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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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PENNSYLVANIA SCHOOL	:	
BOARDS ASSOCIATION, INC.,	:	
SCHOOL DISTRICT OF	:	ORIGINAL JURISDICTION
PITTSBURGH, CENTRAL BUCKS	:	
SCHOOL DISTRICT, and UPPER	:	No.: 409 M.D. 2023
DARBY SCHOOL DISTRICT,	:	
	:	
	:	
Petitioners,	:	
	:	
	:	
v.	:	
	:	
	:	
DR. KHALID N. MUMIN,	:	
SECRETARY OF EDUCATION	:	
OF THE PENNSYLVANIA	:	
DEPARTMENT OF EDUCATION,	:	
and THE PENNSYLVANIA	:	
DEPARTMENT OF EDUCATION,	:	
	:	
	:	
Respondents.	:	

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**APPLICATION FOR LEAVE TO FILE BRIEF OF J.N., E.N., A.P., U.P., M.T., COUNCIL OF PARENT ATTORNEYS AND ADVOCATES, INC., THE EDUCATION LAW CENTER, AND JUVENILE LAW CENTER AS AMICI CURIAE IN SUPPORT OF RESPONDENTS**

Pursuant to Rule 531 of the Pennsylvania Rules of Appellate Procedure, J.N., E.N., A.P., U.P., M.T., the Council of Parent Attorneys and Advocates, Inc., the Education Law Center, and Juvenile Law Center (together, “*Amici*”) respectfully request leave to file the accompanying *amici curiae* brief in support of Respondents.

1. On September 11, 2023, Pennsylvania School Boards Association, Inc. and the school districts of Pittsburgh, Central Bucks, and Upper Darby (“Petitioners”) invoked this Honorable Court’s original jurisdiction seeking, *inter alia*, to enjoin the Pennsylvania Department of Education (“PDE”) and Dr. Kahlid N. Mumin, the Secretary of Education of the Commonwealth of Pennsylvania (together, “Respondents”) from enforcing the provision of the federal Individuals with Disabilities Education Act (the “IDEA”) that requires the Commonwealth to provide a free appropriate public education (“FAPE”) to disabled children until their 22<sup>nd</sup> birthday.

2. On October 4, 2023, Petitioners filed an Application for Special Relief seeking a preliminary injunction requiring Respondents to, *inter alia*, notify stakeholders that school districts need not comply with the rule requiring them to provide a FAPE to disabled children until their 22<sup>nd</sup> birthday. Petitioners withdrew their Application for Special Relief without prejudice on November 17, 2023 in accordance with the Court’s November 14, 2023 Order. On November 28, 2023, Petitioners and Respondents filed Cross-Applications for Summary Relief.

3. *Amici* are two disabled students and their families that previously resolved their litigation against PDE by entering into a settlement agreement requiring PDE to comply with the IDEA provision mandating a FAPE for disabled students until their 22<sup>nd</sup> birthday and three not for profit organizations that advocate

for the educational rights of individuals with disabilities and their families. *Amici* previously filed an Application for Leave to File a Brief as *Amici* in support of Respondents' argument in opposition to Petitioners' Application for Special Relief on November 6, 2023. The Court denied *Amici's* Application for Leave as moot in its November 14, 2023 Order directing Petitioners to withdraw their underlying Application for Special Relief without prejudice. *Amici* now renew their Request for Leave to File a Brief aligned with the current procedural posture of the case. *Amici* have a strong interest in ensuring Petitioners, Respondents, and school districts throughout the Commonwealth continue to comply with the IDEA.

WHEREFORE, *Amici* respectfully request that this Honorable Court grant the requested leave and accept the accompanying *amici curiae* brief.

Dated: December 29, 2023

Respectfully submitted,

/s/ Hope S. Freiwald  
Hope S. Freiwald (PA 60187)  
John P. McClam (PA 321252)  
DECHERT, LLP  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 994-4000  
Hope.freiwald@dechert.com  
john.mcclam@dechert.com

*Counsel for Amici Curiae J.N., E.N.,  
A.P., U.P., M.T., the Council of Parent  
Attorneys and Advocates, Inc., the  
Education Law Center, and Juvenile  
Law Center*

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 29, 2023

/s/ John P. McClam  
John P. McClam (PA 321252)

*Counsel for Amici Curiae*

Hope S. Freiwald (PA 60187)  
John P. McClam (PA 321252)  
DECHERT, LLP  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 994-4000  
hope.freiwald@dechert.com  
john.mcclam@dechert.com

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SCHOOL DISTRICT, and UPPER	:	
DARBY SCHOOL DISTRICT,	:	No.: 409 M.D. 2023
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Petitioners,	:	
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v.	:	
	:	
DR. KHALID N. MUMIN,	:	
SECRETARY OF EDUCATION	:	
OF THE PENNSYLVANIA	:	
DEPARTMENT OF EDUCATION,	:	
and THE PENNSYLVANIA	:	
DEPARTMENT OF EDUCATION,	:	
	:	
Respondents.	:	

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**AMICI CURIAE BRIEF OF J.N., E.N., A.P., U.P., M.T., COUNCIL OF  
PARENT ATTORNEYS AND ADVOCATES, INC., THE EDUCATION  
LAW CENTER, AND JUVENILE LAW CENTER**

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## **STATEMENT OF INTEREST OF *AMICI CURIAE***

*Amici Curiae* are two special needs students that are entitled to receive a free appropriate public education (“FAPE”) until they reach the age of 22, their parents, and three not for profit organizations that advocate for the educational rights of individuals with disabilities and their families (collectively, “*Amici*”). All of the *Amici* have a direct interest in this matter, the resolution of which affects the educational rights of individual children and their parents as guaranteed by federal law, as well as the public interest in educating the Commonwealth’s children, including those with disabilities.

J.N. is a 21-year-old student who is represented by his mother and legal guardian, E.N. J.N.’s diagnoses include autism spectrum disorder, intellectual disability, speech delay, and epilepsy. Because J.N. has not graduated from high school with a regular high school diploma, he is entitled under the Individuals with Disabilities Education Act (the “IDEA”) to receive a FAPE including special educational and related services through his local school district within the Commonwealth until August 20, 2024, his 22nd birthday. A.P. is a 19-year-old high school student who is represented by his parents and legal guardians, U.P. and M.T. A.P.’s diagnoses include autism spectrum disorder, intellectual disability, speech and language impairment, and epilepsy. He is supported by personal care assistants and receives a FAPE including speech and language therapy, occupational therapy,

physical therapy, and transition services from his local school district to help him develop independent living and workplace readiness skills. A.P. is not expected to graduate from high school such that he is entitled under the IDEA to continue receiving a FAPE until his 22<sup>nd</sup> birthday on February 10, 2026.

A.P., U.P., and M.T. were the named plaintiffs and putative class representatives in *A.P. v. Pennsylvania Department of Education*, Civil No. 2:23-cv-02644, the class action litigation filed in the United States District Court for the Eastern District of Pennsylvania that Petitioners discuss at length in their Application for Summary Relief (“Petitioners’ Application”), *see* ¶¶ 38-42, 48, 72-73, 77, 82. They sued PDE to enforce their rights under the IDEA, including specifically their right to a FAPE until A.P.’s 22<sup>nd</sup> birthdays. J.N. and E.N. were to be added to an amended class action complaint in the same action before, on August 30, 2023, PDE voluntarily settled that case with A.P., U.P., and M.T. *and* J.N. and E.N. (collectively, the “Individual *Amici*”<sup>1</sup>). PDE’s settlement expressly recognized that “the IDEA *requires* the Commonwealth of Pennsylvania to provide a FAPE to children with disabilities until their 22<sup>nd</sup> birthday.” Petitioners’ Application, Ex. P-

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<sup>1</sup> The Individual *Amici* proceed under a pseudonym because this brief discloses specific information about J.N. and A.P.’s disabilities, information to which they have the right to privacy. J.N. and A.P.’s parents proceed under a pseudonym because disclosure of their identities would necessarily disclose the identities of J.N. and A.P.

3, Mutual Settlement Agreement and Release at 2 (emphasis added). Individual *Amici* have a direct interest in ensuring that Petitioners do not use this Court to end-run the settlement they reached with PDE, which was designed to and does bring the Commonwealth and its local school districts into compliance with the mandate of federal law.

Individual *Amici* are joined in this memorandum by three organizational *amici*. The Council of Parent Attorneys and Advocates (“COPAA”) is a not-for-profit organization whose mission is to protect and enforce the legal and civil rights of students with disabilities and their families. COPAA’s primary goal is to secure high quality educational services and to promote excellence in advocacy. COPAA has over 3,100 members in all 50 states who advocate on behalf of students with disabilities and their parents.

The Education Law Center (ELC) is a non-profit, legal advocacy organization whose mission is to ensure access to a quality public education for all children in Pennsylvania. Through individual and impact litigation, ELC advances the rights of children who are most marginalized by our education system—including children living in poverty, children of color, children with disabilities, children in the foster care and juvenile justice systems, English learners, and those experiencing homelessness. Over its forty-eight-year history, ELC has handled thousands of individual matters and impact cases to enforce the rights of children with disabilities

and ensure that state and local educational agencies comply with their legal obligations under federal and state law.

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential amicus briefs in state and federal courts across the country to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity. Juvenile Law Center has participated in numerous cases advocating for the rights of children with disabilities.

In short, all of these organizational *amici* have as their mission protecting those who are at risk of being directly and permanently harmed by the position Petitioners advance. Further, they and those they represent have a direct interest in ensuring that Pennsylvania properly interprets and complies with federally mandated duties to children with disabilities until they reach the age of 22, which interest is threatened by Petitioners' claims.

*Amici* urge the Court to grant Respondents’ Application for Summary Relief and reject Petitioners’ Application. As explained in this brief, the relief sought by Petitioners is directly at odds with the IDEA, would cause significant harm to *Amici* and their constituents, and would frustrate the public’s interest in providing suitable education to students with special needs.<sup>2</sup>

### **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

*Amici* file this brief to focus the Court on two issues that compel a finding in favor of Respondents. First, federal law compels the Commonwealth, acting through PDE and local school districts, including the Petitioner districts, to provide a FAPE to students with disabilities until their 22<sup>nd</sup> birthday. Specifically, the IDEA requires any state accepting federal funds under the IDEA (this includes the Commonwealth) to provide a FAPE “to all children with disabilities residing in the State between the ages of 3 and 21, *inclusive . . . .*” 20 U.S.C. § 1412(a)(1)(A) (emphasis added). Courts across the country have recognized this requirement and have interpreted it as compelling states to provide a FAPE to students with disabilities until their 22<sup>nd</sup> birthday.

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<sup>2</sup> No one other than *Amici*, their members, or their counsel paid in whole or in part for the preparation of this brief or authored in whole or in part this brief. See P.R.A.P. 531(b)(2).

Indeed, every federal circuit court of appeals that has considered the question has concluded this is what federal law requires. *See A.R. v. Connecticut State Bd. of Educ.*, 5 F.4th 155, 157–58 (2d Cir. 2021); *K.L. v. Rhode Island Bd. of Educ.*, 907 F.3d 639, 641 (1st Cir. 2018); *E.R.K. ex rel. R.K. v. Hawaii Dep’t of Educ.*, 728 F.3d 982, 986 (9th Cir. 2013). PDE’s acknowledgement that “the IDEA *requires* the Commonwealth of Pennsylvania to provide a FAPE to children with disabilities until their 22<sup>nd</sup> birthday,” Petitioners’ Application, Ex. P-3, Mutual Settlement Agreement and Release at 2 (emphasis added), is nothing more than an acknowledgement of the overwhelming weight of authority regarding the IDEA’s scope and of the Commonwealth’s duty to follow the law. The extraordinary relief Petitioners seek—an order forcing PDE to instruct stakeholders that “the New Age Out Rule [] is not legally effective and is not required to be implemented by school districts, Intermediate Units and vocational-technical schools”<sup>3</sup>—is fundamentally a request that this Court empower them to violate federal law.

Second, to the extent Petitioners suggest that PDE’s actions are inequitable, because they impose duties Petitioners did not understand themselves to have<sup>4</sup>, their arguments are not well taken. Petitioners are not and cannot be harmed by a

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<sup>3</sup> *See* Petitioners’ Application at 27, ¶¶ 4-5.

<sup>4</sup> *See, e.g.*, Petitioners’ Application ¶¶ 42-43 (complaining that Petitioners were not notified about the “New Age-Out Rule” in advance of the settlement).

requirement that they abide by federal law. *See Brayman Const. Corp. v. Commw. Dep't of Transp.*, 30 A.3d 560, 568 (Pa. Commw. Ct. 2011) (“no harm can come to [Respondent] by requiring it to comply with the law”). On the contrary, any balance of equities tips in favor of those like the Individual *Amici*—students and families of students with disabilities—who will suffer significant harm if they lose their right to a FAPE before they turn 22 because Petitioners are allowed not to meet their legal obligations. Also, Petitioners’ requested relief is against the public interest because it invites all school districts in the Commonwealth to violate clearly established federal law and frustrates the United States’ and the Commonwealth of Pennsylvania’s strong interest in providing suitable education to children with disabilities.

## **ARGUMENT**

### **I. Federal and Pennsylvania Law Require School Districts to Provide a FAPE to Students with Disabilities Until They Turn 22**

States like Pennsylvania that accept federal funds under the IDEA are required to provide a FAPE “to children with disabilities residing in the State between the ages of 3 and 21, *inclusive* . . .” 20 U.S.C. § 1412(a)(1)(A) (emphasis added). Three federal circuit courts of appeal have considered the question of what “inclusive” means. Without exception, they all have held that “‘inclusive’ . . . means that the relevant period . . . ends on the last day of his 21<sup>st</sup> year.” *A.R. v. Connecticut State Bd. of Educ.*, 5 F.4th 155, 157–58 (2d Cir. 2021) (quoting *St. Johnsbury Acad. v.*

*D.H.*, 240 F.3d 163, 168 (2d Cir. 2001)); *K.L. v. Rhode Island Bd. of Educ.*, 907 F.3d 639, 641 (1st Cir. 2018) (“Pursuant to [the IDEA’s] mandate, all students ‘who are [otherwise] eligible for special education services are entitled to continue receiving those services until they turn twenty-two.’” (citations omitted)); *E.R.K. ex rel. R.K. v. Hawaii Dep’t of Educ.*, 728 F.3d 982, 986 (9th Cir. 2013) (“[A] student’s eligibility for IDEA services ordinarily ends on his twenty-second birthday.”); *see also K.O. by & through J.O. v. Jett*, No. 21-CV-1837, 2023 WL 5515981, at \*1 (D. Minn. Aug. 25, 2023) (explaining the IDEA requires a FAPE until disabled students’ twenty-second birthday).

Thus, under the plain meaning of the IDEA and the overwhelming weight of federal authority that has considered the issue, states like Pennsylvania that accept federal IDEA funding are *required* to provide a FAPE to students within their state until their 22<sup>nd</sup> birthday. Petitioner’s challenge to PDE, while presented as a procedural challenge to the process by which PDE amended its policy manual, cannot disguise the real issue here—which is one of federal substantive law. What PDE has done is what it *must* do if Pennsylvania is to continue to receive federal educational grant money. That is, follow federal law by educating children with disabilities until they turn 22 and directing its local districts to do the same.

Significantly, Petitioners’ response to the compelling federal authority is to ignore it. Their Application for Summary Relief does not cite to the plain language



of the IDEA that requires the Commonwealth to provide a FAPE to children “between the ages of 3 and 21, inclusive,” the many cases interpreting the IDEA compelling PDE’s actions, or address the IDEA framework in any express way. Instead, Petitioners’ Application asserts that because “the USDE never cited the Commonwealth” and no “court or administrative agency has ever ordered” PDE to extend the right to a FAPE to 22, Petitioners’ Application ¶¶ 70-71, PDE cannot adjust its Model Policy to comply with the law. Indeed, without explication, Petitioners treat the Commonwealth as *de facto* exempt from the IDEA’s mandate and argue that PDE’s rule requiring school districts to provide a FAPE until 22 cannot be enforced because it conflicts with Pennsylvania’s general educational law, which provides for “public education” to non-disabled children only until 21. *See* Petitioners’ Application at 13 (“The Existing Age-Out Rule is 21 As *A Matter of State Law*” (emphasis added)).<sup>5</sup>

But Petitioners’ state law arguments must be informed by what “public education” means under the IDEA, and what “public education” thus must mean in Pennsylvania, as long as the Commonwealth accepts IDEA money. *See K.L.*, 907

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<sup>5</sup> Although not expressly cited by Petitioners, the IDEA contains a narrow exemption from the duty to provide a FAPE to disabled students until their 22<sup>nd</sup> birthdays if doing so “would be inconsistent with State law or practice . . . respecting the provision of *public education* to children in those age ranges.” 20 U.S.C. § 1412(a)(1)(B)(i) (emphasis added). Thus, Petitioners may claim this Court need not consider the IDEA because it does not apply here. They are wrong.

F.3d at 645 (rejecting “premise that [state] law should play any role in determining the meaning of ‘public education’ as used in . . . the IDEA”). Under the IDEA, a state “cannot deny special education to disabled students aged 18 *through* 21 if it in fact provides ‘free public education’ to nondisabled students in that range of ages.” *E.R.K.*, 728 F.3d at 987; *see also K.L.*, 907 F.3d at 642 (“[A] state’s provision of ‘public education’ for students from age 18 through age 21 triggers the IDEA’s § 1412(a)(1)(A) FAPE mandate for students with disabilities in the same age range.”); S. Rep. No. 94-168, 1975 U.S.C.C.A.N. 1425, 1442-43 (“This exception with respect to handicapped children aged three to five and aged eighteen to twenty-one, inclusive . . . does not apply . . . where a state does now in fact provide or assure the provision of free public education to non-handicapped children in these age groups . . .”).

“Public education” under the IDEA is “not limited to educational opportunities provided by state public schools.” *A.R.*, 5 F.4th at 166 (citation omitted). Indeed, all three circuit courts of appeal that have addressed the issue agree that “public education” under the IDEA is any education including adult education offered to 21-year-olds that is: (1) elementary or secondary in nature; (2) provided at the public’s expense; and (3) under public direction. *See id.* at 164-66; *K.L.*, 907 F.3d at 647; *E.R.K.*, 728 F.3d at 988. Thus, the fact that the Commonwealth exits nondisabled students from local public secondary schools before their 22<sup>nd</sup> birthday

under Section 1301 of the School Code, 24 Pa. Stat. Ann. § 13-1301 (West)<sup>6</sup>, does not render the duty to provide a FAPE to disabled students until 22 “inconsistent with state law or practice” under 20 U.S.C. § 1412(a)(1)(B)(i) or otherwise trigger an IDEA exemption.

In *E.R.K.*, the Ninth Circuit considered whether a Hawaiian statute “barring students from attending public school after the last day of the school year in which they turned 20” relieved the state of its duties under the IDEA. 728 F.3d at 984-85. The Court held that the state still provided “public education” after age 20 via its adult education programs and so had to provide a FAPE to disabled children until their 22<sup>nd</sup> birthdays. *Id.* at 989. Similarly, in *A.R. v. Connecticut State Board of Education*, the district court explained that because “‘public education’ under the IDEA is not limited to educational opportunities provided by state public schools, the Board’s reliance on [Connecticut statutes limiting public school attendance to students under 21 years of age] to establish an age limitation on public education

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<sup>6</sup> 24 Pa. Stat. Ann. § 13-1301 states, in relevant part:

Every child, being a resident of any school district, between the ages of six (6) and twenty-one (21) years, may attend the public schools in his district, subject to the provisions of this act. Notwithstanding any other provision of law to the contrary, a child who attains the age of twenty-one (21) years during the school term and who has not graduated from high school may continue to attend the public schools in his district free of charge until the end of the school term.

generally is misplaced.” No. 3:16-CV-01197, 2020 WL 3086032, at \*10 (D. Conn. June 10, 2020), *aff’d*, 5 F.4th 155 (2d Cir. 2021). Importantly, the Connecticut statute—like Section 1301 of the School Code in Pennsylvania—“do[es] not limit the right of individuals in that age range to complete their secondary education through other programs funded and administered by the state.” *Id.*

Pennsylvania provides adult education programs<sup>7</sup> that share all of the same characteristics of “public education” as the adult education programs in Connecticut, Rhode Island, and Hawaii. These programs, which include Adult Basic Education, Adult Secondary Education, and High School Test Equivalency Preparation, (1) permit students to continue pursuing the equivalent of a high school education without an upper age limit, (2) are publicly funded, and (3) are administered by the Commonwealth. For example, the Pennsylvania Department of Education’s website describes its Adult Secondary Education (“ASE”) services as providing “instruction in reading, writing and math at the 9-12 grade-level equivalents” and its “High School Equivalency Test Preparation” program as preparing “adults who do not have a high school diploma to take the high school equivalency tests to earn the Commonwealth Secondary School Diploma.” *See Programs and Services*, Pa.

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<sup>7</sup> *See, e.g.*, Adult and Family Literacy Education Act, 24 Pa. Stat. Ann. § 6402(b) (West) (“It is the intent of this act to provide coordination and broaden the scope of educational activities to uneducated and undereducated adults in this Commonwealth . . .”).

Dep't of Educ.<sup>8</sup> Indeed, Pennsylvania's programs are strikingly similar to the Connecticut, Rhode Island, and Hawaii adult education programs found to satisfy the "public education" criteria. *See A.R.*, 5 F.4th at 164-66 (holding that Connecticut's adult education programs that can lead to high school diplomas meet all of the IDEA "public education" criteria); *K.L.*, 907 F.3d at 650, 652 (holding Rhode Island's adult education system, which "provides for the education of students to the level of academic proficiency needed to sit for and pass the GED exam or to complete the National External Diploma Program[]," qualifies as "'public education' within the meaning of the IDEA"); *E.R.K.*, 728 F.3d at 985, 989 (concluding Hawaii's Adult Secondary Education programs in the form of "tuition-free opportunities for adults and out-of-school youth to earn a high school diploma" constitute a form of "public secondary education under" the IDEA).

Given the weight of federal authority compelling local districts including Petitioners to provide a FAPE until age 22, the PDE was not only well within its authority to amend its IDEA Policies and Procedures to accurately reflect federal requirements that are specifically incorporated into Pennsylvania state law, it was obligated to do so. The IDEA mandates that the "State educational agency"—here,

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<sup>8</sup> Available at <https://www.education.pa.gov/Postsecondary-Adult/Adult%20and%20Family%20Literacy%20Education/Pages/Programs-and-Services.aspx> (last visited Nov. 6, 2023).

PDE—be “responsible for ensuring that the requirements of [the IDEA] are met.” 20 U.S.C. § 1412(a)(11). PDE is also required to “submit[] a plan that provides assurances to the [U.S.] Secretary [of Education] that the State has in effect policies and procedures to ensure that the State meets the conditions in [34 CFR] §§ 300.101 through 300.176.” *See* 34 CFR § 300.100. Petitioners’ desire to force PDE to disavow its accurate description of the school districts’ FAPE obligations for disabled students under IDEA is also plainly at odds with the stated purpose of Pennsylvania’s special education statute “to satisfy the statutory requirements under the Individuals with Disabilities Education Act (20 U.S.C.A. §§ 1400-1482).” 22 Pa. Code § 14.102(a)(1).

There is therefore no basis in federal or Pennsylvania law for the extraordinary relief Petitioners seek. Their Application for Special Relief should be denied.

## **II. The Balance of Equities, if Considered by this Court, Requires Denial of Petitioners’ Requested Relief**

To the extent Petitioners make any equitable arguments in support of their requested relief, they must fail. There is nothing inequitable in requiring Petitioners to follow the law. *See Brayman Const. Corp.*, 30 A.3d at 568 (“no harm can come to [Respondent] by requiring it to comply with the law”).

By contrast, there can be little doubt that A.P., J.N., their families, and those like them, will suffer great harm if Petitioners are allowed to skirt their federally imposed legal obligations and deny Petitioners the FAPes to which they are entitled.

*See, e.g., R.S. v. Lower Merion Sch. Dist.*, No. CV 22-3478, 2023 WL 2228972, at \*7 (E.D. Pa. Feb. 24, 2023) (“Failure to provide a FAPE constitutes irreparable injury.”). Pennsylvania’s state and federal courts have long recognized that depriving children of educational rights can produce great and long-lasting harm. *See, e.g., Oravetz v. W. Allegheny Sch. Dist.*, 74 Pa. D. & C.2d 733, 737-38 (Pa. Ct. Com. Pl. 1975); *Doe 1 v. Perkiomen Valley Sch. Dist.*, 585 F. Supp. 3d 668, 702 (E.D. Pa. 2022) (“The inability to access education constitutes irreparable harm because it is of critical importance to child development and its loss cannot be compensated with monetary damages.”). As the Third Circuit has recognized, “a sound educational program has power to change the trajectory of a child’s life, while even a few months in an unsound program can make a world of difference in harm to child’s educational development.” *Issa v. School District of Lancaster*, 847 F.3d 121, 142 (3d Cir. 2017) (internal quotations and citations omitted). For disabled students, including particularly those on the precipice of the transition to life after school, the harms can be uniquely devastating.

In short, while the cited cases arise in the context of requests for injunctive relief, the principle for which they stand still obtains under the current procedural posture of Petitioners’ case. There is no harm to Petitioners merely for being required to follow the law. There is great harm to *Amici* and those like them if the law is not followed. Additionally, “[t]here is a strong public interest in education

and ensuring that disabled children can safely access in-person education”— particularly educational services to which they are legally entitled. *R.S.*, 2023 WL 2228972, at \*9 (citing *Plyler v. Doe*, 457 U.S. 202, 221 (1982)). Petitioners’ Application should be denied for these additional reasons alone.

### **CONCLUSION**

For the reasons stated above, *Amici* respectfully urge this Court to deny Petitioners’ Application and grant Respondents’ Application for Summary Relief.

Dated: December 29, 2023

Respectfully submitted,

*/s/ Hope S. Freiwald*  
Hope S. Freiwald (PA 60187)  
John P. McClam (PA 321252)  
DECHERT, LLP  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 994-4000  
hope.freiwald@dechert.com  
john.mcclam@dechert.com

*Counsel for Amici Curiae J.N., E.N.,  
A.P., U.P., M.T., the Council of Parent  
Attorneys and Advocates, Inc., the  
Education Law Center, and the Juvenile  
Law Center*



**CERTIFICATION OF WORD COUNT**

I hereby certify that this brief contains 4,078 words, as determined by the word-count feature of Microsoft Word, the word-processing program used to prepare this brief.

Dated: December 29, 2023

/s/ John P. McClam  
John P. McClam (PA 321252)

*Counsel for Amici Curiae*

## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: December 29, 2023

/s/ John P. McClam  
John P. McClam (PA 321252)

*Counsel for Amici Curiae*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 2023, I served the foregoing documents on the Parties via PACfile.

Respectfully submitted,

/s/ John P. McClam  
John P. McClam (PA 321252)

*Counsel for Amici Curiae*