restrictive environment. *See* 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.115; 22 PA. CODE §§ 14.102(a)(1)(iv), 14.145(5). In addition, Chapter 14 of Pennsylvania’s state law mandates that “[a] student may not be removed from or determined to be ineligible for placement in a regular education classroom solely because of the nature or severity of the student’s disability, or solely because educating the student in the regular education classroom would necessitate additional cost or for administrative convenience.” 22 PA. CODE §§ 14.145(4).

In conformance with these mandates, courts have consistently acknowledged student with low-incident disabilities can and must be accommodated in community-based educational settings. *See e.g., D.B. v. Ocean Twp. Bd. of Educ.*, 985 F. Supp. 457, 490 (D.N.J. 1997) (collecting cases); *Oberti v. Bd. of Educ.*, 801 F. Sup. 1392, 1400 (D.N.J. 1992), *aff’d*, 995 F.2d 1204 (3d Cir. 1993)). *See also Beth B. v. Van Clay*, 282 F.3d 493, 499 (7th Cir. 2002). In Pennsylvania, two landmark cases secured essential inclusion rights for students with low-incident disabilities. The seminal *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* 343 F. Supp. 279 (E.D. Pa. 1972) was the first right-to-education lawsuit in the country that overturned state law and secured a quality education for students with intellectual disabilities. In *Gaskin v. Commonwealth of Pennsylvania*, 389 F.Supp. 2d 628 (E.D. Pa. 2005)

Plaintiffs obtained a groundbreaking statewide class action settlement on behalf of over 280,000 students with disabilities that promoted placement in mainstream settings, expanded related services and accommodations, mandated new policies and provided greater technical assistance and on-site training to schools on inclusion, and created a new complaint process at the state level. Importantly, the settlement also required the state to undertake new monitoring of schools to ensure that all students – including those with low-incident disabilities – were educated in the least restrictive environment. Guidance issued by the Pennsylvania Department of Education emphasizes that the individualized nature of all placement decisions must be prioritized and school districts cannot default to relying on segregated settings due to administrative convenience. *See* Basic Education Circular, *Placement Options for Special Education* (Date of Review October 2009) (“Placement BEC”) a p.2 (“regardless of the type of placement being considered,” there remains “an obligation to place a student in the least restrictive environment (LRE) in which the student’s IEP can be implemented; and . . . a corresponding prohibition against placing children based solely on factors of administrative convenience.”). The Department has expressly cautioned districts against utilizing “nontraditional sites, particularly if they are segregated and are not based on an individual placement decision, [would] result in the disapproval of the school district’s special education plan by the Bureau of Special Education.” *Id.* at 2-3.

The creation of a new, segregated special education school to serve a mandatory 200 students with low-incident disabilities in September, and 600 students by June 2022 is contrary to the settlement agreement in *Gaskin* and ignores its policies and procedures by creating a “default” to a segregated setting. It will dramatically alter the individualized placement decision-making process and is the antithesis of IDEA’s LRE mandate to ensure that all students are educated in the least restrictive environment with non-disabled peers. As the segregated school grows, teachers, staff, resources, and services will likely be diverted away from regular education settings and concentrated in the segregated school, further undermining the ability of these students receive the range of needed supplemental aids and services required to educate students with disabilities in inclusive learning environments. Notably, teachers passing through Catapult’s so-called “best-practices training facility” will be exposed to segregation as the ideal when it is, in fact the close-to-last-resort option to be reserved for the small sector of students who actually need it.

Although the District appears to believe that it is appropriate to develop this segregated venue on the ground that students with low-incident disabilities are already in segregated settings, those placements were provided because the District has not had the programs and services available to meet those particular students’ needs. It is almost a certainty, however, that for every one of the students currently in a segregated APS there is a student with the same range of challenges successfully served in a more integrated setting by this District or another school district. It is difficult to believe that the District could not develop more integrated programs with the \$34-56 million dollars it is about to throw into this new, intensely segregated setting. By doing this, the District is merely creating a costly one-size-fits-all “Approved Private School” — expending extraordinary funding and high level attention into the development of segregated programs and no time, attention or money into considering or developing integrated services and inclusive learning environments. Parents and advocates will not sit by and allow this to happen without a fight.

This action will also likely contribute to the further racial segregation of students within the District. It is documented that Black students are overrepresented in the populations of students with low-incident disabilities generally. For example, in Pennsylvania, Black students are 1.48

times more likely than White students to be identified with an intellectual disability and 1.61 times more likely than White students to be identified with emotional disturbance. Black students also are more likely than White students to be labeled with intellectual disability or emotional disturbance, and less likely to be labeled with high-incident disabilities such as speech and language impairment. Accordingly, a proposed segregation-by-disability-type would further contribute to racial segregation.²

III. EDUCATIONAL CONCERNS

Over 20 years of research has consistently demonstrated that the inclusion of students with disabilities in general education classrooms results in more favorable outcomes for students with and without disabilities.³ For students with disabilities, positive outcomes include higher graduation rates,⁴ positive achievement outcomes, and the acquisition of skills in a range of areas available in inclusive classrooms. As a result of inclusive learning, students with disabilities demonstrate greater social interaction with typical peers, greater social competence and improved communication skills. In addition, inclusive learning environments facilitate the acquisition of literacy and adaptive skills. One study examined the outcomes of 11,000 students with a range of disabilities and found that more time spent in a general education classroom was positively correlated with: a) fewer absences from school, b) fewer referrals for disruptive behavior, and c) better outcomes after high school in the areas of employment and independent living.⁵ Inclusive learning environments also provide a far better quality education for *all* children. They are instrumental in changing discriminatory attitudes and expanding the ability of individuals to interact, socialize, and learn from individuals with diverse abilities and backgrounds and develop better social relationships and interactions.

Through the work of some of the signatories to this letter, we have seen excellent examples of successful efforts to include children with a variety of disabilities. These models could be emulated in many schools across the District to the benefit of students with and without disabilities.

IV. CONCERNS REGARDING COST, TIMING AND TRANSPARENCY

If approved, the SRC will authorize the District to expend \$36,073,350, for the new school for the period commencing July 1, 2017 through June 30, 2020 and a total amount not to exceed \$54,473,350, for the period ending June 30, 2022. Yet neither the District nor the SRC explored the option of funding a “model” for inclusion where teachers throughout the District could be trained in best practices, such as co-teaching, differentiated instruction, and evidence-based behavioral support.

² See *Table 3 in the 2014-15 PennData report*.

³ Inclusive education Research and Practice. Xuan Bui, Carol Quirk, Selene Almazan, Michele Valenti, available at http://www.mcie.org/usermedia/application/6/inclusion_works_final.pdf (collecting studies).

⁴ Districts that prioritize inclusion cited for high graduation rates, available at <http://www.rgj.com/story/news/education/2016/07/25/districts-prioritize-inclusion-cited-high-graduation-rates-children-disabilities/87414016/>

⁵ The Academic Achievement and Functional Performance of Youth with Disabilities: A Report from the National Longitudinal Transition Study-2 (NLTS2). Wagner, M., Newman, L., Cameto, R., and Levine, P. (2006). (NCSE 2006-3000). Menlo Park, CA: SRI International.

Instead, the District seeks to push through a multi-million dollar contract at the eleventh hour without any input from stakeholders and without any transparency.

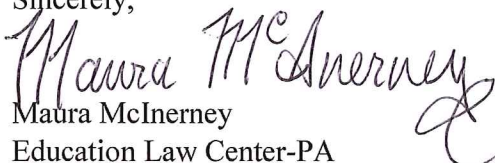
These millions of dollars would be better spent supporting inclusive learning practices across the District through strategies such as:

1. Professional development training to all staff including principals and teachers on inclusion, positive behavior management strategies, including Positive Behavior Interventions and Supports, and other evidence-based practices;
2. Providing ongoing, in-classroom coaching to teachers, especially new teachers, on inclusion and behavior management strategies;
3. Increasing the number of board-certified behavior analysts working for the district who can both provide ongoing training to school staff and intervene quickly if there are particularly challenging problem behaviors;
4. Require all CBH-funded service providers in schools to receive the same training as District staff.
5. Supporting a co-teaching model in which special education teachers are placed in general education classrooms as a way of increasing inclusion;
6. Partnering with education programs from local institutions of higher education to increase resources in schools.

Finally, we note that this new school is scheduled to open in September with very little notice to parents, students and others who would be attending the new school. Uprooting and disrupting children with disabilities – particularly students with autism who rely on routine and stability -- is clearly detrimental. Moreover, the District has failed to disclose any information about the programs, services, and supports available in the new school to enable parents to make a knowing, informed and thoughtful decisions through the IEP process. With no notice to families regarding the details of a proposed “change in placement” or notice to parents regarding their rights in this process, parents are unable to make informed decisions regarding the appropriateness of such an educational placement for their child and their child’s future.

For all of these reasons, we strongly urge the Commission to deny approval of the contract which seeks to establish a new segregated school for students with low-incident disabilities and instead, support these students to be educated in a beneficial, inclusive learning environment in accordance with their legal rights under federal and state law.

Sincerely,


Maura McInerney
Education Law Center-PA

On Behalf of:

Philadelphia Coalition of Special Education Advocates

Alliance for Philadelphia Public Schools
ARC of Philadelphia
Autism Sharing and Parenting

Disability Rights Pennsylvania
Education Law Center
Juvenile Law Center
PARENT Power
Parents Involved Network, Mental Health Association of Southeastern Pennsylvania
PEAL Center
Pennsylvania's Education for All Children
Philadelphia HUNE
Philadelphia RTE LTF #26
Public Interest Law Center

David S. Mandell, ScD
Professor and Director, Center for Mental Health Policy and Services Research
Vice-Chair for Research, Department of Psychiatry
University of Pennsylvania Perelman School of Medicine

Cc: Superintendent Hite, School District of Philadelphia