

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

Khadidja Issa; Q.M.H., a minor, individually,
by and through his parent, Faiza Ahmed
Abdalla Alembe Dunia; Anyemu Dunia;
V.N.I., a minor, individually by and through
her parent Mar Ki; **Sui Hnem Sung; and all**
others similarly situated,

Plaintiffs,

v.

The School District of Lancaster,

Defendant.

Civil Action No. 16-cv-3881

HON. EDWARD G. SMITH

CLASS ACTION

CONSENT DECREE

FILED
JUN 29 2017
KATE BARKMAN, Clerk
By _____ Dep. Clerk

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DEFINITIONS

Action means *Issa, et al. v. School District of Lancaster*, Index No. 16-cv-3881, filed on July 19, 2016.

Alternative education program means any high school-level educational program serving students enrolled in the School District of Lancaster (“SDOL”) that is (a) not located on the McCaskey Campus, or (b) provides an accelerated curriculum.

Application Date refers to the date on which an applicant for enrollment to SDOL completes an enrollment application form.

Complaint means the legal document filed by Named Plaintiffs on behalf of themselves and others similarly situated to initiate this Action.

Defendant or District or SDOL means the School District of Lancaster (“SDOL”).

Consent Decree means the agreement between the Parties in the Action that is entered and so ordered by this Court.

Effective Date means the date the Court signs and enters the Consent Decree.

English Learner or **EL** means an individual who does not speak English as their native or primary language and has a limited ability to read, speak, write, or understand English.

ESL means English as a Second Language instruction.

Immigrant means any person between the ages of 17 to 21 who (a) was not born in any state of the United States of America defined to include the 50 States, the District of Columbia, and any U.S. territory (including Puerto Rico, Guam and Virgin Islands) and (b) as of the Application Date has not been attending one or more schools continuously in any one or more States for the preceding twelve (12) months.

Immigrant EL Placement Form means the appropriate document, included as Exhibits A through C to this Consent Decree, which shall be reviewed and signed by any student covered by this Consent Decree and a parent of such a student (unless the student is emancipated), following: (a) translation of the Form into the student's *and* parent's preferred language; and (b) a meeting between one or more District representatives and the student, the parent (unless the student is emancipated), and up to three additional individual(s) of the family's choice, which may include a caseworker or other individual as long as the parent (or the student if the student is 18 years of age or older) signs a form permitting the additional individuals access to the student's education records. The Form shall fully and fairly apprise the parent and student of the option to attend McCaskey, or voluntarily choose to attend Phoenix Academy.

McCaskey means any educational program physically located on the McCaskey Campus of the District at 1051 Lehigh Avenue, Lancaster PA, including, but not limited to, J.P. McCaskey High School and McCaskey East High School.

Named Plaintiffs means Khadidja Issa; Q.M.H., a minor, individually, by and through his parent, Faiza Ahmed Abdalla; V.N.I., a minor, individually by and through her parent Mar Ki; Sui Hnem Sung; Alembe Dunia; and Anyemu Dunia.

Newcomer Program refers to the educational program formerly known as the International School and located at McCaskey Campus, 1051 Lehigh Avenue. The Newcomer Program is a one-year transition program for students who were not born in the United States of America and are WIDA Level I students. All newly-enrolled immigrant students ages 17 to 21 with WIDA Level I proficiency will be placed into the Newcomer Program. Students in the Newcomer Program attend English as a Second Language (ESL) and "core subject" classes (mathematics, science and social studies) in a "sheltered environment" with their Newcomer Program peers.

Students in the Newcomer Program have full access to activities, sports, and extracurricular programs offered at the McCaskey Campus. A student's English language proficiency will be assessed at the completion of each full 10-week marking period in the Newcomer Program. An immigrant student age 17 to 21 in the Newcomer Program attaining WIDA Level II proficiency will transfer out of the Newcomer Program, and will have the option to either join a Small Learning Community on the McCaskey Campus or based on a knowing, voluntary decision to attend Phoenix Academy.

Newly-enrolled means never having been previously enrolled in the District.

Over-aged and under-credited means a student is not able to earn sufficient credits through the regular course of instruction at McCaskey (48-minute classes, 10 week marking periods and 180 days of instruction) to graduate by the end of the school term in which that student turns 21 years old. A student who is 17 years old at the time of enrollment in the District will have time to graduate from McCaskey, provided the student earns the 24 credits required for graduation. A student who is 18 years old at the time of enrollment may also be able to graduate from McCaskey, depending on birth date, enrollment date and the extent to which the student has obtained credits prior to and after enrollment.

Parent means a biological parent with legal custody rights or a legal guardian of an immigrant student aged 17 to 21.

Parties mean the Plaintiffs and Defendant in the Action.

Phoenix Academy ("Phoenix") means the accelerated credit-recovery educational program located at 630 Rockland Street, Lancaster, PA 17602, operated by or on behalf of SDOL, that educates, among others, students who are over-aged and under-credited and would not be able to graduate from McCaskey by the school term in which they turn 21 years of age. Phoenix

provides an accelerated, semester-based credit recovery program for high school students, which means that students can earn credits toward high school graduation at a faster pace than at McCaskey. Unlike McCaskey's Newcomer Program, Phoenix does not offer sheltered instruction in core subjects (mathematics, science and social studies), which means that English Learners may be placed in classes that include some native English speakers who are fluent in English and have lived their entire lives in the United States. Phoenix is located approximately two (2) miles from the McCaskey Campus, and Phoenix provides its students with transportation to and from school. Although Phoenix does not offer extracurricular programs, all Phoenix students are permitted to participate in the full array of extracurricular programs at McCaskey, and the District provides them with transportation to do so. Phoenix does not offer any Newcomer Program.

School-age means the period of an individual's life from the earliest admission age to a school district until the end of the school term in which a student reaches the age of 21 years. *See* 22 Pa. Code § 11.12.

School Term means "school term" as defined by 24 P.S. § 1-102 of the Public School Code of 1949, "[t]he period of time elapsing between the opening of the public schools in the fall of one year and the closing of the public schools in the spring of the following year."

School Year means "school year" as defined by 24 P.S. § 1-102 of the Public School Code of 1949, "the first day of July of one year and the 30th day of June of the following year."

Small Learning Community or SLC means the instructional program offered at McCaskey Campus wherein students are assigned to small groups. SLCs offer students a number of advantages: personalized learning, electives that match student interests, and targeted support. Students are provided with personal and individual teaching and learning opportunities based

on their career and personal goals. At McCaskey, students choose (subject to availability) the SLC that best suits their interests and career goals. Students have full access to activities, sports, and extracurricular programs offered at the McCaskey Campus.

Student means any immigrant student aged 17-21 years.

WIDA Level I (Entering) means the first level of English language proficiency as defined by WIDA (formerly known as World-class Instructional Design and Assessment) following the administration of W-APT test (current), WIDA screener or WIDA Model (soon to be implemented).

WIDA Level II (Emerging) shall mean the second level of English language proficiency as defined by WIDA (formerly known as World-class Instructional Design and Assessment) following the administration of W-APT test (current), WIDA screener or WIDA Model (soon to be implemented).

INTRODUCTION

The Parties to this Consent Decree, by their attorneys, hereby stipulate and agree as follows:

WHEREAS, Named Plaintiffs Khadidja Issa; Q.M.H., a minor, individually, by and through his parent, Faisa Ahmed Abdalla; Alembe Dunia; Anyemu Dunia; V.N.I., a minor, individually by and through her parent Mar Ki; and Sui Hnem Sung (“Plaintiffs”) filed, on behalf of themselves and similarly situated students, and Defendant SDOL has denied the Plaintiffs’ allegations, and the Parties have voluntarily agreed to resolve the Action according to the terms set forth herein;

WHEREAS, the Named Plaintiffs filed the Class Action Complaint commencing the Action in the U.S. District Court for the Eastern District of Pennsylvania (“District Court”) seeking preliminary injunctive relief to allow older immigrant students the opportunity to attend McCaskey, the regular public high school rather than being educated in an alternative accelerated program; and

WHEREAS, following expedited discovery and a five-day hearing, the District Court granted in part Plaintiffs’ motion for preliminary injunction permitting the students to attend McCaskey High School and finding that the District violated the federal Equal Educational Opportunity Act, 20 U.S.C. § 1703(f) (EEOA), a ruling that was subsequently affirmed by the U.S. Court of Appeals for the Third Circuit;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, and the Parties do hereby stipulate and agree, as follows:

I. ADMINISTRATIVE DIRECTIVE

Within 20 days of entry of this Consent Decree, the District shall issue a written administrative directive stating that the District's practices and procedures shall conform to the terms of this Consent Decree. This directive shall expressly set forth the following specific practices and procedures outlined below with regard to both enrollment and placement of students.

II. ENROLLMENT OF IMMIGRANT STUDENTS AGES 17-21

A. The District shall comply with the following enrollment requirements for immigrant students aged 17 to 21, pursuant to Pennsylvania law, 22 Pa. Code § 11.11(b), (d) and (e), which are also included in the District's School Board Policy 200:

1. The District shall normally enroll a child the next business day, but no later than 5 business days, after the Application Date if the parent, guardian or other person having control or charge of the student has completed the enrollment application and has supplied some proof of the child's age, residence, and immunizations as required by law. Any one of the following constitutes acceptable documentation: birth certificate; notarized copy of birth certificate; baptismal certificate; copy of the record of baptism – notarized or duly certified and showing the date of birth; notarized statement from the parents or another relative indicating the date of birth; a valid passport; a prior school record indicating the date of birth; or I-94 Arrival-Departure Record. Upon enrollment, the District shall contact the student's former school and request a certified copy of the student's education records. The District shall not, though, condition enrollment or delay a student's admission due to the absence of student records or other information or documents that are not required for enrollment in accordance

with guidance issued by the Pennsylvania Department of Education in its Basic Education Circular entitled Enrollment of Students, available at:

<http://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/Purdons%20Statutes/Enrollment%20of%20Students>

2. The District shall administer a Home Language Survey (“HLS”) to all students seeking first time enrollment.

3. The District shall not inquire regarding the immigration status of a student as part of the admission process, and shall not condition a child’s right to enroll in the District upon the child’s immigration status.

B. With regard to assessing the English language proficiency of newly-enrolled immigrant students aged 17-21, the District shall comply with guidance of the Pennsylvania Department of Education (“PDE”) as reflected in Basic Education Circular 22 Pa. Code § 4.26, titled *Educating Students with Limited English Proficiency (LEP) and English Language Learners (ELL)*, or with any replacement Basic Education Circular issued by PDE during the term of this Consent Decree.

C. When immigrant students ages 17 to 21 present themselves to the District for the purpose of applying for enrollment, the District shall not initiate discussions about alternatives to enrollment (such as G.E.D. training or English language instruction not offered by the District), but may respond to inquiries about such alternatives and provide further information upon request.

III. PLACEMENT OF NEWLY-ENROLLED IMMIGRANT STUDENTS AGES 17-21

A. Newly-Enrolled WIDA Level I Immigrant Students -- Initial Placement

All newly enrolled immigrant students ages 17 to 21 with WIDA Level I proficiency shall be placed into the Newcomer Program.

B. Transfer Options for Immigrant Students

1. After Newcomer Program Students Attain WIDA Level II

After achieving WIDA Level II status through the Newcomer Program, immigrant students ages 17-21 shall have the option to either: (i) enter into a Small Learning Community on the McCaskey Campus; or (ii) transfer to Phoenix Academy. There shall be a meeting to discuss such options between one or more District representatives, the student, the parent(s) (unless the student is emancipated), and any three additional individuals of the family's choice, so long as the parent (or the student if the student is 18 years of age or older) has signed a form permitting the additional individuals access to the student's education records. If Plaintiffs' counsel is to be one of the additional individuals selected by the family to attend the meeting, Plaintiffs' counsel shall provide at least 24-hour advance notice to the District's Solicitor, who shall not bar the participation of counsel or any individuals who seek to participate in the process. The District shall provide an appropriate language interpreter (via phone or in-person) to discuss the options. A written notice and election form describing these options (Ex. A, Immigrant EL Placement Form for Students Who Have Achieved WIDA II Status and Are Leaving the Newcomer Program), translated into the student's and parent's preferred language(s) (unless the student is emancipated), shall be provided to the student and to the parent at least 3 days prior to the meeting, and the District shall have a copy of the translated form(s) available for review at the meeting.

**2. Additional Option – for “Over-age Under-Credited”
Newcomer Program Students Aged 19-21**

Immigrant students ages 19-21 who have completed at least one full 10-week marking period in the Newcomer Program, but have not achieved WIDA II proficiency and who do not have sufficient credits to graduate from McCaskey by the completion of the school year in which they turn 21 years of age, shall have the additional option to either: (i) remain in the Newcomer Program at McCaskey until they attain WIDA II proficiency; or (ii) transfer to Phoenix Academy. There shall be a meeting to discuss this additional option between one or more District representatives and the student, the parent(s) (unless the student is emancipated), and any three additional individuals of the family's choice, so long as the parent (or the student if the student is 18 years of age or older) has signed a form permitting the additional individuals access to the student's education records. If Plaintiffs' counsel is to be one of the additional individuals selected by the family to attend the meeting, Plaintiffs' counsel shall provide at least 24-hour advance notice to the District's Solicitor. The District shall provide an appropriate language interpreter (via phone or in-person) to discuss the options. A written notice and election form describing these options (Ex. B, Immigrant EL Placement Form for Students Ages 19-21 Following Completion of One Full Marking Period in the Newcomer Program), translated into the student's and parent's preferred language, shall be provided to the student and to the parent (unless the student is emancipated), at least 3 days prior to the meeting, and the District shall have a copy of the translated form available for review at the meeting.

C. Newly-Enrolled WIDA Level II Immigrant Students -- Initial Placement Options

Newly-enrolled immigrant students ages 17 to 21 with WIDA Level II proficiency shall be given the option to enter either: (i) a Small Learning Community on the McCaskey Campus;

or (ii) Phoenix Academy. There shall be a meeting to discuss such options between one or more District representatives, the student and the parent(s) (unless the student is emancipated), and any additional individual of the family's choice, so long as the parent (or the student if the student is 18 years of age or older) has signed a form permitting the additional individual(s) access to the student's education records. If Plaintiffs' counsel is to be one of the additional individuals selected by the family to attend the meeting, Plaintiffs' counsel shall provide at least 24-hour advance notice to the District's Solicitor. The District shall provide an appropriate language interpreter (via phone or in-person) to discuss the options. A written notice and election form describing these options (Ex. C, Immigrant EL Placement Form for Entering WIDA Level II Students), translated into the student's and parent's preferred language, shall be provided to the student and to the parent (unless the student is emancipated) prior to the meeting. Such meeting shall occur as soon as is practicable but in no case longer than 4 days following completion of Application and the Home Language Survey and the identification of WIDA proficiency level, and the District shall have a copy of the translated form(s) available for review at the meeting. The student shall have up to two working days following the meeting to select an option. If no option is timely selected the student shall be placed at McCaskey until an option is selected.

D. Parental Rights/Emancipated Minors

With regard to all proposed options, a parent shall make the placement decision unless the student is an emancipated minor as defined by 22 Pa Code 11.11(a)(1).

E. No Discrimination from Programs/Regular Policies and Rules Apply/Age-Cohorts

Immigrant students ages 17 to 21 may not be denied any educational opportunities for which they are otherwise eligible due to their age or national origin. The District's regular policies and rules generally applicable to all students shall apply equally to immigrant students

ages 17 to 21. Immigrant students ages 17 to 21 may not be isolated into separate classrooms by age or national origin, except that the District shall have the discretion to place immigrant students aged 19-21 on the McCaskey campus into “age-cohort” classes, so long as the cohort includes no fewer than five students in each class.

IV. NEW STAFF POSITIONS

The District agrees to maintain the following new staff positions throughout the duration of this Consent Decree.

A. **“Enrollment Specialist,”** whose training and job duties shall include the enrollment and placement of immigrant students aged 17-21 in accordance with state and federal laws, District policies and this Consent Decree.

B. **“Program Facilitator” for the Newcomer School,** a new position dedicated to provide an enhanced level of oversight and support for the Newcomer School, including overseeing and assessing curriculum, monitoring and evaluating students’ progress toward WIDA II proficiency, and working with the Guidance Department to facilitate the development of a post-high school plan for all Newcomer School students. The position will also be a dedicated single point of contact and liaison between the Newcomer School and SDOL support services, including guidance and enrollment.

V. DUTY OF DISTRICT TO PROVIDE TRANSLATION AND INTERPRETATION SERVICES

A. The District shall, in compliance with its general duties under state and federal laws, provide all EL students and LEP parents with interpretation services at all meetings relating to the student’s enrollment and school placement and shall translate all documents relating to these meetings into the preferred language of both the student and parent.

VI. COMPENSATORY EDUCATION

A. The District shall create a compensatory education program fund which shall not exceed the amount of \$66,500, to be administered (at no cost to the District) by an appropriate person identified by Plaintiffs but approved by the District (the “Fund Administrator”).

B. Students shall be eligible to receive compensatory education program funds on an individual basis, as follows:

1. Six Named Plaintiffs shall be eligible to receive \$3,000 each (subtotal of \$18,000);

2. Newly-enrolled immigrant students aged 17 to 21 placed at Phoenix Academy during the 2016-2017 school year (“2016-17 Immigrant Students Placed at Phoenix”), shall be eligible to receive \$1,500 each (estimated subtotal of \$16,500);

3. Immigrant students ages 17-21 who went to the District for enrollment between 2013 and the Effective Date, but who were never enrolled (“Immigrant Youth Never Enrolled”), shall be eligible to receive \$1,000 each (estimated subtotal of \$32,000).

C. Within 30 days of the Effective Date of this Consent Decree, the District shall provide to Plaintiffs’ counsel a list of the available identifying information regarding both the 2016-17 Immigrant Students Placed at Phoenix and the Immigrant Youth Never Enrolled. Identifying information shall include, if available in the District’s records: each person’s name, age, native language, last known address, last known telephone number, and the names of his or her parent(s) and any other advocate or contact person associated with their school enrollment inquiry.

D. Eligible Students must give the District notice of their intent to use funds for an educational program by submitting the appropriate Intent to Use EL Compensatory Education Services Form (attached to Consent Decree as Exhibits D, E and F) to the designated Trust Administrator by June 30, 2018, and must utilize funds for any educational purpose by June 30, 2021.

E. Funding shall not be provided by the Fund Administrator until an Intent to Use EL Compensatory Education Services Form is submitted by a student and approved by the Fund Administrator, and an invoice, receipt or request for payment (as required by such Form) has been provided to the Fund Administrator.

F. To the extent any portion of the compensatory education program fund has not been committed for utilization through the submittal of Intent to Use EL Compensatory Education Services forms as of June 30, 2018, such remaining portion shall be returned to the District. In addition, any portion of the compensatory education program fund that is not utilized by June 30, 2021, shall be returned to the District.

G. The compensatory education fund described herein shall be used wholly and exclusively for educational purposes, which may include tuition for any educational program including post-secondary programs, vocational training/services, therapeutic and/or remedial instruction, programs, courses, services and materials, ESL programs, and cyber-based programs and related technology to support cyber-based programs but only if such programs further the goals of the student's education or language development, or will assist the student in achieving some educational goal. While compensatory education may be used as stated above for technology purchases such as computers, printers and educational software, it may not be used to purchase non-educational technology or software, such as an I-Phone or I-pad. The Parties

agree that the compensatory education fund described herein shall not be used to fund, pay and/or reimburse purchases of any phones, non-educational software, including computer games, or for any non-educational purpose, such as, but not limited to attorney's fees, vehicles of any kind, home improvements, furniture of any kind or leisure travel.

H. The Fund Administrator will quarterly provide to the District and Plaintiffs' counsel (a) copies of Intent to Use Compensatory Education Forms received during such quarter, and (b) data substantiating the use of compensatory education funds to date. Said data shall include a description of requests and expenditures, the programs or services provided, the dates of purchase, refusals of requests, and the cost, and shall include the supporting invoices and receipts required to be submitted to the Fund Administrator pursuant to such Forms.

I. Under no circumstances shall the District be required to pay more than \$66,500 into the compensatory education program fund. Any students receiving money from the fund shall be required to waive and release claims against the District for additional compensatory education for 2013 through June 2017 relating to or arising from claims brought against the District in this settled litigation.

VII. FORMS

The Forms attached to this Consent Decree as Exhibits A through F have been agreed upon by the District and Plaintiffs' counsel, and shall not be altered by the District without written agreement by Plaintiffs' counsel.

VIII. CERTIFICATION OF TEACHERS

The District shall ensure that all ESL teachers serving immigrant students aged 17 to 21 are certified by the Pennsylvania Department of Education to teach ESL, in accordance with

state requirements and guidance and that all other teachers are properly certified to teach their assigned subjects in accordance with applicable standards.

IX. DURATION OF THIS CONSENT DECREE

- A. This Consent Decree is effective immediately upon the signature of the Court (“Effective Date”).
- B. Without further action by the Court, this Consent Decree shall expire on June 30, 2019.

X. MONITORING AND REPORTING

A. Monitoring and reporting shall begin in August in anticipation of the 2017-2018 school year. Monitoring reports shall be due on August 18th, September 8th and monthly beginning on October 15th for the 2017-2018 school year. Reports shall be submitted quarterly during the 2018-2019 school year, and continue thereafter quarterly if the Consent Decree is extended by order of the Court (unless stated otherwise in such extension order). In accordance with this schedule, the District shall provide Plaintiffs’ counsel with a report, within at most 15 days of the end of the preceding reporting period, which includes the following information for such preceding period:

1. The number of immigrant youth aged 17-21 requesting new enrollment in the District;
2. The number of newly-enrolling students, who, upon application to the District, were aged 17-21 and whose HLS indicated a home language other than English, disaggregated by the student’s: (a) age upon application; (b) home language; (c) score on the W-APT; and (d) school placement. The report shall include the student’s name and contact information including address, phone number(s), email address; country of origin; and the date

of each student's: (i) initial application to the District; (ii) formal enrollment; and (iii) first day of class attendance at the student's school placement. Pursuant to Section X.A.9 below, students and their parents shall be advised that such information will be shared with Plaintiffs' counsel.

3. The number of immigrant students who transferred from the Newcomer Program at McCaskey East to another Small Learning Community at McCaskey during the preceding reporting period, disaggregated by the student's: (a) age on the date of transfer; (b) WIDA Level on the date of transfer; and (c) home language;

4. The number of immigrant students who transferred from the Newcomer Program at McCaskey East to Phoenix Academy (or to any other alternative education program operated by or for the District) during the preceding reporting period, disaggregated by the student's: (a) age on the date of transfer; (b) WIDA Level on the date of transfer; and (c) home language;

5. The number of immigrant students who transferred from a Small Learning Community at McCaskey (not including the Newcomer Program) to Phoenix Academy (or to any other alternative education program operated by or for the District) during the preceding reporting period, disaggregated by the student's: (a) age on the date of transfer; (b) WIDA Level on the date of transfer; and (c) home language;

6. A copy of all signed EL Immigrant Election Forms for SY 2017-18 and EL Placement Forms received during such reporting period;

7. The number of total pupils assigned to any age-cohort class on the McCaskey campus that includes any immigrant students aged 19-21.

8. For the August 18, 2017, report, the District shall provide information about all students covered by this Agreement dating back to January 1, 2017. However,

retroactive information shall not result in any violation of this Agreement, which pertains to prospective duties of the District. Thereafter, reports shall provide information covering the intervening reporting period.

9. The Parties acknowledge that federal and state law, including the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (“FERPA”), governs the disclosure of student education records. Pursuant to FERPA regulations, 34 C.F.R. § 99.31(a)(9), the District may provide the information required pursuant to the Consent Decree, after providing notification through Exhibits A, B, C or through other means that such information will be provided, so that a parent or eligible student under FERPA has opportunity to seek protective action. Further, the District’s production of signed school placement forms and other identifying information shall be made pursuant to the protective order entered by the Court and attached as Exhibit H to this Consent Decree.

10. The District shall designate a specific employee who shall be charged with the duty to monitor and provide reports required under this Consent Decree.

XI. ENFORCEMENT

A. The Parties consent to the jurisdiction of this Court over any proceedings seeking to enforce the terms of this Consent Decree.

B. In the event of material non-compliance by the District, which is not remedied within fourteen days of the District’s receipt of written notice specifying such non-compliance, Plaintiffs may petition this Court for an extension of the Consent Decree beyond June 30, 2019.

C. In the event the Court finds that a party has not complied with a material provision of this Consent Decree, which is not remedied within fourteen days of the non-compliant party’s receipt of written notice of such non-compliance, the Court shall have the

power to order specific performance of the provision and/or any other relief the Court deems necessary to ensure compliance.

XII. NOTICE TO COUNSEL

A. Notices and other written communications pursuant to this Consent Decree shall be in writing.

B. Notice to the District shall be addressed to the Superintendent of the School District of Lancaster, with a copy to the District's Solicitor (Howard L. Kelin, Esq., Kegel Kelin Almy & Lord LLP, 24 North Lime Street, Lancaster, PA 17602, kelin@kkallaw.com). Notice to Plaintiffs shall be addressed to Maura McInerney, Esq., Witold J. Walczak, Esq. and Kathleen A. Mullen, Esq., at the addresses specified in the signature pages of this Consent Decree.

C. The District's Solicitor shall notify Plaintiffs' counsel in the event of a change in the District's Superintendent or Solicitor, and Plaintiffs' counsel shall notify the District's Solicitor in the event substitution is to be made in Plaintiffs' counsel to receive communications under this Consent Decree, and in either event the new names and contact information shall be provided.

XIII. MODIFICATION

This Consent Decree may not be modified without the written consent of the Parties and the approval of the Court.

XIV. RESERVATION OF JURISDICTION

Upon approval of the Consent Decree by the Court, the Parties shall execute, deliver, and file a stipulation of resolution of the Action, substantially in the form attached hereto as Exhibit G. The Court shall retain jurisdiction of the Action to enforce this Consent Decree, and the protective order attached as Exhibit H. The Court may, for administrative purposes, mark the

case as closed and discontinued. The parties may, consistent with the terms of this Consent Decree, reopen the proceedings to enforce the terms herein.

XV. RELEASE OF CLAIMS

In consideration of the rights and obligations set forth herein, Plaintiffs, their successors, assigns, heirs, executors, administrators, and legal representatives, with the intent to be legally bound hereby, fully and forever release, acquit, discharge and hold harmless Defendant District, and any and all of their agents, servants, employees, officials, officers, directors and assigns, from any and all actions, causes of action, claims, demands, damages, or costs relating to the facts set forth in the Complaint which were raised on their behalf by Named Plaintiffs, including but not limited to any causes of action, claims, demands, damages or costs relating to the Equal Education Opportunity Act, 20 U.S.C. § 1701 *et seq.* (Count One of the Complaint), Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (Count Two of the Complaint), the Due Process Clause of the Fourteenth Amendment to the United States Constitution (Count Three of the Complaint), the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (Count Four of the Complaint), and Pennsylvania Public School Code § 1301 and 22 Pa. Code Chapter 11 (Count Five of the Complaint).

XVI. ATTORNEYS' FEES AND COSTS

A. The District shall arrange for payment of attorneys' fees to Plaintiffs in the amount of \$300,000, and payment of litigation costs to Plaintiffs in the amount of \$70,000, and such payments shall be full satisfaction of Plaintiffs' outstanding fees and costs.

B. The District shall make payment of the \$70,000 for litigation costs within 7 days of the Effective Date, and shall arrange for its insurance carrier to make payment of the \$300,000 for attorneys' fees within 45 days of the Effective Date, through checks payable in such amounts

to Pepper Hamilton LLP, delivered to Kathleen A. Mullen, Esq., at Pepper Hamilton LLP, Suite 200, 100 Market Street, P.O. Box 1181, Harrisburg, PA 17108-1181.

C. In the event of material non-compliance by the District, which is not remedied within fourteen days of the District's receipt of written notice specifying such non-compliance, Plaintiffs reserve the right to request additional attorneys' fees and costs for any time reasonably incurred thereafter to enforce implementation of the terms of the Consent Decree.

XVII. NON-WAIVER PROVISIONS

A. This Consent Decree does not limit or affect the rights and remedies of any persons who are not a party to this Consent Decree.

B. The failure by any party to enforce any provision of the Consent Decree with respect to any deadline or other provision herein shall not be construed as a waiver of their right to enforce deadlines or provisions of this Consent Decree.

XVIII. ENTIRE AGREEMENT

This Consent Decree, along with its exhibits, embodies the entire agreement of the Parties. No prior or contemporaneous agreements, oral or written, entered into prior to the execution of this Consent Decree regarding the subject matter of this Action shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein. Captions are included herein solely for convenience of reference, and shall not be used to limit the terms of the Consent Decree.

XIX. EXECUTION

This Consent Decree may be executed in multiple counterparts, and faxed, electronic, and/or emailed signatures will be valid and enforceable, each of which shall be deemed an original, and all of which shall constitute one and the same document.

Dated: June 28, 2017

For the Plaintiffs,

/s/ Witold J. Walczak

Witold J. Walczak, Esquire (PA62976)
American Civil Liberties Union of
Pennsylvania
247 Fort Pitt Blvd.
Pittsburgh, PA 15222
Telephone: (412) 681-7736
Fax: (412) 681-8707
VWalczak@aclupa.org

Molly Tack-Hooper, Esquire (PA307828)
Michelin Cahill, Esquire (PA 314553)
American Civil Liberties Union of
Pennsylvania
P.O. Box 60173
Philadelphia, PA 19102
Telephone: (215) 592-1513
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MTack-Hooper@aclupa.org
MCahill@aclupa.org

/s/ Kathleen A. Mullen

Thomas B. Schmidt, III (PA 19196)
Kathleen A. Mullen (PA84604)
PEPPER HAMILTON LLP
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/s/ Maura McInerney

Maura McInerney, Esquire (PA71468)
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mmcinerney@elc-pa.org
kmoon@elc-pa.org
adutton@elc-pa.org

/s/ Seth F. Kreimer

Seth F. Kreimer, Esquire (PA26102)
3501 Sansom Street
Philadelphia, PA 19104
Telephone: (215) 898-7447
skreimer@law.upenn.edu

*Attorneys for Plaintiffs Khadidja Issa; Q.M.H.,
a minor, individually, by and through his
parent, Faisa Ahmed Abdalla; V.N.I., a minor,
individually by and through her parent Mar
Ki; and Sui Hnem Sung.*

Dated: June 28, 2017

For the Defendant,

/s/ Sharon M. O'Donnell
Sharon M. O'Donnell, Esquire (PA79457)
Marshall Dennehey Warner Coleman &
Goggin
100 Corporate Center Drive, Suite 201
Camp Hill, PA 17011
Telephone: (717) 651-3503
Fax: (717) 651-3707
smodonnell@mdwgcg.com

This Order is hereby APPROVED on this 29th day of June 2017, and the relief set forth herein is GRANTED.

A handwritten signature in black ink, appearing to be 'E. Smith', written over a horizontal line.

Hon. Edward Smith, U.S.D.J.

Exhibit A to Consent Decree

**SCHOOL DISTRICT OF LANCASTER IMMIGRANT EL STUDENT
PLACEMENT FORM FOR STUDENTS WHO HAVE ACHIEVED WIDA II STATUS
AND ARE LEAVING THE NEWCOMER PROGRAM**

Administrative Instructions For School District of Lancaster Staff

1. Use of the form

This form is to be used with immigrant students ages 17 to 21, who have achieved the WIDA 2 proficiency level and are leaving the Newcomer Program.

The form's purpose is to identify and select placement options available to such students. School staff will explain the options and answer questions the family may have regarding the choices. Staff MAY NOT press families to choose one option over the other. Parents of students make this decision unless the student is an emancipated minor as defined by the School Code¹ in which case the student makes the decision.

2. Procedure

The District will meet and discuss placement options with the student, the parent, and up to three additional individuals of the family's choice, so long as the parent (or the student if the student is 18 years of age or older) signs a form permitting the additional individuals access to the student's education records.

The District shall provide an appropriate language interpreter (via phone or in-person) to discuss the options. This form, translated into the student's and parent's preferred language, shall be provided to the student and to the parent at least 3 days before the meeting, and the District shall have a copy of the translated form available for review at the meeting.

The student shall have up to two working days following the meeting to select an option. If no option is timely selected the student shall be placed at McCaskey until an option is selected.

¹ Pursuant to 22 Pa. Code 11.11 (a) (1) an emancipated minor is "a person under 21 years of age who has chosen to establish a domicile apart from the continued control and support of parents or guardians. A minor living with a spouse is deemed emancipated."

**SCHOOL DISTRICT OF LANCASTER EL IMMIGRANT STUDENT
PLACEMENT FORM FOR STUDENTS WHO HAVE ACHIEVED WIDA II STATUS
AND ARE LEAVING THE NEWCOMER PROGRAM
(THIS FORM MUST BE TRANSLATED
INTO THE PREFERRED LANGUAGE OF THE STUDENT AND PARENT)**

Dear Student and Parent/Guardian:

You and your child may choose to attend McCaskey which is the District's main high school or your child may choose to attend Phoenix Academy. The choice is yours. This form explains those options.

Student's name: _____ **Date of Birth:** _____

1. Placement Options

Small Learning Community at McCaskey Campus

The School District's McCaskey Campus is located at 1051 Lehigh Avenue, Lancaster PA, and includes J.P. McCaskey High School and McCaskey East High School. Students on the McCaskey Campus attend Small Learning Communities ("SLCs") that focus on particular areas of interest to the student. For example, students interested in a possible career in the field of health care may wish to attend the SLC for Health Sciences. Current SLCs include Arts and Humanities, Health Sciences, Technology, Media Studies and Communications, Public Leadership and Services, and Technical and Business Careers. Students are assigned to a SLC they select, assuming space is available in that SLC. All SLCs provide the basic credit requirements such as English, math, science and social studies courses. Elective courses are based on the specific focus of the SLC. The McCaskey Campus provides after-school activities, sports teams and other extracurricular programs.

Phoenix Academy

Phoenix Academy is the District's "accelerated credit-recovery educational program" located at 630 Rockland Street, Lancaster, PA 17602. The school educates, among others, students who are over-age and under-credited and would not be able to graduate from McCaskey by the school term in which they turn 21 years of age. Phoenix provides an accelerated semester-based credit recovery program for high school students, which means that the curriculum is taught at a faster pace. Students can earn credits toward high school graduation more quickly than at McCaskey. Phoenix is located approximately two (2) miles from the McCaskey Campus, and Phoenix provides its students with transportation to and from school. Phoenix does not offer Small Learning Communities, nor does it offer extracurricular programs at the school, but students may participate in extracurricular programs at McCaskey, and are provided transportation to do so.

2. Your Child's Current Credit Status

Under Pennsylvania law, a student is entitled to receive an education in the District through the end of the school term in which the student turns 21 years of age. A student who is 17 years old at the time of enrollment in the District will have time to graduate from McCaskey, provided the student earned the 24 credits required for graduation. A student who is 18 years old at the time of enrollment may also be able to graduate from McCaskey, depending on birth date, enrollment date and the extent to which the student has obtained credits prior to and after enrollment. In addition, if your child is not able to graduate from McCaskey, s/he may seek a General Equivalency Diploma or GED which can be exchanged for a high school diploma. However, obtaining a GED requires studying for and taking a separate test covering the content areas of language arts, math, science and social studies.

Based on your child's educational records provided to the District, your child earned ____ credits before coming to the School District of Lancaster, which will count towards the student's minimum requirement of 24 credits to graduate and receive a high school diploma. (Any disagreement regarding this number of credits should be reported immediately to the District).

Based upon your current age and credits earned prior to enrolling in the District, the District has indicated below whether you can earn enough credits to graduate and receive a diploma, before or during the school term in which you turn 21 years of age, through enrolling in a Small Learning Community on the McCaskey Campus:

Can earn enough credits to graduate ____ Cannot earn enough credits to graduate ____

Based upon your current age and credits earned prior to enrolling in the District, the District has indicated below whether you can earn enough credits to graduate and receive a diploma, before or during the school term in which you turn 21 years of age, through enrolling in Phoenix Academy:

Can earn enough credits to graduate ____ Cannot earn enough credits to graduate ____

NOTE: Pursuant to a Consent Decree entered in *Issa v. School District of Lancaster, Civil Action No. 16-3881*, a case in the United States District Court for the Eastern District of Pennsylvania, the School District will be providing information to Plaintiffs' counsel regarding this individual student and the student's educational placement.

I would like the following additional individuals to participate in my placement meeting with the School District to be held on _____:

Placement Selection Decision Following In-Person Meeting

Name of Student: _____ D.O.B. _____

Date of Meeting: _____

Participants in meeting: _____

My rights have been explained to me. I understand that I can choose to go to either a Small Learning Community on the McCaskey Campus or Phoenix Academy. I make this choice voluntarily. I choose to have my child attend:

Small Learning Community on McCaskey Campus

_____ (Parent or Student
Initials if Emancipated Minor)

Phoenix Academy

_____ (Parent or Student
Initials if Emancipated Minor)

Signatures

By signing below, you are saying that you understand the options provided to you in this form, that this is your decision, and that no one has forced you to make your decision.

Parent/Guardian Signature: _____ Date: _____

Student signature: _____ Date: _____

Exhibit B to Consent Decree

**SCHOOL DISTRICT OF LANCASTER IMMIGRANT EL STUDENT
PLACEMENT FORM FOR STUDENTS AGED 19-21 FOLLOWING COMPLETION OF
ONE FULL MARKING PERIOD IN THE NEWCOMER PROGRAM**

Administrative Instructions For School District of Lancaster Staff

1. Use of the form

This form is to be used with immigrant students age 19 to 21, who have completed one full marking period in the Newcomer Program, but have not yet achieved the WIDA 2 level of English proficiency.

The form's purpose is to identify and select placement options available to such students. School staff will explain the options and answer questions the family may have regarding the choices. Staff MAY NOT press families to choose one option over the other. Parents of students make this decision unless the student is an emancipated minor as defined by the School Code¹ in which case the student makes the decision.

2. Procedure

The District will meet and discuss placement options with the student, the parent, and up to three additional individuals of the family's choice, so long as the parent (or the student if the student is 18 years of age or older) signs a form permitting the additional individuals access to the student's education records.

The District shall provide an appropriate language interpreter (via phone or in-person) to discuss the options. This form, translated into the student's and parent's preferred language, shall be provided to the student and to the parent at least three days before the meeting, and the District shall have a copy of the translated form available for review at the meeting.

The student shall have up to two working days following the meeting to select an option. If no option is timely selected the student shall be placed at McCaskey until an option is selected.

¹ Pursuant to 22 Pa. Code 11.11 (a) (1) an emancipated minor is "a person under 21 years of age who has chosen to establish a domicile apart from the continued control and support of parents or guardians. A minor living with a spouse is deemed emancipated."

**SCHOOL DISTRICT OF LANCASTER EL IMMIGRANT STUDENT PLACEMENT
FORM FOR IMMIGRANT STUDENTS AGED 19-21 FOLLOWING COMPLETION OF
ONE FULL MARKING PERIOD IN THE NEWCOMER PROGRAM
(THIS FORM MUST BE TRANSLATED
INTO THE PREFERRED LANGUAGE OF THE STUDENT AND PARENT)**

Dear Student and Parent/Guardian:

You and your child may choose to complete the Newcomer Program at McCaskey or your child may choose to attend Phoenix Academy. The choice is yours. This form explains those options.

Student's name: _____ **Date of Birth:** _____

1. Placement Options

Complete the Newcomer Program

The Newcomer Program at McCaskey is a one-year transition program for students who were not born in the United States of America and are WIDA Level I students. Students in the Newcomer Program attend English as a Second Language (ESL) and "core subject" classes (mathematics, science and social studies) in a "sheltered environment" with their Newcomer Program peers. Students in the Newcomer Program have full access to activities, sports, and extracurricular programs offered at the McCaskey Campus. A student's English language proficiency will be assessed at the completion of each full 10-week marking period in the Newcomer Program. An immigrant student age 17 to 21 in the Newcomer Program attaining WIDA Level II proficiency will transfer out of the Newcomer Program, and will have the option to either join a Small Learning Community on the McCaskey Campus or based on a knowing, voluntary decision to attend Phoenix Academy.

Phoenix Academy [No WIDA Level 1 students start in this program]

Phoenix Academy is the District's "accelerated credit-recovery educational program" located at 630 Rockland Street, Lancaster, PA 17602. The school educates students who are over-age and under-credited and would not be able to graduate from McCaskey by the school term in which they turn 21 years of age. Phoenix provides an accelerated semester-based credit recovery program for high school students, which means that the curriculum is taught at a faster pace. Students can earn credits toward high school graduation more quickly than at McCaskey. Phoenix is located approximately two (2) miles from the McCaskey Campus, and Phoenix provides its students with transportation to and from school. Phoenix does not offer Small Learning Communities, nor does it offer extracurricular programs at the school, but students must be permitted to participate in extracurricular programs at McCaskey and shall be provided transportation to do so.

2. Your Child's Current Credit Status

Under Pennsylvania law, a student is entitled to receive an education in the District through the end of the school term in which the student turns 21 years of age. A student who is 17 years old at the time of enrollment in the District will have time to graduate from McCaskey, provided the student earned the 24 credits required for graduation. A student who is 18 years old at the time of enrollment may also be able to graduate from McCaskey, depending on birth date, enrollment date and the extent to which the student has obtained credits prior to and after enrollment. In addition, if your child is not able to graduate from McCaskey, s/he may seek a General Equivalency Diploma or GED which can be exchanged for a high school diploma. However, obtaining a GED requires studying for and taking a separate test covering the content areas of language arts, math, science and social studies.

Based on your child's educational records provided to the District, your child earned ____ credits before coming to the School District of Lancaster, which will count towards the student's minimum requirement of 24 credits to graduate and receive a high school diploma. (Any disagreement regarding this number of credits should be reported immediately to the District).

Based upon your current age and credits earned prior to enrolling in the District, the District has indicated below whether you can earn enough credits to graduate and receive a diploma, before or during the school term in which you turn 21 years of age, through completing the Newcomer Program and then enrolling in a Small Learning Community on the McCaskey Campus:

Can earn enough credits to graduate ____ Cannot earn enough credits to graduate ____

Based upon your current age and credits earned prior to enrolling in the District, the District has indicated below whether you can earn enough credits to graduate and receive a diploma, before or during the school term in which you turn 21 years of age, through enrolling in Phoenix Academy:

Can earn enough credits to graduate ____ Cannot earn enough credits to graduate ____

NOTE: Pursuant to a Consent Decree entered in *Issa v. School District of Lancaster, Civil Action No. 16-3881*, a case in the United States District Court for the Eastern District of Pennsylvania, the School District will be providing information to Plaintiffs' counsel regarding this individual student and the student's educational placement.

I would like the following additional individuals to participate in my placement meeting with the School District to be held on _____:

Placement Selection Decision Following In-Person Meeting

Name of Student: _____ D.O.B. _____

Date of Meeting: _____

Participants in meeting: _____

My rights have been explained to me. I understand that I can choose to either remain in the Newcomer Program at McCaskey or transfer to Phoenix Academy. I make this choice voluntarily. I choose to have my child attend:

Complete the Newcomer Program at McCaskey East _____ (Parent or Student
Initials if Emancipated Minor)

Phoenix Academy _____ (Parent or Student
Initials if Emancipated Minor)

Signatures

By signing below, you are saying that you understand the options provided to you in this form, that this is your decision, and that no one has forced you to make your decision.

Parent/Guardian Signature: _____ Date: _____

Student signature: _____ Date: _____

Exhibit C to Consent Decree

**SCHOOL DISTRICT OF LANCASTER IMMIGRANT EL STUDENT
PLACEMENT FORM FOR ENTERING WIDA LEVEL II STUDENTS**

Administrative Instructions For School District of Lancaster Staff

1. Use of the form

This form is to be used with newly-enrolled immigrant students ages 17 to 21, who upon entering the School District of Lancaster are at the WIDA 2 proficiency level for English.

The form's purpose is to identify and select placement options available to such students. School staff will explain the options and answer questions the family may have regarding the choices. Staff MAY NOT press families to choose one option over the other. Parents of students make this decision unless the student is an emancipated minor as defined by the School Code¹ in which case the student makes the decision.

2. Procedure

The District will meet and discuss placement options with the student, the parent, and up to three additional individuals of the family's choice, so long as the parent (or the student if the student is 18 years of age or older) signs a form permitting the additional individuals access to the student's education records.

The District shall provide an appropriate language interpreter (via phone or in-person) to discuss the options. This form, translated into the student's and parent's preferred language, shall be provided to the student and to the parent before the meeting, and the District shall have a copy of the translated form available for review at the meeting. The meeting shall occur within 4 days following completion of the enrollment application and the identification of WIDA proficiency through a Home Language Survey.

The student shall have up to two working days following the meeting to select an option. If no option is timely selected the student shall be placed at McCaskey until an option is selected.

¹ Pursuant to 22 Pa. Code 11.11 (a) (1) an emancipated minor is "a person under 21 years of age who has chosen to establish a domicile apart from the continued control and support of parents or guardians. A minor living with a spouse is deemed emancipated."

**SCHOOL DISTRICT OF LANCASTER EL IMMIGRANT STUDENT
PLACEMENT FORM FOR ENTERING WIDA LEVEL II STUDENTS
(THIS FORM MUST BE TRANSLATED
INTO THE PREFERRED LANGUAGE OF THE STUDENT AND PARENT)**

Dear Student and Parent/Guardian:

You and your child may choose to attend McCaskey which is the District's main high school or your child may choose to attend Phoenix Academy. The choice is yours. This form explains those options.

Student's name: _____ **Date of Birth:** _____

1. Placement Options

Small Learning Community at McCaskey Campus

The School District's McCaskey Campus is located at 1051 Lehigh Avenue, Lancaster PA, and includes J.P. McCaskey High School and McCaskey East High School. Students on the McCaskey Campus attend Small Learning Communities ("SLCs") that focus on particular areas of interest to the student. For example, students interested in a possible career in the field of health care may wish to attend the SLC for Health Sciences. Current SLCs include Arts and Humanities, Health Sciences, Technology, Media Studies and Communications, Public Leadership and Services, and Technical and Business Careers. Students are assigned to a SLC they select, assuming space is available in that SLC. All SLCs provide the basic credit requirements such as English, math, science and social studies courses. Elective courses are based on the specific focus of the SLC. The McCaskey Campus provides after-school activities, sports teams and other extracurricular programs.

Phoenix Academy

Phoenix Academy is the District's "accelerated credit-recovery educational program" located at 630 Rockland Street, Lancaster, PA 17602. The school educates students who are over-age and under-credited and would not be able to graduate from McCaskey by the school term in which they turn 21 years of age. Phoenix provides an accelerated semester-based credit recovery program for high school students, which means that the curriculum is taught at a faster pace. Students can earn credits toward high school graduation more quickly than at McCaskey. Phoenix is located approximately two (2) miles from the McCaskey Campus, and Phoenix provides its students with transportation to and from school. Phoenix does not offer Small Learning Communities, nor does it offer extracurricular programs at the school, but students may participate in extracurricular programs at McCaskey, and shall be provided transportation to do so.

2. Your Child's Current Credit Status

Under Pennsylvania law, a student is entitled to receive an education in the District through the end of the school term in which the student turns 21 years of age. A student who is 17 years old at the time of enrollment in the District will have time to graduate from McCaskey, provided the student earns the 24 credits required for graduation. A student who is 18 years old at the time of enrollment may also be able to graduate from McCaskey, depending on birth date, enrollment date and the extent to which the student has obtained credits prior to and after enrollment. In addition, if your child is not able to graduate from McCaskey, s/he may seek a General Equivalency Diploma or GED which can be exchanged for a high school diploma. However, obtaining a GED requires studying for and taking a separate test covering the content areas of language arts, math, science and social studies.

Based on your child's educational records provided to the District, your child earned ____ credits before coming to the School District of Lancaster, which will count towards the student's minimum requirement of 24 credits to graduate and receive a high school diploma. (Any disagreement regarding this number of credits should be reported immediately to the District).

Based upon your current age and credits earned prior to enrolling in the District, the District has indicated below whether you can earn enough credits to graduate and receive a diploma, before or during the school term in which you turn 21 years of age, through enrolling in a Small Learning Community on the McCaskey Campus:

Can earn enough credits to graduate ____ Cannot earn enough credits to graduate ____

Based upon your current age and credits earned prior to enrolling in the District, the District has indicated below whether you can earn enough credits to graduate and receive a diploma, before or during the school term in which you turn 21 years of age, through enrolling in Phoenix Academy:

Can earn enough credits to graduate ____ Cannot earn enough credits to graduate ____

NOTE: Pursuant to a Consent Decree entered in *Issa v. School District of Lancaster, Civil Action No. 16-3881*, a case in the United States District Court for the Eastern District of Pennsylvania, the School District will be providing information to Plaintiffs' counsel regarding this individual student and the student's educational placement.

I would like the following additional individuals to participate in my placement meeting with the School District to be held on _____:

Placement Selection Decision Following In-Person Meeting

Name of Student: _____ D.O.B. _____

Date of Meeting: _____

Participants in meeting: _____

My rights have been explained to me. I understand that I can choose to go to either a Small Learning Community on the McCaskey Campus or Phoenix Academy. I make this choice voluntarily. I choose to have my child attend:

Small Learning Community on McCaskey Campus _____ (Parent or Student
Initials if Emancipated Minor)

Phoenix Academy _____ (Parent or Student
Initials if Emancipated Minor)

Signatures

By signing below, you are saying that you understand the options provided to you in this form, that this is your decision, and that no one has forced you to make your decision.

Parent/Guardian Signature: _____ Date: _____

Student signature: _____ Date: _____

Exhibit D to Consent Decree

SCHOOL DISTRICT OF LANCASTER COMPENSATORY EDUCATION FUND
NOTIFICATION FORM TO NAMED PLAINTIFFS

**[THIS FORM SHALL BE SENT BY THE COMPENSATORY EDUCATION FUND
ADMINISTRATOR TO ALL NAMED PLAINTIFFS]**

Dear Parent and Student,

As a result of settlement of litigation involving the School District of Lancaster, *Issa v. School District of Lancaster*, Civil Action No. 16-3881, a case in the United States District Court for the Eastern District of Pennsylvania, the School District has established a compensatory education fund, from which you may apply to receive up to \$3,000, to be used solely for educational purposes as described in this letter.

Money from the compensatory education fund may be used only for educational purposes, which may include tuition for any educational program including post-secondary programs, vocational training/services, therapeutic and/or remedial instruction, programs, courses, services and materials, ESL programs, and cyber-based programs and related technology to support cyber-based programs, but only if such programs further the goals of the student's education or language development, or will assist the student in achieving some educational goal. While compensatory education funds may be used as stated above for technology purchases such as computers, printers and educational software, it may not be used to purchase non-educational technology or software, such as an I-Phone or I-Pad. The compensatory education fund shall ***not*** be used to fund, pay and/or reimburse any technology purchases for any phones or non-educational software, including computer games, or for any non-educational purpose, such as, but not limited to attorney's fees, vehicles of any kind, home improvements, furniture of any kind or leisure travel.

The student will need to identify below on this form the intended use of the compensatory education funds requested. Funds to be used for educational programs will be sent directly to the program provider – when payment becomes due, the student will need to provide a copy of an invoice that includes the name and address of the program provider, so that payment may be sent on the student's behalf. Similarly, approved educational materials may be purchased directly by the Fund Administrator in which case payments requested from and made to vendors shall be documented by the Fund Administrator, or the student may be reimbursed for such costs upon providing the Fund Administrator a copy of a receipt or invoice that identifies the materials purchased and their cost.

To utilize funds, you must complete and return this form by **June 30, 2018** to the Fund Administrator at the following address or email address: **[name, address and email address of Fund Administrator]**.

If you have any questions, you may also direct them by email to the Fund Administrator.

This money for education must be used by **June 30, 2021**.

Student Name: _____ Date of Birth: _____

Student Address: _____

Student Phone Number: _____

Amount of funds requested (up to amount stated in the first paragraph of this form): _____

Identify the intended use of funds (specify educational program or other permitted use):

Date (or range of dates) when funds will be utilized: _____

Funds to be used for educational programs will be sent directly to the program provider – when payment becomes due, the student will need to provide a copy of an invoice that includes the name and address of the program provider, so that payment may be sent on the student's behalf.

Funds used for approved educational materials will be reimbursed to the student – the student will need to provide a copy of a receipt that identifies the materials purchased and their cost.

By signing below, the student and parents agree to use the requested funds only for the intended purpose stated above, and further agree that upon receipt of the requested funds, they agree to ***wave and release any claims or actions against the School District of Lancaster for compensatory education*** relating to the claims raised in *Issa v. School District of Lancaster*, Civil Action No. 16-3881, a case in the United States District Court for the Eastern District of Pennsylvania, regarding whether the School District has fulfilled enrollment requirements and taken adequate steps to overcome language barriers for immigrant students ages 17 to 21 with limited English proficiency from 2013 through June 2017.

Student Signature: _____

Date form is signed: _____

****If eligible individual is under 18 at time of declaration of intent to use:***

Parent/Guardian Name: _____

Parent/Guardian Signature: _____ Date: _____

Exhibit E to Consent Decree

SCHOOL DISTRICT OF LANCASTER COMPENSATORY EDUCATION FUND
NOTIFICATION TO IMMIGRANT STUDENTS AGES 17-21 PLACED AT PHOENIX
ACADEMY DURING THE 2016-2017 SCHOOL YEAR

[THIS FORM SHALL BE SENT BY THE COMPENSATORY EDUCATION FUND ADMINISTRATOR TO ALL NEWLY ENROLLED IMMIGRANT STUDENTS AGES 17-21 PLACED AT PHOENIX ACADEMY DURING THE 2016-2017 SCHOOL YEAR]

Dear Parent and Student,

As a result of settlement of litigation involving the School District of Lancaster, *Issa v. School District of Lancaster*, Civil Action No. 16-3831, a case in the United States District Court for the Eastern District of Pennsylvania, the School District has established a compensatory education fund, from which you may apply to receive up to \$1,500, to be used solely for educational purposes as described in this letter.

Money from the compensatory education fund may be used only for educational purposes, which may include tuition for any educational program including post-secondary programs, vocational training/services, therapeutic and/or remedial instruction, programs, courses, services and materials, ESL programs, and cyber-based programs and related technology to support cyber-based programs, but only if such programs further the goals of the student's education or language development, or will assist the student in achieving some educational goal. While compensatory education funds may be used as stated above for technology purchases such as computers, printers and educational software, it may not be used to purchase non-educational technology or software, such as an I-Phone or I-Pad. The compensatory education fund shall **not** be used to fund, pay and/or reimburse any technology purchases for any phones or non-educational software, including computer games, or for any non-educational purpose, such as, but not limited to attorney's fees, vehicles of any kind, home improvements, furniture of any kind or leisure travel.

The student will need to identify below on this form the intended use of the compensatory education funds requested. Funds to be used for educational programs will be sent directly to the program provider – when payment becomes due, the student will need to provide a copy of an invoice that includes the name and address of the program provider, so that payment may be sent on the student's behalf. Similarly, approved educational materials may be purchased directly by the Fund Administrator in which case payments requested from and made to vendors shall be documented by the Fund Administrator, or the student may be reimbursed for such costs upon providing the Fund Administrator a copy of a receipt or invoice that identifies the materials purchased and their cost.

To utilize funds, you must complete and return this form by **June 30, 2018** to the Fund Administrator at the following address or email address: **[name, address and email address of Fund Administrator]**.

If you have any questions, you may also direct them by email to the Fund Administrator.

This money for education must be used by June 30, 2021.

Student Name: _____ Date of Birth: _____

Student Address: _____

Student Phone Number: _____

Amount of funds requested (up to amount stated in the first paragraph of this form): _____

Identify the intended use of funds (specify educational program or other permitted use):

Date (or range of dates) when funds will be utilized: _____

Funds to be used for educational programs will be sent directly to the program provider – when payment becomes due, the student will need to provide a copy of an invoice that includes the name and address of the program provider, so that payment may be sent on the student's behalf.

Funds used for approved educational materials will be reimbursed to the student – the student will need to provide a copy of a receipt that identifies the materials purchased and their cost.

By signing below, the student and parents agree to use the requested funds only for the intended purpose stated above, and further agree that upon receipt of the requested funds, they agree to ***wave and release any claims or actions against the School District of Lancaster for compensatory education*** relating to the claims raised in *Issa v. School District of Lancaster*, Civil Action No. 16-3881, a case in the United States District Court for the Eastern District of Pennsylvania, regarding whether the School District has fulfilled enrollment requirements and taken adequate steps to overcome language barriers for immigrant students ages 17 to 21 with limited English proficiency from 2013 through June 2017.

Student Signature: _____

Date form is signed: _____

****If eligible individual is under 18 at time of declaration of intent to use:***

Parent/Guardian Name: _____

Parent/Guardian Signature: _____ Date: _____

Exhibit F to Consent Decree

SCHOOL DISTRICT OF LANCASTER COMPENSATORY EDUCATION FUND
NOTIFICATION FORM FOR IMMIGRANT STUDENTS AGES 17-21 WHO WENT TO
THE DISTRICT FOR ENROLLMENT BUT WERE NOT ENROLLED
FROM JULY 2013- JUNE 2017

[THIS FORM SHALL BE SENT BY THE COMPENSATORY EDUCATION FUND ADMINISTRATOR TO ALL IMMIGRANT STUDENTS AGES 17-21 WHO WENT TO THE DISTRICT FOR ENROLLMENT BUT WERE NOT ENROLLED FROM JULY 2013- JUNE 2017.]

Dear _____,

As a result of settlement of litigation involving the School District of Lancaster, *Issa v. School District of Lancaster*, Civil Action No. 16-3881, a case in the United States District Court for the Eastern District of Pennsylvania, the School District has established a compensatory education fund, from which you may apply to receive up to \$1,000, to be used solely for educational purposes as described in this letter.

Money from the compensatory education fund may be used only for educational purposes, which may include tuition for any educational program including post-secondary programs, vocational training/services, therapeutic and/or remedial instruction, programs, courses, services and materials, ESL programs, and cyber-based programs and related technology to support cyber-based programs, but only if such programs further the goals of the student's education or language development, or will assist the student in achieving some educational goal. While compensatory education funds may be used as stated above for technology purchases such as computers, printers and educational software, it may not be used to purchase non-educational technology or software, such as an I-Phone or I-Pad. The compensatory education fund shall ***not*** be used to fund, pay and/or reimburse any technology purchases for any phones or non-educational software, including computer games, or for any non-educational purpose, such as, but not limited to attorney's fees, vehicles of any kind, home improvements, furniture of any kind or leisure travel.

The student will need to identify below on this form the intended use of the compensatory education funds requested. Funds to be used for educational programs will be sent directly to the program provider – when payment becomes due, the student will need to provide a copy of an invoice that includes the name and address of the program provider, so that payment may be sent on the student's behalf. Similarly, approved educational materials may be purchased directly by the Fund Administrator in which case payments requested from and made to vendors shall be documented by the Fund Administrator, or the student may be reimbursed for such costs upon providing the Fund Administrator a copy of a receipt or invoice that identifies the materials purchased and their cost.

To utilize funds, you must complete and return this form by **June 30, 2018** to the Fund Administrator at the following address or email address: **[name, address and email address of Fund Administrator]**.

If you have any questions, you may also direct them by email to the Fund Administrator.

This money for education must be used by **June 30, 2021**.

Student Name: _____ Date of Birth: _____

Student Address: _____

Student Phone Number: _____

Amount of funds requested (up to amount stated in the first paragraph of this form): _____

Identify the intended use of funds (specify educational program or other permitted use):

Date (or range of dates) when funds will be utilized: _____

Funds to be used for educational programs will be sent directly to the program provider – when payment becomes due, the student will need to provide a copy of an invoice that includes the name and address of the program provider, so that payment may be sent on the student's behalf.

Funds used for approved educational materials will be reimbursed to the student – the student will need to provide a copy of a receipt that identifies the materials purchased and their cost.

By signing below, the student and parents agree to use the requested funds only for the intended purpose stated above, and further agree that upon receipt of the requested funds, they agree to ***waive and release any claims or actions against the School District of Lancaster for compensatory education*** relating to the claims raised in *Issa v. School District of Lancaster*, Civil Action No. 16-3881, a case in the United States District Court for the Eastern District of Pennsylvania, regarding whether the School District has fulfilled enrollment requirements and taken adequate steps to overcome language barriers for immigrant students ages 17 to 21 with limited English proficiency from 2013 through June 2017.

Student Signature: _____

Date form is signed: _____

****If eligible individual is under 18 at time of declaration of intent to use:***

Parent/Guardian Name: _____

Parent/Guardian Signature: _____ Date: _____

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

Khadidja Issa; Q.M.H., a minor, individually,
by and through his parent, Faiza Ahmed
Abdalla; **Alembe Dunia; Anyemu Dunia;**
V.N.I., a minor, individually by and through
her parent Mar Ki; **Sui Hnem Sung; and all**
others similarly situated,

Plaintiffs,

v.

The School District of Lancaster,

Defendant.

Civil Action No. 16-cv-3881

HON. EDWARD G. SMITH

CLASS ACTION

STIPULATED ORDER OF RESOLUTION

WHEREAS, the Parties have entered into a Consent Order in the above-captioned action ("Action") in the form attached hereto that shall settle and resolve any and all claims arising from the allegations described in the Complaint in this Action; and

WHEREAS the Court finds that this Consent Decree represents a just, fair, adequate and equitable resolution of the claims raised in this Action.

IT IS HEREBY STIPULATED AND AGREED by consent of the Parties in the Action, through their respective counsel, that the Action be hereby deemed resolved by the parties. The case is dismissed with prejudice with regard to all claims asserted in the Complaint; however, the Court shall retain jurisdiction of this case solely for the purpose of enforcing compliance with the Consent Decree. The parties are barred from relitigating any claims raised in this litigation or any claims released by means of the Consent Decree.

The Court retains jurisdiction of the of this Action to enforce all terms and conditions of the Consent Decree as entered into on _____ and subject to Section

XIV of the Consent Decree, until its termination date as set forth in Section IX of the Consent Decree, including entering and enforcing the Protective Order attached as Exhibit H to the Consent Decree, and adjudicating any motion seeking enforcement of the Consent Decree pursuant to Section XI thereof (including any motion for fees and costs associated with any such enforcement motion). The Court may direct the Parties to undertake specific enforcement of the Consent Decree or restore the case to the Court's active docket for further litigation. In the event a motion to enforce the Consent Decree is not filed on or before termination date as set forth therein, the Court shall relinquish jurisdiction and the case shall be deemed dismissed with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure without further order of the Court.

Dated: June 28, 2017

For the Plaintiffs,

/s/ Witold J. Walczak

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/s/ Kathleen A. Mullen

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/s/ Maura McInerney

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/s/ Seth F. Kreimer

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*Attorneys for Plaintiffs Khadidja Issa; Q.M.H.,
a minor, individually, by and through his
parent, Faisa Ahmed Abdalla; V.N.I., a minor,
individually by and through her parent Mar
Ki; and Sui Hnera Sung.*

Dated: June 28, 2017

For the Defendant,

/s/ Sharon M. O'Donnell
Sharon M. O'Donnell, Esquire (PA79457)
Marshall Dennehey Warner Coleman &
Goggin
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Telephone: (717) 651-3533
Fax: (717) 651-3707
smodonnell@mdwecg.com

SO ORDERED:

Hon. Edward Smith, U.S.D.J.

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

Khadidja Issa; Q.M.H., a minor, individually,
by and through his parent, Faisa Ahmed
Abdalla Alembe Dunia; Anyemu Dunia;
V.N.I., a minor, individually by and through
her parent Mar Ki; **Sui Hnem Sung; and all**
others similarly situated,

Plaintiffs,

v.

The School District of Lancaster,

Defendant.

Civil Action No. 16-cv-3881

HON. EDWARD G. SMITH

CLASS ACTION

STIPULATED PROTECTIVE ORDER IN CONNECTION WITH CONSENT DECREE

The Parties to the above-captioned action (the "Action"), by their attorneys, hereby stipulate and agree as follows:

WHEREAS, the parties have entered into a Consent Decree on this date and have voluntarily agreed to resolve the Action according to the terms set forth in the Consent Decree;

WHEREAS, Section VI of the Consent Decree includes certain requirements relating to compensatory education which may result in the exchange and disclosure by the School District of Lancaster (the "District") to Plaintiffs' counsel of confidential information pertaining to students' immigration status; education records; and other information protected by the Family Education Rights and Privacy Act, 20 U.S.C. 1232g (2013) ("FERPA");

WHEREAS, Section X of the Consent Decree includes certain monitoring provisions and requires, *inter alia*, the providing of student education records protected under FERPA by the District to Plaintiffs' counsel;

WHEREAS, the Parties have demonstrated that “good cause exists for the order of protection.” *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3rd Cir. 1994); and

WHEREAS, counsel for both Parties have given their consent to these terms and have agreed to request that the following Protective Order be entered; and

WHEREAS, the Parties acknowledge that federal and state law, including FERPA, governs the disclosure of student education records;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, and the Parties do hereby stipulate and agree, as follows:

1. The provisions of the Stipulated Protective Order entered by the Court on January 20, 2017 relevant to the provision and dissemination of student education records and information shall apply to such provision and dissemination required under the Consent Decree through the duration of the Consent Decree.
2. A copy of the signed Stipulated Protective Order is attached hereto as Exhibit A and incorporated as if set forth in full herein.

Dated: June 28, 2017

For the Plaintiffs,

/s/ Witold J. Walczak

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/s/ Seth F. Kreimer

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*Attorneys for Plaintiffs Khadija Issa; Q.M.H.,
a minor, individually, by and through his
parent, Faisa Ahmed Abdalla; V.N.I., a minor,
individually by and through her parent Mar
Ki; and Sui Hnem Sung.*

Dated: June 28, 2017

For the Defendant,

/s/ Sharon M. O'Donnell

Sharon M. O'Donnell, Esquire (PA79457)

Marshall Dennehey Warner Coleman &
Goggin

100 Corporate Center Drive, Suite 201

Camp Hill, PA 17011

Telephone: (717) 651-3503

Fax: (717) 651-3707

smodonnell@mdwccg.com

This Order is hereby APPROVED and ENTERED on this ____ day of June, 2017.

Hon. Edward Smith, U.S.D.J.

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

Khadidja Issa et al.,

Plaintiffs,

v.

The School District of Lancaster,

Defendant.

Civil Action No. 16-cv-3881

HON. EDWARD G. SMITH

CLASS ACTION

STIPULATED PROTECTIVE ORDER

WHEREAS, the parties to the above-captioned action (the "Action") will be engaged in discovery proceedings that include, among other things, taking depositions and producing documents;

WHEREAS, the discovery proceedings will necessarily involve the production of certain information that the parties to the Action (the "Parties," each a "Party") believe to contain confidential information pertaining to the Named Plaintiffs and members of the putative Class;

WHEREAS, the Parties expect that the confidential information pertaining to the Parties, will relate to, among other things, students' (1) immigration status; (2) educational records; (4) medical records; and (5) information protected by the Family Education Rights and Privacy Act, 20 U.S.C. 1232g (2013);

WHEREAS, the Parties have demonstrated that "good cause exists for the order of protection." *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3rd Cir. 1994); and

WHEREAS, counsel for both Parties have given their consent to these terms and have agreed to request that the following Protective Order be entered,

IT IS HEREBY ORDERED, pursuant to Federal Rule of Civil Procedure 26(c), that the following provisions of this Stipulated Protective Order (the "Protective Order") will govern the

handling of documents, deposition testimony, deposition exhibits, deposition transcripts, written discovery requests, interrogatory responses, responses to requests for admission, responses to requests for the production of documents, and any other information or material produced, given, or exchanged, including any information contained therein or derived therefrom ("Discovery Material") by or among any Party or non-Party providing Discovery Material (each a "Producing Party") in this Action.

1. "Confidential Material" is Discovery Material designated as "Confidential" pursuant to Paragraph 2 below, which a Party in good faith believes to contain sensitive or personal information which if disclosed might invade the privacy rights (including but not limited to rights defined by the Family Educational and Privacy Rights Act ("FEPR"), 20 U.S.C.A § 1232g(b)(1) (2013)), of any person, including the Parties and members of the putative Class.
2. The designation of Discovery Material as Confidential shall be made in the following manner:
 - a. Documents or other materials may be designated as Confidential by affixing the legend "CONFIDENTIAL" to each page containing any Confidential Material.
 - b. For electronic documents produced in native format, if any, designations shall be made in accordance with an agreed upon protocol governing production of electronically stored information.
 - c. Depositions or other pre-trial testimony may be designated as Confidential by: (1) a statement on the record, by counsel, at the time of such disclosure or before the conclusion of the deposition or testimony; or (2) by written notice, sent to all Parties

within fifteen (15) business days of the deposition or other pre-trial testimony; provided that only those portions of the transcript designated as Confidential shall be deemed Confidential Material. The Parties may modify this procedure for any particular deposition or other pre-trial testimony, through an agreement on the record at such deposition or testimony, without further order of the Court.

3. All documents and records that contain the names or comparable identifying information of any student within the School District of Lancaster and all photographs and videotapes depicting such students' faces shall be considered to be Confidential Material without the necessity of designation by any Party set forth in Paragraph 2 of this Protective Order.

4. The Parties shall only use Confidential Material in relation to the Action. The Parties shall ensure that the provisions of this Protective Order are made known to, and fully understood by, all persons involved in this Action.

5. All Confidential Material may be disclosed or made available by the party receiving the Confidential Material to the Parties, the Parties' counsel, legal assistants, secretarial and clerical personnel, persons assisting counsel, witnesses, experts and consultants (including their employees and associates) retained to perform work in connections with the Action, the Court and its personnel, court reporters, stenographers, or videographers utilized in this Action, and any other person or party designated by the Court. Any person(s) with access to Confidential Material may only use it for the purpose of preparing for and conducting this Action.

6. During the pendency of this Action, any Party objecting to the designation of any Discovery Material or testimony as Confidential Material may, after making a good-faith effort to resolve any such objection with opposing counsel, file a motion on reasonable notice for an

order vacating the designation. While such an application is pending, the Discovery Material or testimony in question shall be treated as Confidential Material pursuant to this Protective Order. The provisions of this Protective Order are not intended to shift any burdens of proof, including the burden of establishing that any Discovery Material validly constitutes Confidential Material.

7. Inadvertent failure to designate Discovery Material as Confidential Material shall not constitute a waiver of such claim and may be corrected. A Producing Party may designate as Confidential any Discovery Material that has already been produced, including Discovery Material that the Producing Party inadvertently failed to designate as Confidential: (1) by notifying in writing the Party to whom the production has been made that the Discovery Material constitutes Confidential Material; or (2) in any manner consistent with Paragraph 2. Upon receiving such supplemental notice, the Parties shall thereafter mark and treat the Discovery Material so designated as Confidential Material, and such Discovery Material shall be fully subject to this Protective Order from the date of such supplemental notice forward. The Party receiving such notice shall make a reasonable, good-faith effort to ensure that any analyses, memoranda, notes, or other such materials generated based upon such newly-designated information are immediately treated as containing Confidential Material. In addition, upon receiving such supplemental written notice, any Party that disclosed the Discovery Material prior to its designation as Confidential shall exercise its best efforts to: (1) ensure the return or destruction of such Discovery Material; (2) ensure that any documents or other materials derived from such Discovery Material are treated as if the Discovery Material had been designated as Confidential when originally produced; and (3) ensure that such Discovery Material is not further disclosed except in accordance with the terms of this Protective Order.

8. If any Confidential Material is used as an exhibit to a court filing or admitted into evidence as an exhibit at trial, the Parties shall redact or otherwise obscure the confidential portions of the material, unless the confidential portions are an integral part of a document or record, in which case the Parties shall file the document or record under seal of the Court, pursuant to Local Rules 5.1.2, 5.1.3 and 5.1.5.

9. If any photograph or portion of a videotape that contains Confidential Material is used as an exhibit to a court filing or admitted into evidence at trial, the Parties shall file the photograph or portion of the videotape under seal of the Court.

10. Nothing in this Protective Order shall prohibit the use of identifying information in a case or situation in which the person, or the person's parent, guardian, custodian, or surrogate parent consents to the use of such information.

11. Nothing in this Protective Order shall prevent any Party from using or disclosing its own Discovery Material in any matter it sees fit, without prior consent of opposing counsel or the Court.

12. Entering into this Protective Order, or agreeing to and/or producing or receiving Discovery Material or otherwise complying with the terms of this Protective Order, shall not:

- a. Prejudice in any way the rights of any Party to: (1) seek production of documents or information it considers subject to discovery; or (2) object to the production of documents or information it considers not subject to discovery;
- b. Prejudice in any way the rights of any Party to object to the authenticity or admissibility into evidence of any Discovery Material;

- c. Operate as an admission by any Party that any particular Discovery Material constitutes Confidential Material or contains any other type of confidential information;
- d. Prejudice in any way the rights of any Party to: (1) petition the Court for a further protective order relating to any purportedly Confidential Material; or (2) seek a determination by the Court whether any Discovery Material or Confidential Material should be subject to the terms of this Protective Order;
- e. Prevent any Party from agreeing in writing to alter or waive the provisions or protections provided herein with respect to any particular Discovery Material;
- f. Prejudice in any way the rights of any Party to object to the relevance, authenticity, use, or admissibility into evidence of any document, testimony, or other evidence subject to this Protective Order;
- g. Preclude any Party from objecting to discovery that it believes to be otherwise improper; or
- h. Operate as a waiver of any attorney-client, work product, business strategy, trade secret, or other privilege.

13. Confidential Material filed with the Court shall be filed under seal pursuant to the following procedures:

- a. Where possible, only confidential portions of filings with the Court shall be filed under seal. Information filed under seal shall be placed in a sealed envelope on which it shall be endorsed with the title to this action, the words "FILED UNDER SEAL" and a statement substantially in the following form:

"This envelope is sealed pursuant to order of the Court and contains Confidential Material filed in this case by [name of Party] and is not to be

opened or the contents thereof to be displayed or revealed except by order of the Court."

Any envelope containing information filed under seal that is an exhibit to a pleading shall also bear the name of the pleading. A full and unredacted copy of any such submission may be provided directly to the Court's chambers, marked "Chambers Copy" and "Contains Confidential Material Subject to Protective Order."

- b. If any Party objects to identified portions of the materials remaining under seal, it shall, within ten (10) business days after submission of such materials to the Court, state its objections in a letter sent by facsimile or electronic mail to counsel for all Parties in this action. The interested Parties shall promptly meet and confer to attempt to resolve those objections and, if such objections cannot be resolved, the Party asserting such objections shall promptly tender those objections to the Court for resolution. The revised public filing, if any, of that submission shall be made by the submitting Party within ten (10) business days after the Court's decision resolving that dispute.

14. Upon termination of this action, including all appeals, the Parties shall destroy or return to opposing counsel all documents or material designated as Confidential that they received from the disclosing Party, and all copies thereof (including such copies as may have been marked as deposition exhibits and/or exhibits to any motion, pleadings or other court documents); provided, however, that counsel for the Parties shall be permitted to keep work product referencing or containing Confidential Material on an attorneys' eyes only confidential basis. A Party that elects to destroy, rather than return, Confidential Material pursuant to this Section shall certify in writing to the disclosing Party that he/she/it has done so.

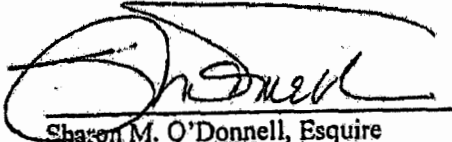
15. Nothing in this Protective Order shall prevent either Party from applying to the Court for any additional protection with respect to the confidentiality of documents, material or

information, or for the right to utilize the Confidential Material in any way not contemplated herein, as either Party may consider appropriate.

16. The provisions of this Protective Order shall survive any settlement, judgment or other disposition or conclusion of this action, and all appeals therefrom, and the Court handling this action shall retain continuing jurisdiction in order to enforce the terms of this Protective Order.

Dated:

Respectfully submitted,

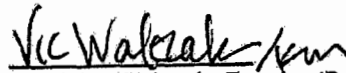


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Attorneys for Defendant



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So ordered.



J.

Dated:

1 / 20 / 2017