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.L.**, 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. _____ **CLASS ACTION COMPLAINT**

I. PRELIMINARY STATEMENT

1. Plaintiffs in this class action lawsuit are limited-English-proficient ("LEP") immigrants who, while aged 17-21, were, are, or may be in the future denied their right to equal educational opportunities and meaningful public education by Defendant School District of Lancaster ("SDOL" or the "District") in violation of the U.S. Constitution, federal civil rights statutes, and Pennsylvania education law.

2. The Named Plaintiffs are refugees who have fled war, violence, and persecution from their native countries of Somalia, Sudan, Democratic Republic of Congo, and Burma. Having finally escaped their turbulent environment to resettle in America, these young immigrants yearn to learn English and get an education so they can make a life for themselves.

3. SDOL has a custom, practice, and policy of refusing to admit older immigrant LEP students into the District's regular high school, McCaskey. SDOL either refuses to enroll them altogether or assigns them to an "alternative" school, Phoenix Academy.

4. Phoenix Academy is an alternative high school for "underachieving" students operated for SDOL on a contract basis by Camelot Education, a private company that is known for operating disciplinary schools. With its highly restrictive and overtly confrontational environment, Phoenix is run more like a disciplinary school than a traditional public high school. Students are subject to pat-down searches, prohibited from bringing belongings into or out of the school, forced to wear colored shirts that correspond with behavior and not allowed to wear watches or jewelry, expected to "confront" peers "exhibiting negative behavior," and can be subjected to physical and even violent restraint, as part of the school's disciplinary policy. Phoenix lacks adequate and appropriate supports for immigrant LEP students, including any transition program like the International School at McCaskey, which is a "one-year transition program designed to address the needs of students who are new to the country or the district and who have limited English proficiency." Phoenix is academically inferior by all measures and offers no extra-curricular opportunities. Many immigrant LEP students placed at Phoenix drop out because they are not provided sufficient supports to overcome language barriers to enable them to learn the core curriculum, and because of unchecked, persistent bullying in a severe, authoritarian environment that is particularly ill-suited for refugees.

5. SDOL's refusal to admit older immigrant LEP students into the McCaskey High School Campus ("McCaskey")—with its superior academic program, International School specially tailored to their academic needs as newcomers entering the school system, and superior language supports and accommodations—results in denial of a meaningful and equal education to Plaintiffs and Class Members that violates the Equal Education Opportunity Act ("EEOA"), 20 U.S.C. § 1703(f); Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* ("Title VI"); the Due Process Clause of the Fourteenth Amendment to the U.S.

Constitution, U.S. Const., amend XIV, § 1; the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, U.S. Const., amend XIV, § 1; and various provisions of the Pennsylvania Public School Code of 1949, 24 Pa. Stat. § 13-1301, *et seq.*

6. Plaintiffs seek declaratory and injunctive relief, including a preliminary injunction, directing SDOL to admit Plaintiffs and Class Members to McCaskey and to make available the full range of curricular and extra-curricular programs and activities, including access to the International School and all appropriate accommodations and modifications to overcome language barriers, in time to begin the fall semester on August 30, 2016.

II. JURISDICTION AND VENUE

7. The claims in this action arise under the Equal Education Opportunities Act ("EEOA"), 20 U.S.C. § 1703(f); Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d; the Due Process Clause of the Fourteenth Amendment to the United States Constitution; the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; 42 U.S.C. § 1983; and 24 Pa. Stat. § 13-1301 and 22 Pa. Code, Chapter 11.

8. This Court has subject matter jurisdiction over the federal law claims pursuant to 28 U.S.C. §§ 1331 and 1343. In addition, this Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202. This Court may exercise supplemental jurisdiction over the pendent state law claims pursuant to 28 U.S.C. § 1367.

9. Venue in this district is proper under 28 U.S.C. § 1391(b) because the defendant is subject to personal jurisdiction within the Eastern District of Pennsylvania and the events that give rise to this action occurred within the Eastern District of Pennsylvania.

III. THE PARTIES

A. Named Plaintiffs

Khadidja Issa[1]

10. Plaintiff Khadidja Issa is an 18-year-old refugee from Sudan.

11. Refugee status is governed by the 1951 Convention relating to the Status of Refugees ("Refugee Convention"), a United Nations multilateral treaty, to which the United States is a signatory, that defines who is a refugee, and sets out the rights of individuals who are granted asylum and the corresponding responsibilities of nations that grant asylum. Article 1 of the Refugee Convention, as amended by the 1967 Protocol, defines a refugee as:

> A person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

12. The screening process to admit refugees is rigorous, and typically takes 18-24 months. *See, e.g., Refugees*, U.S. Citizenship & Immigration Services, https://www.uscis.gov/humanitarian/refugees-asylum/refugees (last visited July 12, 2016); *U.S. Refugee Admissions Program*, U.S. Department of State, http://www.state.gov/j/prm/ra/admissions/ (last visited July 12, 2016).

13. In September 2015, Khadidja, her mother, and her siblings came to the U.S. as refugees. Lutheran Immigration Refugee Services ("LIRS"), a refugee resettlement agency, helped them resettle in Lancaster, Pennsylvania, where they still live.

[1] Each of the Named Plaintiffs have verified the allegations of the Complaint specifically pertaining to them. Those verifications are attached hereto as Exhibit A.

14. Khadidja's first language is Fur, an indigenous language of Darfur, Sudan. She also speaks Arabic. Neither she nor her mother spoke, read, wrote or understood English when they arrived in the U.S.

15. SDOL initially refused to enroll Khadidja in any District school. After several months SDOL relented, but made Khadidja attend Phoenix Academy. She was not given the option of attending McCaskey.

Q.M.H.

16. Plaintiff Q.M.H. is a seventeen-year-old refugee from Somalia. Q.M.H. is a pseudonym that is being used because he is a minor. As a minor, he brings this lawsuit by and through his mother, Faisa Ahmed Abdalla. Q.M.H., his mother, and his four siblings escaped the conflict in Somalia and took refuge in Egypt, where they lived for five years in a refugee camp.

17. Q.M.H. and his mother speak and understand only Somali and Arabic. They had no experience speaking or learning English before their arrival in the United States.

18. Q.M.H. and his family came to the United States as refugees in September 2015. LIRS helped them resettle in Lancaster, Pennsylvania, where they still live.

19. Defendant SDOL refused initially to admit Q.M.H. into any District school. After months of persistence by LIRS case workers, SDOL relented in January 2016, but admitted Q.M.H only to Phoenix. He was not given the option of attending McCaskey. Q.M.H. left Phoenix in April due to SDOL's failure to provide a program that meets his language and learning needs and its failure to check persistent and serious bullying of Q.M.H.

Alembe Dunia and Anyemu Dunia

20. Plaintiffs Alembe Dunia and Anyemu Dunia are brothers, aged 20 and 18, respectively. Alembe and Anyemu are refugees from the Democratic Republic of Congo. They spent twelve years in a refugee camp in Mozambique after fleeing the war in Congo. Their

father died in the camp. Alembe and Anyemu are native Swahili speakers, who also speak some Portuguese. Neither they nor their mother spoke, read, wrote or understood English when they arrived in the U.S.

21. In November 2014, Alembe and Anyemu, along with their mother and siblings, came to the United States as refugees. LIRS helped resettle them in Lancaster, where they still live.

22. In December 2014 and thereafter, SDOL refused to admit Alembe, who was 19 years old at the time, into any District school. SDOL refused to enroll then-17-year-old Anyemu in McCaskey, only allowing him to attend Phoenix, where he has not been provided sufficient language and other supports to learn and where the restrictive, hostile environment makes him uncomfortable. Despite the deficient language supports and educational instruction, SDOL recently advised Anyemu that he has managed to accrue four years of credits at Phoenix in twenty months and would be graduated later this summer.

Sui Hnem Sung and V.N.L.

23. Plaintiffs Sui Hnem Sung and V.N.L. are sisters, 19 and 17 years old, respectively. V.N.L is a pseudonym that is being used because she is a minor. As a minor, she brings this lawsuit by and through her mother, Mar Ki. They are refugees from Burma. Sui Hnem Sung and V.N.L. are native Hakha Chin speakers. Neither they nor their parents spoke, read, wrote or understood English when they first arrived in the United States.

24. In November 2015, Sui Hnem Sung, V.N.L., their mother, and younger brother and sister came to the U.S. as refugees, joining their father who had arrived in 2013. Church World Services ("CWS"), a refugee settlement agency, helped them settle in Lancaster, where they still live.

25. SDOL refused to admit Sui Hnem Sung and V.N.L. to McCaskey, instead admitting them only to Phoenix Academy, where they are not given sufficient language and other supports to access the curriculum.

B. Defendant

26. Defendant, SDOL, is a school district within the Commonwealth of Pennsylvania organized pursuant to the Public School Code of 1949, Act of March 10, 1949, P.L. 30, as amended, 24 Pa. Stat. §§ 1-101, *et seq*. The District's headquarters and principal place of business is located at 251 S. Prince Street, Lancaster, Pennsylvania 17603. The District is a Local Educational Agency ("LEA") responsible for ensuring that Plaintiffs receive an education consistent with federal and state law. The District, as a public entity, receives federal funds and is subject to the EEOA and Title VI of the Civil Rights Act of 1964. The District is also required to comply with state education laws pursuant to the Pennsylvania Code.

IV. LEGAL FRAMEWORK

27. Education is a fundamental right under the Pennsylvania Constitution and the Pennsylvania Public School Code of 1949, giving every child aged 6 through 21 the right to a free public education in that child's school district of residence. *See* Pa. Const. Art. III, § 14; 24 Pa. Cons. Stat. Ann. § 13-1301; *Sch. Dist. of Wilkinsburg v. Wilkinsburg Educ. Ass'n*, 667 A.2d 5, 9 (Pa. 1995) (interpreting Article III, Section 14 of the Pennsylvania Constitution to make public education a fundamental right in the Commonwealth). A child who turns 21 during the school term and who has not graduated from high school has the right to continue to attend the public schools in his district free of charge until the end of the school term. 24 Pa. Cons. Stat. Ann. § 13-1301; *see also* 22 Pa. Code § 12.1(a).

28. The right to a free public education extends equally to immigrant students who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

29. Such students are referred to in the law as "LEP students," which stands for limited-English-proficiency students,[2] or as "ELLs," which denotes English Language Learners, or simply "ELs," English Learners.[3] These terms are used interchangeably in this Complaint.

30. A school district does not satisfy its obligations under federal and state law by merely providing LEP students the exact same services and programs as native speakers:

> there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

Lau v. Nichols, 414 U.S. 563, 566 (1974).

31. Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from engaging in national origin discrimination, which has been interpreted to require school districts to take affirmative steps to address language barriers so that LEP students can participate meaningfully in schools' educational programs, both curricular and

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[2] *See, e.g.*, No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1961 (defining the term "limited English proficient.").

[3] *See, e.g., Glossary*, National Center for Education Statistics, https://nces.ed.gov/programs/coe/glossary.asp#ell (last visited July 12, 2016) (defining term English Language Learner).

extra-curricular. *See* 42 U.S.C. § 2000d (prohibiting race, color, and national origin discrimination in any program or activity receiving federal financial assistance); *Lau*, 414 U.S. 563; 34 C.F.R. § 100.3(b)(1), (2).

32. Another federal statute, the EEOA provides that "[n]o State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f).

33. More specifically, these federal laws have been interpreted and applied to require that school districts do the following:

a. Identify and assess ELL students in need of language assistance in a timely, valid, and reliable manner;

b. Provide ELL students with a language assistance program that is educationally sound and proven successful;

c. Provide sufficient staff and support for the language assistance programs for ELL students;

d. Ensure that all ELL students have equal opportunities to meaningfully participate in all curricular and extracurricular activities, including the core curriculum, graduation requirements, specialized and advanced courses and programs, sports, and clubs;

e. Ensure that students with disabilities, as defined by federal law, are evaluated in a timely and appropriate manner for special education and disability-related services and their language needs are considered in evaluations and delivery of services;

f. Monitor and evaluate ELL students in language assistance programs to ensure their progress with respect to acquiring English proficiency and grade level core content, exit ELL students from language assistance programs when they are proficient in English, and monitor exited students to ensure they were not prematurely exited and that any academic deficits incurred in the language assistance program have been remedied;

g. Evaluate the effectiveness of a school district's language assistance program(s) to ensure that ELL students in each program acquire English proficiency and that each program was reasonably calculated to allow ELL students to attain parity of participation in the standard instructional program within a reasonable period of time; and

h. Ensure meaningful communication with ELL parents. Catherine E. Lhamon & Vanita Gupta, U.S. Dep't of Justice & U.S. Dep't of Educ., *Dear Colleague Letter: English Learner Students and Limited English Proficient Parents*, 8-9 (Jan. 7, 2015), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf.

34. Pennsylvania law tracks federal law, but provides additional specificity. For instance, state law provides that a "child's right to be admitted to school may not be conditioned on the child's immigration status . . . [and, thus, a] school may not inquire regarding the immigration status of a student as part of the admission process." 22 Pa. Code § 11.11(d).

35. Pennsylvania law clarifies that "every school district shall provide a program for each student whose dominant language is not English for the purpose of facilitating the student's achievement of English proficiency and the academic standards under § 4.12 . . . ." 22 Pa. Code § 4.26. It also specifies that "[p]rograms under this section shall include appropriate bilingual-bicultural or English as a second language (ESL) instruction." *Id.*

36. Guidance issued by the Pennsylvania Department of Education to implement federal and state laws delineates how students should be identified, evaluated, monitored, and exited from a language program; recommends a specific number of instruction hours for ELL students based on their level of proficiency; and expressly states that language program administrators consider "LEA demographics, and student characteristics" in planning their instructional model. *See Educating Students with Limited English Proficiency (LEP) and English Language Learners (ELL)*, Pennsylvania Department of Education Basic Education Circulars (last modified Apr. 14, 2009),

http://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/PA%20Code/Educating%20Students%20with%20Limited%20English%20Proficiency%20(LEP)%20and%20English%20Language%20Learners%20(ELL).pdf.

37. Pennsylvania also requires all teachers in language instructional programs to hold a Program Specialist ESL Certificate. *Id.* at 7 ("All teachers in language instructional programs must hold the certification and endorsements required by [the Pennsylvania Department of Education]."); 24 Pa. Stat. § 15-1511 ("[T]he teaching of subjects in a language other than English may be permitted as part of a sequence in foreign language study or as part of a bilingual education program if the teaching personnel are properly certified in the subject fields."). All school districts with ELLs enrolled must offer staff development related to ESL for all personnel as part of the Professional Development Act 48 Plan.

38. Furthermore, Article 22 of the Refugee Convention, under which the U.S. accepted all of the Named Plaintiffs, also obliges host countries to provide them a free public education equivalent to that offered native students.

39. In sum, federal and Pennsylvania law requires that all school districts provide ELLs with appropriate language programs and assistance to help ensure that they can access the curriculum, attain English proficiency, develop high levels of academic attainment in English, and meet the same academic content and academic achievement standards that all students are expected to meet.

V. FACTUAL ALLEGATIONS

A. The School District of Lancaster

40. SDOL has a custom, practice, and policy of refusing to enroll immigrant LEP students, aged 17-21, in the District's main high school, McCaskey. That school offers a program known as the International School, which is specially designed for newly-arrived

immigrant LEP students. Instead of placing older immigrant students in McCaskey's International School, SDOL denies them enrollment in the District altogether or discourages or delays their admission, and if it does admit the students, funnels them to a substantially inferior alternative high school called Phoenix Academy. Phoenix operates under an educational theory that predictably denies these students meaningful education; it is neither pedagogically sound for recent immigrant ELLs nor reasonably calculated to overcome their cultural and language barriers.

41. SDOL annually enrolls about 11,300 students with a budget of about $190 million.

42. SDOL serves a significant immigrant population. Approximately 18% of students are ELLs, and about 4.5% of the students are refugees. (Refugees constitute about one-quarter of the ELLs in the District.)

43. The District operates three high schools: the McCaskey High School Campus (referred to herein as "McCaskey"), which has two buildings, JP McCaskey and McCaskey East; Phoenix Academy; and Buehrle Academy.

44. McCaskey enrolls the vast majority of the District's high-school-age students, about 2,600 students each year.

45. SDOL operates McCaskey like a traditional public high school, with a large array of curricular and extra-curricular offerings and a fairly typical degree of student freedom in movement and expression.

46. SDOL contracts with a private company, Camelot Education, to operate the District's two alternative high schools, Buehrle Academy and Phoenix Academy.

47. Camelot Education is a private company that specializes in alternative schools. Camelot holds itself out as running two types of schools relevant to this case. Camelot describes its "Transitional Schools" as "serv[ing] students in need of a temporary placement due to behavioral or disciplinary infractions." Camelot considers Buehrle a "transitional school." Camelot describes "accelerated Schools" as "offer[ing] students a highly structured, engaging, direct instruction pathway to graduation," and an "opportunity for students from the ages 16-21 who are overage and under-credited to graduate in 2.5 years or less."

48. Camelot characterizes Phoenix Academy as both an accelerated school and a transitional school. The Curriculum Guide for Phoenix lists "three basic goals" for "all students" at Phoenix: 1) "To recover credits needed for graduation," 2) "To change behavior from anti-social to pro-social," and 3) "To develop life skills that will help sustain this change."

49. Buehrle Academy operates under Pennsylvania law as an "Alternative Education for Disruptive Youth" ("AEDY") program, which is "designed for seriously and persistently disruptive students" in grades 6-12. Under state law, students can only be assigned to an AEDY school following an informal hearing. *See* 24 Pa. Stat. § 19-1902-C(2) (AEDY applicants must comply with informal hearing procedures set forth in 22 Pa. Code § 12.8(c), relating to hearings). The purpose of such a hearing is to determine whether the student meets the criteria for referral to an AEDY program, *i.e.*, that at the time of the recommended transfer the student demonstrates, to marked degree, specific disruptive conduct. *See id.* The maximum enrollment in Buehrle is 135 students.

50. Camelot began operating Phoenix Academy under contract with the District in 2011. Then-Superintendent of the District, Pedro Rivera, announced that transferring

operation of Phoenix to Camelot Education would save the District more than $1 million a year, or $3.6 million over the term of the initial 3-year contract.

51. Camelot has described Phoenix Academy publicly as a high school for "students with academic and attendance problems," "second-chance students," and "students who have lost their way."

52. Because Phoenix is an "accelerated" or "credit recovery" program, Phoenix students earn credits at a much faster rate than they could at a regular school, even though they receive comparable instruction time.

53. The maximum enrollment at Phoenix Academy is 350 students. Last year, Phoenix enrolled 323 students, approximately 95% of whom were students of color.

B. McCaskey Versus Phoenix

54. SDOL's refusal to enroll immigrant LEP students, like Plaintiffs, in McCaskey deprives them of an equal and meaningful education. In comparison to McCaskey, Phoenix is substantially inferior by every measure.

55. Academically, McCaskey is clearly superior to Phoenix.

a. The students-to-teacher ratio at McCaskey is 14:1, whereas at Phoenix it is 42:1;

b. The percentage of classes taught by "highly qualified teachers," as defined by the Pennsylvania Department of Education, at McCaskey is 92% whereas 0% of the classes at Phoenix are taught by "highly qualified teachers";

c. The Pennsylvania Department of Education's School Performance Profile[4] for the 2014-15 school ranked McCaskey twice as high as Phoenix with scores of 60.4 and 30.3, respectively;

[4] The Pennsylvania Department of Education's School Performance Profile provides the public with a comprehensive overview of student academic performance in every public school (including charter and alternative schools) and measures academic outcomes.

d. For advanced academic courses, which the District characterizes as "highly recommended for every student planning to attend college," McCaskey offers 10 Advanced Placement ("AP") courses and an International Baccalaureate ("IB") program—one of only 15 Pennsylvania high schools to offer such a program—whereas Phoenix offers no AP courses and no IB program;

e. For Advanced-Placement testing, 32% of students at McCaskey take AP tests, whereas 0% of Phoenix students take AP tests;

f. According to the Pennsylvania Department of Education, "college ready" students comprise 83% of McCaskey students whereas 0% of Phoenix students are deemed "college ready";

g. There are many extra-curricular activities, clubs, and opportunities, including interscholastic and other athletic teams, at McCaskey, whereas Phoenix offers no sports teams or extra-curricular activities on campus.

56. Beyond the stark differences in academic opportunities and quality, Phoenix provides more limited and less tailored ESL instruction and few modifications to instruction and testing in regular education classes.

57. At McCaskey, 19.46% of the students are ELLs whereas at Phoenix, 28.17% of students (90 students) are ELLs.

58. SDOL recognizes the unique challenges that newly-arriving immigrant ELLs face, and provides a one-year (sometimes longer) transitional program (the "International School") for such students at McCaskey.

59. The International School program at McCaskey for students in grades 9-12 is designed to provide intensive ESL support and content-based ESL instruction in a one-year program (with exceptions) primarily for entering students.

60. Students in the International School program participate in ESL classes and "sheltered instruction" science, math, and social studies courses,[5] as well as "enrichment subjects."

61. Other key features of the International School program, according to SDOL documents, include close communication with families, access to appropriate translation services[,] and assistance in connecting to community resources.

62. The goal of the program is for students to develop a beginning level of English proficiency and prepare to enter mainstream classes. At the end of each marking period, International School students are supposed to have the opportunity to transfer to the next ESL level within the International School or leave the International School, depending on their English language proficiency score.

63. Phoenix has no International School and no comparable transitional program for newcomers.

64. Phoenix also offers no "sheltered instruction" for ELL students.

65. Upon information and belief, Phoenix does not have any certified ESL teachers on staff.

66. According to SDOL documents describing the schools' operations, there are other significant differences, beyond the International School, between the ESL instructional approaches taken at McCaskey and Phoenix:

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[5] "Sheltered instruction" is "adapted to the students' English proficiency levels and provides modified curriculum-based content. Teachers enhance context by providing visual props, hands-on learning experiences, drawings, pictures, graphic organizers, and small group learning opportunities." Sch. Dist. of Lancaster, ESL Instructional Services Matrix (on file with Plaintiffs' counsel). "Sheltered English instruction programs offer instruction to ELLs at lower English proficiency levels, who are often newcomers to the United States." *Id.*

a. McCaskey offers either one or two periods daily of English language skill development and support based on ELLs' assessed English proficiency, whereas most of Phoenix's ELLs receive only one 80-minute ESL class with the same one-size-fits-all instruction regardless of the student's proficiency level;

b. McCaskey has systems in place to offer ELLs additional language supports during their core classes and other times of the day beyond ESL classes, whereas Phoenix ELLs commonly fail to receive any in-class language supports during non-ESL classes; and

c. McCaskey's ELLs are supposed to receive accommodations and language supports during standardized testing whereas Phoenix's ELLs commonly receive no accommodations during standardized testing.

67. Besides the major differences in academic quality and opportunities, curriculum, and essential language supports, Phoenix's environment and culture differ markedly from McCaskey and, indeed, from typical American high schools.

68. Camelot describes the environment at Phoenix as "more structured" and restrictive than other SDOL schools, including McCaskey.

69. The restrictions Phoenix places on students and the school's environment more closely resemble Buehrle Academy, the District's AEDY school for disruptive students that is also run by Camelot.[6]

70. At public high schools, the Fourth Amendment to the U.S. Constitution applies and school staff and faculty cannot invade students' privacy with intrusive searches unless they have reasonable suspicion that the student is concealing contraband. That is the policy at McCaskey.

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[6] Upon information and belief, some students may be placed at Phoenix for disciplinary reasons, in which case, Phoenix may be operating as an AEDY program whereby the District "removes disruptive students from regular school programs," *see* 24 Pa. Stat. § 19-1901-C(1), and students would be entitled to an informal hearing prior to placement. 24 Pa. Stat. § 19-1902-C(2).

71. At Phoenix, students entering the building must line up by gender for a pat-down search. They must also remove their shoes, which are also searched. And throughout the day, Phoenix students are subject to search by staff at any time.

72. Student discipline at Phoenix is also different from traditional public high schools, including McCaskey.

73. Phoenix, like many Camelot-operated schools and other AEDYs, uses a multi-tiered behavioral correction system called "Handle with Care" that employs both "verbal intervention" and "physical intervention." *See* Handle with Care Behavior Management System, http://handlewithcare.com/ (last visited July 12, 2016).

74. Physical interventions at Phoenix range from taking a student by the wrist or elbow or placing a hand behind their back to restraining a student against a wall.

75. This restraint system is such a central feature of life at Phoenix that new-student orientation has included a demonstration of the school's confrontational tactics using a student volunteer.

76. Physical restraints resulting in injury to students or school property are not uncommon at Phoenix.

77. Phoenix is designed to encourage "confrontations" between students. The school's primary mechanism for enforcing its behavioral rules is "positive peer group pressure and redirection." Phoenix's Student Handbook explicitly requires students to "confront[] the negative behavior of their peers," and identifies confrontation of one's peers as the number one "step to success" at Phoenix. In order to achieve a "positive" behavioral ranking at Phoenix, a student must demonstrate that they are "vocal in confronting the negative behavior of their peers." To advance further in the behavioral rankings, a Phoenix student must fill out a "Pledge

Log" so that school personnel can review "who they have been confronting, [and] the reason for the confrontation[.]" Only students who are consistently documented "confronting and enforcing the normative culture at Phoenix" can earn the highest behavioral ranking.

78. Consistent with the foregoing security practices, students at Phoenix are not allowed to carry belongings either into or out of the school, including books, papers, calculators, cell phones, food, bags, or cash over $10.

79. Phoenix students also have significantly less freedom than do students at traditional public high schools, including McCaskey.

80. Whereas McCaskey students make their own choices regarding dress and grooming (so long as their choices do not affect the educational program of the school or the health and safety of others), Phoenix maintains a strict disciplinary dress code. Students are assigned shirt colors based on behavior. Students begin wearing green Phoenix-branded shirts but can "earn" black Phoenix shirts for good behavior and consistent policing of their peers' behavior—a uniform requirement that results in a caste system within the school and bullying by the "black shirt" students.

81. Phoenix students are also prohibited from wearing any jewelry, including watches and ear or other piercings.

82. Phoenix students have significant limits on their freedom of expression that are not imposed at McCaskey. They cannot wear t-shirts bearing messages—political, religious or otherwise—nor can they distribute or even possess publications, handbills, buttons, armbands, or any communications technology.

83. In sum, students at Phoenix receive a grossly inferior education in a far more restrictive environment than do students at McCaskey.

84. Placing refugee students in a school that relies on an accelerated-credit instructional model, without sufficient language supports, is not a sound educational theory.

85. Moreover, the highly-restrictive, confrontational, and sometimes violent environment at Phoenix is a particularly unsuitable placement for refugee students who have experienced significant trauma and are new to the country.

86. It is not uncommon for refugees to experience great difficulty in adjusting to the most basic expectations of a school setting in the U.S. For refugees facing not only unfamiliar school routines but debasing and intimidating ones, their struggle is compounded. An educational environment that treats them with suspicion or harshness or otherwise creates new stressors in their lives severely undermines their ability to benefit from the educational opportunities afforded to them.

C. District Enrollment Process for ELL Students Aged 17-21

87. For at least the past three years, SDOL has had a custom, practice, and policy of refusing to admit immigrant LEP students aged 17-21 to McCaskey.

88. SDOL's custom, practice, and policy for older immigrant LEP students, age 17-21, is to either deny them enrollment in the District altogether or, if pressured by the family or refugee-resettlement case worker to enroll the student, send them to Phoenix.

89. The District is required to a do a home language survey of all newly enrolling students, and a language proficiency assessment for non-native English speakers.

90. SDOL typically does not provide any interpreters or other language supports during the testing or to explain the test.

91. After the aforementioned testing, students meet with Jacques "Jack" Blackman, the Coordinator of Counseling & Dropout Prevention Programs at McCaskey, who unilaterally makes enrollment and placement decisions for the students.

92. SDOL typically does not provide interpreters at these enrollment meetings.

93. SDOL sometimes tells students and families to bring someone who speaks both their native language and English to serve as an interpreter.

94. The enrollment meeting takes place regardless of whether anyone is available to interpret and regardless of whether a family-supplied interpreter is qualified to interpret.

95. In conversations with older immigrant ELLs and their resettlement case workers, Mr. Blackman has stated that he is excluding immigrant students from enrollment because the student "doesn't seem interested in school" or they are "served better by getting a job."

96. SDOL does not provide families or students with any documentation of enrollment denials—in either English or the student's native language.

97. SDOL does not translate the documents used by District personnel and shown to prospective students and parents at the enrollment meeting, or explain what the documents say. All documents are in English.

98. SDOL does not advise rejected students, either verbally or in writing, of any appeal rights or the existence of the enrollment-dispute process through the Pennsylvania Department of Education.

99. If SDOL allows older LEP students to enroll as a District student, the District often places them at Phoenix Academy, even though Phoenix lacks the language supports necessary to overcome the language barriers that impede their equal participation in instructional programs, and without regard to whether Phoenix provides an appropriate

educational environment given each student's educational background, career ambitions, and language proficiency.

100. Older LEP students placed at Phoenix Academy are not given the option of attending McCaskey.

101. When some Plaintiffs have expressly requested enrollment in McCaskey, the District has refused.

102. Upon information and belief, older non-immigrant students and younger high-school-age students who are new to the District are not excluded from enrollment, and are placed at McCaskey by default.

103. Refugee resettlement case workers from LIRS and CWS have met on several occasions over the past year with SDOL officials to discuss the District's exclusion of older immigrant LEP children from the District, refusal to admit them to McCaskey and the International School, and the deficient education and highly-restrictive environment at Phoenix.

104. The case workers have asked SDOL officials to formalize the enrollment process and provide documentation specifying why the students were denied enrollment altogether, or denied enrollment at McCaskey and forced into Phoenix, but SDOL officials have refused to do so.

D. Named Plaintiffs' Experiences

Khadidja Issa

105. Plaintiff Khadidja Issa is an 18-year-old refugee from Sudan. She is a native Fur and Arabic speaker. Khadidja came to the United States, specifically Lancaster, with her mother and siblings in September 2015. Neither she nor any family members spoke, read, wrote, or understood English as of their arrival in the United States.

106. Khadidja's resettlement case worker first attempted to enroll her in school in November 2015. SDOL did not provide an interpreter. Although a resettlement case worker attended the meeting and attempted to interpret, he did not speak Khadidja's dialect. All the documents District officials showed Khadidja were in English, which neither she nor her mother understood.

107. SDOL refused to enroll Khadidja in any District school. SDOL did not provide Khadidja with any written documentation of the denial or explain her rights under Pennsylvania law to file an appeal.

108. After additional efforts by Khadidja's case workers, SDOL eventually agreed to enroll her in Phoenix Academy for the spring semester of the 2015-2016 school year.

109. Khadidja wanted to attend McCaskey—her younger siblings attend McCaskey's International School and they are happy there—but SDOL refused, saying she was too old. The District placed Khadidja in the eleventh grade at Phoenix.

110. As a result of her placement at Phoenix, Khadidja never participated in the International School at McCaskey or any similar transitional program for newcomers. She is not learning the material presented at Phoenix because she does not understand English well enough and does not receive the necessary language supports and accommodations. Khadidja's primary educational goal is to learn English, which is not happening at Phoenix.

111. No staff person at Phoenix speaks Arabic or Fur. The only language support enlisted by teachers at the school in order to facilitate Khadidja's learning was that, on two or three occasions, Phoenix staff asked for telephonic interpretation assistance from an LIRS resettlement case worker who speaks Arabic but does not speak Khadidja's dialect. Significantly, the case worker speaks Middle Eastern Arabic, which Khadidja, with her Sudanese

Arabic dialect, finds very difficult to understand. She has never received, or been offered, any instructional or testing accommodations in her core classes or for standardized exams. Khadidja has not been assessed for language proficiency since starting at Phoenix.

112. Khadidja also does not feel safe at Phoenix Academy. She is often scared when she is in the school.

113. Khadidja is uncomfortable being patted down every day. It makes her feel like a "prisoner." When Khadidja is menstruating, she is very uncomfortable because the daily pat-downs are so intrusive that the staff sometimes touch near her sanitary pad.

114. Khadidja wants desperately to attend McCaskey, where she would receive more language support and be in a less dangerous and hostile environment. She is highly committed to getting a good education.

Q.M.H.

115. Q.M.H. is a Somalian refugee who came to Lancaster in the fall of 2015 when he was 17 years old. Q.M.H. and his family are native Somali speakers. He also learned to speak and read Arabic while in an Egyptian refugee camp. Q.M.H. and his family had no experience speaking or learning English before their arrival in the United States.

116. For four months, starting in mid-September 2015, SDOL refused LIRS resettlement case workers' repeated attempts to enroll Q.M.H. in any District school. In September, the District first claimed that Q.M.H. had "medical issues" and insufficient vaccinations to enroll. Q.M.H. did, in fact, have the necessary immunizations and medical clearance. SDOL never advised Q.M.H or his mother that he was eligible, under Pennsylvania law, for provisional enrollment even if he had not completed all required immunizations.

117. In December, 2015, Q.M.H.'s resettlement case worker again attempted to enroll him, producing documents confirming all necessary immunizations and medical

clearances, but SDOL again refused. After Q.M.H.'s case worker told Mr. Blackman that Q.M.H. had limited formal education and did not speak English, Mr. Blackman told them that Q.M.H. could not attend school in the District and should instead go to the privately-run Literacy Council. When the case worker pointed out that 17-year-old Q.M.H. was too young to attend Literacy Council, Mr. Blackman said his decision was final and left the meeting.

118. At none of the meetings with Q.M.H. and his mother did SDOL provide an interpreter or give them written information, in any language, about their rights or the legal process for resolving enrollment disputes.

119. In January 2016, Q.M.H.'s case worker made several more attempts, by telephone and in person, to enroll him. Mr. Blackman gave Q.M.H.'s resettlement case worker varying reasons for denying Q.M.H. admission, including that Q.M.H. isn't motivated, that Phoenix would be a lot of work, and that Q.M.H. should instead look into services offered by the Job Corps and Literacy Council.

120. In late January, Mr. Blackman and SDOL eventually acceded to the resettlement case worker's repeated entreaties and admitted Q.H.H. to Phoenix. The District did not make the option of attending McCaskey available to Q.M.H.

121. SDOL's repeated refusals to admit Q.M.H. caused him to miss four months of schooling.

122. At Phoenix, Q.M.H. was given only one ESL class per day. Since Phoenix does not have a transition program for newly arrived immigrants, like McCaskey's International School, Q.M.H. was not given any specialized assistance to learn English or overcome obstacles to accessing the curriculum. SDOL failed to provide Q.M.H. with language support or accommodations in testing and instruction in his core classes. SDOL never offered

Q.M.H. access to an Arabic language interpreter and never once used a telephone-based interpretation service, such as Language Line, to facilitate communication with him.

123. The District failed to assess Q.M.H.'s acquisition of English language skills at any point after he started at Phoenix.

124. SDOL's failure to provide adequate and necessary services to enable Q.M.H. to learn English or access the instruction in his core subject classes caused Q.M.H. to struggle academically.

125. Q.M.H. did not feel safe at Phoenix. He was bullied regularly, typically by the students who had "earned black shirts" for good behavior. When he was in the bathroom, they would bang on the door, pull his curly black hair, and yell angry things at him that he could not understand, other than the words "black" and "n_ _ _ _," a racial epithet.

126. With the help of his resettlement case worker, Q.M.H. reported to District officials four specific incidents in which he had been bullied.

127. On April 7, 2016, Q.M.H.'s mother and resettlement case workers accompanied him to a meeting at Phoenix to discuss inadequate language and other support services for Q.M.H. and to seek help with the persistent bullying. SDOL was represented at the meeting by employees Dr. Arthur Abrom, Jacques Blackman, and Amber Hilt.

128. For the first time, SDOL provided an interpreter for the meeting, but Q.M.H. and his mother had difficulty understanding the interpreter.

129. Dr. Abrom stated that he would investigate the bullying, but on April 15, Dr. Abrom emailed Q.M.H.'s case worker to say that Q.M.H. had not provided adequate detail about the bullies or proof of his allegations and that the allegations, "even if they occurred, were not severe, persistent or pervasive."

130. On April 25, 2016, Plaintiffs' counsel wrote to the District to again bring to the District's attention the inadequacies in Q.M.H.'s education and language support and the serious bullying to which he had been subjected. The letter asked that Q.M.H. be transferred to McCaskey. The District has not responded to the letter.

131. In May, the District delivered a notice to Q.M.H. advising him that he needed to return to Phoenix or he would be unenrolled from the school. This was the first document that SDOL ever provided to Q.M.H. that was translated into Somali.

132. Q.M.H. has not attended Phoenix since April because the District does not provide sufficient language support for him to understand the course material, and because he does not feel safe from the persistent and serious bullying. Q.M.H.'s mother has said she will not send him back to Phoenix because she does not believe he is safe there.

133. Q.M.H. wants to complete high school at McCaskey and pursue a career in justice, either as a lawyer or a police officer.

Alembe Dunia and Anyemu Dunia

134. Plaintiffs Alembe and Anyemu Dunia are brothers from Democratic Republic of Congo who spent twelve years at a refugee camp in Mozambique. They are native Swahili speakers who also speak and understand some Portuguese. Alembe, Anyemu, and their family members did not speak, read, write, or understand English when they arrived in the U.S. At the time of their arrival in November 2014, Alembe was 19 and Anyemu was 17 years old.

135. Alembe's passion is fixing cars, and he wants to pursue a career as a car mechanic. Anyemu likes science and wants to study biology and chemistry.

136. In December 2014, with the help of their LIRS resettlement case worker, Alembe and Anyemu attempted to enroll in the District and met with Mr. Blackman to discuss their enrollment. SDOL did not provide an interpreter at the meeting.

137. SDOL refused to enroll Alembe in any school. Mr. Blackman told him he was too old and did not have enough credits to graduate on time. Mr. Blackman told Alembe to apply to Job Corps.

138. In November 2015, Alembe and his mother, with the assistance of their resettlement case worker, again attempted to enroll Alembe in the District and inquired about whether he could join his brother at Phoenix. Once again, however, SDOL refused to admit him into the District, even though he was still under age 21.

139. Because he is out of school, Alembe has little to no interaction with English-speaking peers. He would like to learn English in part so that he can learn the English names of the parts of cars in order to obtain employment as a mechanic. Alembe will turn 21 in November, and has a right to attend school until June 2017.

140. At the same December 2014 meeting where SDOL refused to enroll Alembe, the District enrolled Anyemu in Phoenix Academy and placed him in the ninth grade. SDOL did not offer McCaskey to him as an option.

141. As a result of his placement at Phoenix, Anyemu never participated in the International School at McCaskey or any similar transitional program. Phoenix has failed to provide him with sufficient language instruction and other supports to enable him to learn and access the curriculum. Though Anyemu really needs to take books home to study, he is not allowed to carry any books in or out of the school.

142. SDOL has required Anyemu to take the standardized Keystone exams with no accommodations or language support, although he is legally entitled to such accommodations.

143. Without adequate ESL instruction and language supports in core subject classes, Anyemu has been unable to access or learn the curriculum. He understands very little of what is being taught to him in his non-ESL classes at Phoenix. There are no Swahili speakers in the school. Anyemu has not been assessed for English language acquisition since he first entered the District.

144. The restrictive and invasive environment at Phoenix bothers Anyemu greatly. He does not like the pat-down searches, where strangers touch his body. He has seen behavioral specialists physically apprehend and forcibly remove students from class. Anyemu describes his daily experiences there as "scary." He also observes that the classrooms are often chaotic and disruptive and it can be difficult to concentrate and learn.

145. Anyemu has been bullied regularly at Phoenix. While he does not understand everything the bullies say, he does understand when they call him "black" or "black Chinese"—he has dark skin and almond shaped eyes. Anyemu regularly reports the bullying to teachers and staff but they have never taken any action to help him.

146. Anyemu is now in the eleventh grade at Phoenix Academy and was told recently that he can expect to be graduated from high school in August 2016. Anyemu's content instruction was so accelerated at Phoenix that he was pushed through four years of high school in only one year and eight months.

147. SDOL's decision to graduate Anyemu is premature, as he has not learned to speak, read, or write English and has not attained a level of proficiency in the core curricular content to warrant graduation from any American school.

148. Anyemu wants to continue in school and wants to attend McCaskey to improve his English and to access the full educational opportunities that can prepare him for college and employment.

Sui Hnem Sung and V.N.L.

149. Plaintiffs Sui Hnem Sung and V.N.L. are sisters from Burma, ages 19 and 17, respectively, who came to Lancaster in November 2015. They did not speak, read, write, or understand English when they first arrived in the United States. Their education was interrupted for two years while their family waited for approval of their visas to immigrate to the United States, and they could not afford to pay for education.

150. In December 2015, the younger sister, V.N.L., was enrolled at Phoenix, in the ninth grade. SDOL officials told her this was her assigned school; she was not given the option to attend McCaskey.

151. Sui Hnem Sung enrolled in the District in January 2016. SDOL placed her at Phoenix. She was not given the option to attend McCaskey.

152. Sui Hnem Sung began at Phoenix in or around early February, and believes she was placed in the tenth grade.

153. There is no one at Phoenix who speaks Sui Hnem Sung and V.N.L.'s native language, Hahka Chin. As a result of their placement at Phoenix, Sui Hnem Sung and V.N.L. never participated in the International School at McCaskey or any similar transitional program for newcomers.

154. Sui Hnem Sung and V.N.L. very much want to learn English and get a good education. They wish to transfer to McCaskey, an option that SDOL has never offered them.

VI. CLASS ACTION ALLEGATIONS

155. Plaintiffs bring this suit individually and as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of all similarly-situated individuals. The Class that Plaintiffs seek to represent is comprised of all foreign-born limited English proficient ("LEP") individuals, who, at any time after August 1, 2013, while aged 17-21, were, are, or will be in the future, excluded from the School District of Lancaster's main high school, McCaskey, either as a result of being refused enrollment altogether or by involuntary placement at Phoenix.

156. The Class is so numerous that joinder of all members is impracticable. The exact number of Class Members is not currently known to Plaintiffs, but the Defendant can identify the Class Members.

157. There are questions of law and fact common to the Class. Specifically, all Plaintiffs, along with the proposed Class Members, are LEP immigrants who in the past three years and continuing to the present were, while ages 17-21, denied enrollment in McCaskey—either as a result of being refused enrollment in the District altogether, or by involuntary placement at Phoenix. Each putative Class Member raises the same basic questions of law: whether refusing to enroll LEP students, who have exhibited no behavioral or disciplinary problems, in the regular high school in the District that provides the language development programs that these students require is a violation of the Equal Protection and Due Process Clauses of the U.S. Constitution, Title VI, the Equal Educational Opportunities Act, and Pennsylvania law.

158. Plaintiffs' claims are typical of the claims of the Class as all Class Members are being deprived of, and would benefit from, the opportunity to attend the main public high school, McCaskey, which has programs and services available to meet their

educational and language needs and afford them equal access to educational opportunities. Unlike Phoenix, McCaskey does not operate on a disciplinary or accelerated model that is unnecessary for Class Members, and undermines their educational success.

159. The Named Plaintiffs will fairly and adequately protect the interests of the Class. The Named Plaintiffs are LEP immigrants who were harmed by the District's conduct of refusing to enroll them in the regular public schools of the District, depriving them of the ESL services and appropriate environment to receive the educational benefits available to them under state law. The Named Plaintiffs and Class Members have experienced a common harm and seek a common remedy, including a declaration of unlawful behavior and preliminary and final injunctive relief and equitable remedies requiring their enrollment in educationally appropriate programs at McCaskey and compensatory supplemental educational services to make up for the time when students failed to receive meaningful instruction in accordance with federal and state law.

160. Counsel for Plaintiffs are experienced in handling federal class action litigation and will adequately and zealously represent the interests of the Class. The undersigned counsel at the American Civil Liberties Union of Pennsylvania and Education Law Center have litigated numerous class action suits involving federal civil rights claims. Additionally, ELC has experience litigating class actions specifically on behalf of students seeking educational opportunities and fair treatment in accordance with applicable laws. The undersigned counsel at Pepper Hamilton LLP are likewise experienced in complex federal law and class action litigation, including representing plaintiffs in class actions asserting civil rights claims.

161. Class-wide final injunctive relief or declaratory relief is appropriate under Rule 23(b)(2) because the District has acted or refused to act on grounds that apply generally to

the Class by denying them access to their regular public high school and affording them equal access to educational opportunities.

162. Upon information and belief, no Class Member has initiated similar litigation concerning the claims herein.

VII. LEGAL CLAIMS

Count One: Violation of the Equal Education Opportunity Act
(On Behalf of All Named Plaintiffs and Class Members)

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

164. Federal law provides that: "No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by . . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." 20 U.S.C. § 1703(f).

165. National origin discrimination has been defined to include the denial of equal opportunities due to an individual's, or his or her ancestor's, place of origin, or because an individual has the physical, cultural, or linguistic characteristics of a national origin group, including limited English proficiency.

166. All Named Plaintiffs and Class Members (collectively, "Plaintiffs") are LEP immigrants who have documented language barriers.

167. Through its actions and inactions, the District denied enrollment to Plaintiffs or required them to attend Phoenix Academy, an alternative school providing limited and inadequate language assistance services in an accelerated instructional model that is not reasonably designed to appropriately address their educational and language needs.

168. SDOL's placement of older LEP students in Phoenix, as opposed to McCaskey, is not based on any sound educational theory that is reasonably calculated to overcome language barriers. Rather, Phoenix is a wholly inappropriate alternative accelerated program that fails to provide each Plaintiff with an appropriate language instruction program, including but not limited to: valid and comprehensive assessments of proficiency levels, an appropriate amount of ESL instruction based on the individual language needs of each student, comprehensible content instruction, and modifications and accommodations to instruction and testing to address language barriers and enable equal participation in instructional programs.

169. By failing to take appropriate action to overcome language barriers that impede Plaintiffs' equal participation in instruction, SDOL has denied Plaintiffs an equal education in violation of the EEOA on account of their race and/or national origin.

170. The District's failure to overcome language barriers includes but is not limited to:

a. failing to enable the meaningful participation of parents and students in educational decisions and educational opportunities by failing to provide interpretation and translation services;

b. failing to provide an appropriate amount of ESL instruction based on the individual needs of each Plaintiff;

c. failing to provide an appropriate and necessary transitional and introductory program for newly-arrived immigrant LEP students, along the lines of McCaskey's International School; and

d. failing to provide modifications and accommodations to content instruction and standardized testing, which denied Plaintiffs access to comprehensible instruction and meaningful learning.

171. Each of these failures has impeded equal participation by the Named Plaintiffs and Class Members in instructional programs of the District and thereby denied Plaintiffs an equal education.

172. The refusal of the District to enroll Plaintiffs or permit them to attend McCaskey has denied Plaintiffs equal educational opportunities to which they are legally entitled.

173. Plaintiffs have suffered and will continue to suffer irreparable injury in the form of lost instruction time, an inability to overcome language barriers, and diminished educational and future employment opportunities.

174. Wherefore, the Named Plaintiffs and Class Members demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

Count Two: Violation of Title VI of the Civil Rights Act of 1964
(On Behalf of All Named Plaintiffs and Class Members)

175. Plaintiffs' incorporate the preceding paragraphs as if set forth in full herein.

176. Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

177. Regulations promulgated pursuant to Section 602 of Title VI forbid the District from utilizing methods of administration that subject individuals to discrimination because of race and/or national origin or that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. These regulations, in relevant part, prohibit the following forms of discrimination:

> A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

34 C.F.R. §§ 100.3(b)(1)(i)-(vi).

178. As a recipient of federal funds, the District is prohibited from discriminating against Plaintiffs, including by excluding them from instructional services, failing to provide appropriate instruction and language services, and by providing unequal educational services on the basis of national origin.

179. By excluding Plaintiffs from its schools, or requiring them to attend a wholly inappropriate alternative accelerated school that is academically inferior by every measure, and by failing to eliminate language barriers as described above, the District has discriminated against Plaintiffs on the basis of their national origin.

180. The District knows that immigrant LEP students have been and are being denied enrollment altogether, experiencing delays in enrollment, or have been and are being required to attend Phoenix Academy, an accelerated credit-recovery school that fails to provide appropriate language instruction, offers far more limited educational opportunities, and educates students in a highly restrictive and confrontational school environment. The Phoenix program is not educationally sound for Plaintiffs, denies Plaintiffs a meaningful education, and has not been proven successful.

181. The District has acted intentionally or with deliberate indifference by excluding Plaintiffs from a meaningful education.

182. The District has denied and continues to deny Plaintiffs equal educational opportunities and meaningful participation in school, including by denying them access to the International School at McCaskey, the full range of curriculum options, and extracurricular activities and programs available to other high school students who have the option to attend McCaskey.

183. Despite this knowledge, the District has acted intentionally and repeatedly with deliberate indifference, including by:

a. Refusing to enroll school-age Plaintiffs within five days of presentation of enrollment documents;

b. Prohibiting and actively discouraging Plaintiffs from enrolling in the District;

c. Failing to provide LEP parents of Plaintiffs with interpretation and translation services throughout the enrollment, placement, and educational process, thereby failing to enable meaningful parent participation;

d. Unilaterally placing Plaintiffs in a wholly inappropriate educational setting at Phoenix;

e. Denying Plaintiffs an appropriate language assistance program that is educationally sound, proven successful, and enables Plaintiffs to access core curricular content, attain language proficiency, and achieve academic success;

f. Requiring Plaintiffs to be educated in a highly restrictive and punitive learning environment where they are stigmatized;

g. Denying Plaintiffs admission to McCaskey, including its International School and the full range of curricular and extracurricular programs and activities that are not available at Phoenix;

h. Failing to ensure that Plaintiffs have equal opportunities to meaningfully participate in all curricular and extracurricular activities, including the core curriculum, graduation requirements, specialized and advanced courses, and programs, sports, and clubs;

i. Failing to evaluate the effectiveness of Phoenix's language assistance program to ensure that ELL students acquire English proficiency and that the program is reasonably calculated to allow ELL students to attain parity of participation in the standard instructional program within a reasonable period of time;

j. Failing to take affirmative steps to rectify this discrimination and ensure that LEP immigrant students are able to promptly enroll in school, access appropriate language services and instruction, and access the full range of educational programs and services provided to their peers who attend McCaskey.

184. As a result of the District's deliberate indifference to Plaintiffs' educational and language needs, Plaintiffs have been denied an appropriate program of language instruction and access to comprehensible instruction in content areas required by Pennsylvania academic standards.

185. As a result of the District's deliberate indifference to Plaintiffs' educational needs, the District failed to communicate with the parents of Plaintiff students in the parent's preferred language and mode of communication to enable meaningful parent participation in education decisions, thereby failing to ensure equal access to educational opportunities.

186. As a result of the District's deliberate indifference to Plaintiffs' educational needs, Plaintiffs have suffered and will continue to suffer irreparable harm, which includes but is not limited to the loss of educational time, an inability to overcome language barriers, and diminished educational and future employment opportunities.

187. Wherefore, Plaintiffs demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

Count Three: Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution

(On Behalf of All Named Plaintiffs and Class Members Denied Enrollment)

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

189. The Due Process Clause provides that no State "shall . . . deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const., amend XIV, § 1.

190. Pennsylvania law establishes the legal right of school-age children to receive a free public education. The Pennsylvania Public School Code of 1949 provides that every student aged six through twenty-one has the right to a free public education in his or her school district of residence. 24 Pa. Stat. § 13-1301; *see also* 22 Pa. Code § 11.11(a)(1).

191. This statutorily created right qualifies as a property interest protected by the Due Process Clause of the Fourteenth Amendment.

192. The District's refusal to enroll Named Plaintiffs and Class Members without providing any notice of the reasons for the denial or their applicable rights to contest the denial in a language they can understand deprives them of property interests without due process of law in violation of the Due Process Clause of the Fourteenth Amendment.

193. Through its actions and inactions, as set forth above, the District deprived the Named Plaintiffs and Class Members of a state-created right to enrollment without providing them with notice or a meaningful opportunity to be heard in violation of procedural protections guaranteed by the Due Process Clause of the Fourteenth Amendment.

194. As a result of the District's violation of Plaintiffs' right to procedural due process, Plaintiffs have suffered and will continue to suffer injury by being deprived of an education to which they are legally entitled under state law.

195. Wherefore, pursuant to 42 U.S.C. § 1983, Plaintiffs demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

Count Four: Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

(On Behalf of All Named Plaintiffs and Class Members)

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

197. Through its actions and inactions, as set forth above, the District has violated and continues to violate the rights conferred upon Plaintiffs and all others similarly situated by the Equal Protection Clause of the Fourteenth Amendment. U.S. Const., amend XIV, § 1.

198. SDOL acted pursuant to a policy, practice, and custom to deprive the Named Plaintiffs and Class Members of the equal protection of laws on the basis of their national origin by denying these students enrollment in contravention of their right to a free public education and by denying them admission to McCaskey and admitting them only to an inferior alternative school, namely, Phoenix, which deprives them of a meaningful education.

199. As a result of the District's violation of Plaintiffs' right to equal protection, Plaintiffs have suffered and will continue to suffer injury in the form of the denial of

a meaningful education due to lack of language instruction and services, and equal access to the educational opportunities that are afforded to students at McCaskey, and the loss of future educational and employment opportunities.

200. Wherefore, pursuant to 42 U.S.C. § 1983, Plaintiffs demand judgment in their favor and against the District for declaratory and injunctive relief, as set forth herein.

Count Five: Violation of 24 Pa. Stat. § 13-1301 and 22 Pennsylvania Code Chapter 11
(On Behalf of All Named Plaintiffs and Class Members Denied Enrollment)

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

202. The Pennsylvania Public School Code of 1949 provides that every student aged six through twenty-one has the right to a free public education in his or her school district of residence. 24 Pa. Stat. § 13-1301; *see also* 22 Pa. Code § 11.11(a)(1).

203. Regulations promulgated by the Pennsylvania State Board of Education to effectuate this right require school districts to enroll students the next business day, but no later than five business days upon proof of the child's age, residence, and immunizations. 22 Pa. Code § 11.11(b). Additionally:

> prior to admission to any school entity, the [child's] parent, guardian or other person having control of the student shall, upon registration, provide a sworn statement or affirmation stating whether the pupil was previously or is presently suspended and expelled from any public or provide school of [the] Commonwealth or any other state for an act or offense involving weapons, alcohol or drugs or for the willful infliction of injury to another person or for any act of violence committed upon school property.

24 Pa. Stat. § 13-1304-A. The only time that a district "may" place a student in an "alternative assignment" is if the student is currently expelled for such a serious act or offense. *See* 24 Pa. Stat. § 13-1317.2(e.1) (a school district may assign the student to an alternative assignment

during the period of the student's expulsion from the prior school district). None of the Plaintiffs are currently expelled from a prior school district or subject to this exception.

204. Through its actions and inactions, as set forth above, the District has violated Plaintiffs' rights under the Public School Code of 1949 and its implementing regulations by denying Plaintiffs immediate enrollment in its schools.

205. As a result of the District's violation of Plaintiffs' state right to a free public education, Plaintiffs have suffered and will continue to suffer injury in the form of the loss of any education, and the loss of educational opportunities, as well as future employment opportunities.

VIII. RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Assert jurisdiction over this matter and certify the Class as defined herein;

B. DECLARE that Defendant's actions and inactions, as described in this document or proven at trial, violate the EEOA, Title VI, the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and Pennsylvania education law;

C. ENJOIN, preliminarily and permanently thereafter, Defendant as follows:

1. Not to violate the applicable federal and state laws;

2. To accord Class Members due process rights, including but not limited to providing interpreter and translation services as necessary and legally required at time of enrollment;

3. To accord Class Members who are denied enrollment meaningful procedural due process, including apprising Class Members of the grounds for denying enrollment and providing them an opportunity to appeal or challenge such a denial;

4. Admit all Class Members aged 17 to 21 to District schools unless they have clearly demonstrated evidence of high school graduation or the exact equivalent from an institution that provides education comparable to that provided by SDOL;

5. Admit all Class Members under age 21 into McCaskey, including the International School, and ensure equal access to the full range of educational opportunities offered by the District;

6. Provide all Class Members an appropriate program of language instruction based on a sound educational theory to overcome language barriers, including sufficient ESL instruction, interpretation and translation services, modifications to curriculum and content instruction, accommodations in testing and assessments of the program to evaluate effectiveness;

7. Immediately transfer Plaintiffs and all Class Members currently at Phoenix to McCaskey; and

8. Provide all Class Members supplemental educational services to make up for the deprivation of a meaningful education, including providing targeted services to those Class Members who are no longer school age.

D. Appoint Plaintiffs' counsel to monitor the implementation of this Court's Order.

E. Award Plaintiffs their costs and reasonable attorneys' fees.

F. Retain jurisdiction over this matter until such time as Defendant demonstrates full compliance with applicable federal and state laws.

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

Dated: July 19, 2016

Respectfully submitted,

Eric Rothschild, Esquire (PA71746)
Kathleen A. Mullen, Esquire (PA84604)
Kaitlin M. Gurney, Esquire (PA309581)
Megan Morley, Esquire (PA321706)
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
Telephone: (215) 981-4000
Fax: (215) 981-4750
rothschilde@pepperlaw.com
mullenk@pepperlaw.com
gurneyk@pepperlaw.com
morleym@pepperlaw.com

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

Molly Tack-Hooper, Esquire (PA307828)
American Civil Liberties Union of Pennsylvania
PO Box 60173
Philadelphia, PA 19102
Telephone: (215) 592-1513
Fax: (215) 592-1343
MTack-Hooper@aclupa.org

/s/ Maura McInerney
Maura McInerney, Esquire (PA71468)
Kristina Moon, Esquire (PA306974)
Alex Dutton, Esquire (PA267321)
Education Law Center
1315 Walnut Street Suite 400
Philadelphia, PA 19107
Telephone: (215) 238-6907
Fax: (215) 772-3125
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; Alembe Dunia; Anyemu Dunia, V.N.L., a minor, individually by and through her parent Mar Ki; and Sui Hnem Sung.

EXHIBIT A

VERIFICATION

I, **Khadidja Issa**, hereby affirm under penalty of perjury that my lawyers read to me, through an interpreter in my preferred language, Arabic, the factual allegations concerning me made in the foregoing complaint. These allegations are true and correct to the best of my knowledge, information and belief.

Signed: _____

Date _____

Interpretation provided by _____

تصديق

أنا، خديجة عيسى، أؤكد بموجب هذه تحت عقوبة الحنث باليمين أن محاميني قراءوا عبر مترجم بلغتي المفضلة، اللغة العربية، المزاعم الواقعية ذات الصلة بي في الشكوى السابقة. وهذه المزاعم حقيقية وصحيحة على حد علمي ومعلوماتي واعتقادي.

التوقيع: [signature]

التاريخ: [signature]

تم توفير الترجمة من قبل : [signature]

VERIFICATION

I, Faisa Abdalla, hereby affirm under penalty of perjury that that my lawyers read to me, through an interpreter in my preferred language Arabic, the factual allegations concerning my minor child, Q.M.H., made in the foregoing complaint. These allegations are true and correct to the best of my knowledge, information and belief.

Signed: Faisa

Date: 7/14/2016

Interpretation provided by Shamil Idris

I, Q.M.H., am the child of Faisa Abdalla and a minor Plaintiff identified in this action. I hereby affirm under penalty of perjury that my lawyers read to me, through an interpreter in my preferred language Arabic, the factual allegations concerning me made in the foregoing complaint. These allegations are true and correct to the best of my knowledge, information and belief.

Signed: Q M H

Date: 7/14/2016

Interpretation provided by Shamil Idris

تصديق

انا، فايزة عبد الله، أؤكد بموجب هذه تحت عقوبة الحنث باليمين أن محاميني قراءوا علىّ عبر مترجم بلغتي المفضلة، اللغة العربية، المزاعم الواقعية ذات الصلة بطلبي القاصر في الشكوى السابقة. وهذه المزاعم حقيقية وصحيحة على حد علمي ومعلوماتي واعتقادي.

التوقيع: _____

التاريخ: 7/14/2016

تم توفير الترجمة من قبل: _____

انا، ياسين محمد حسن، ابن فايزة عبد الله ومدعي قاصر في هذه الدعوى. انا أؤكد بموجب هذه تحت عقوبة الحنث باليمين أن محاميني قراءوا علىّ عبر مترجم بلغتي المفضلة، اللغة العربية، المزاعم الواقعية ذات الصلة بطلبي القاصر في الشكوى السابقة. وهذه المزاعم حقيقية وصحيحة على حد علمي ومعلوماتي واعتقادي.

التوقيع: _____

التاريخ: 7/14/16

تم توفير الترجمة من قبل: _____

UTHIBITISHAJI

I, **Alembe Dunia**, hereby affirm under penalty of perjury that my lawyers read to me, through an interpreter in my preferred language, Swahili, the factual allegations concerning me made in the foregoing complaint. These allegations are true and correct to the best of my knowledge, information and belief.

Signed: Alembe Dunia

Date: _____

Interpretation provided by _____

Mimi, **Alembe Dunia**, kuthibitisha chini ya adhabu ya kusema uwongo kwamba wanasheria wangu wameni somea, kupitia mkalimani katika lugha nimechagua, Kiswahili, madai sahihi katika habari zangu kufanywa katika malalamiko hapo chini. Madai haya ni kweli na sahihi kwa kadiri ya ufahamu wangu, habari na imani.

Saini: _____

Tarehe: 07/14/2016

Ufafanuzi unaotolewa na Carine Fiscles

UTHIBITISHAJI

I, Anyemu Dunia, hereby affirm under penalty of perjury that my lawyers read to me, through an interpreter in my preferred language, Swahili, the factual allegations concerning me made in the foregoing complaint. These allegations are true and correct to the best of my knowledge, information and belief.

Signed: Anyemu Dunia

Date: 07 - 14 - 16

Interpretation provided by _____

Mimi, Anyemu Dunia, kuthibitisha chini ya adhabu ya kusema uwongo kwamba wanasheria wangu wameni somea, kupitia mkalimani katika lugha nimechagua, Kiswahili, madai sahihi katika habari zangu kufanywa katika malalamiko hapo chini. Madai haya ni kweli na sahihi kwa kadiri ya ufahamu wangu, habari na imani.

Saini: Anyemu Dunia

Tarehe: 07 - 14 - 16

Ufafanuzi unaotolewa na Carine Bisilia

VERIFICATION

I, _____, hereby affirm under penalty of perjury that my lawyers read to me, through an interpreter in my preferred language Hakha Chin, the factual allegations concerning my minor child, V.N.L., made in the foregoing complaint. These allegations are true and correct to the best of my knowledge, information and belief.

Signed: _____

Date: _____

Interpretation provided by _____

A Hmaan Tuktak Tiah Fianternak

Keimah, Mar K, nih lihbia chim ruangah dantatnak tangah ka sihni pawl nih an kan chimhmi cu keimah duhdeuhmi Hakha holh in holh lehtu nih leh piaknak thawngin, ka fa ngakchia V.N.L. kong he petlaiin a thlu tete cung in aa hngatchanmi sual puhnak cu a hlan deuh rak chim cangmi phunzainak ningin ka tuah tiah atu bantukin ka fehter. Hi sual puhnak pawl hi a hmaan i a dik tiah ka hngalh, ka theih i ka zumh.

Minthu tu: Mar

Nithla: 7-15-2016

Holh lehmi a chuahpitu [illegible]

I, V.N.L., am the child of _____ and a minor Plaintiff identified in this action. I hereby affirm under penalty of perjury that my lawyers read to me, through an interpreter in my preferred language Hakha Chin, the factual allegations concerning me made in the foregoing complaint. These allegations are true and correct to the best of my knowledge, information and belief.

Signed: _____

Date: _____

Interpretation provided by _____

Keimah, V.N.L. cu Mar ki _____ i a fa ka si i hi tazacuainak ah tazacuaitu ngakchia in min langhtermi ka si. Lihbia chim ruangah dantatnak tangah ka sihni pawl nih an kan chimhmi cu keimah duhdeuhmi Hakha holh in holh lehtu nih leh piaknak thawngin, keimah kong he petlai in a thlar tete cung in aa hngatchanmi sual puhnak cu a hlan deuh rak chim cangmi phunzainak ningin ka tuah tiah atu bantukin ka fehter. Hi sual puhnak pawl hi a hmaan i a dik tiah ka hngah, ka theih i ka zumh.

Mintha tu: V[redacted] N[redacted] L[redacted]

Nithla: 7/15/16

Hola lehmi a chuahpitu language services [illegible] #[illegible]

VERIFICATION

I, **Sui Hnem Sung**, hereby affirm under penalty of perjury that my lawyers read to me, through an interpreter in my preferred language, Hakha Chin, the factual allegations concerning me made in the foregoing complaint. These allegations are true and correct to the best of my knowledge, information and belief.

Signed: _____

Date: _____

Interpretation provided by _____

A Hmaan Taktak Tiah Fianternak

Keimah, **Sui Hnem Sung**, nih lihbia chim ruangah dantatnak tangah ka sihni pawl nih an kan chimhmi cu keimah duhdeuhmi Hakha holh in holh lehtu nih leh piaknak thawngin, keimah kong he petlai in a thlar tete cung in aa hngatchunmi sual puhnak cu a hlan deuh rak chim cangmi phunzainak ningin ka tuah tiah atu bantukin ka fehter. Hi sual puhnak pawl hi a hmaan i a dik tiah ka hngalh, ka theih i ka zumh.

Mintthu tu: Sui

Nithla: 7.15.2016

Holh lehmi a chuahpitu Language Service Center 11/5/2013