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29 April 2008

Via: Fax (215) 938-6375 and First Class Mail

Re: Julie Smith, Pennsylvucky School District

Dear Ms. Saia:

As you know, we represent Julie Smith, an eligible student in the Pennsylvucky School District, and her parents, John and Jacqueline Smith. Julie's date of birth is January 14, 1994, and she resides with her parents at 1246 Huntsman Lane, Pennsylvucky, PA 19000. At this time, Julie is in eighth grade at Valley Middle School, placed full-time in the District's Alternative Education Program with no inclusion opportunities whatsoever with her typical peers.

Julie was first identified in fourth grade by the District, following an ADHD diagnosis, as a student with a disability eligible for special education, specifically a speech and language disability and learning difficulties. Since then, and continuing through the beginning of the present school year, she has been mainstreamed in various placements within the District. As of the end of her seventh grade year her agreed-upon placement was a part-time learning support classroom predicated on her identification as a child with a specific learning disability. After Julie successfully attended the District's ESY program in the summer of 2007, the Smiths and the District agreed to a full-time placement in a regular education classroom for the 2007-2008 school year. The District issued a NOREP to reflect this change in placement. Shortly after school began, Julie started to experience problems manifesting in inappropriate behaviors in school and a marked decline in her grades. The District took no steps to remediate the situation. Instead, it removed Julie from the classroom and did not provide her any opportunities to continue her academics.

On December 13, 2007, the Smiths requested, in writing, a District evaluation to ascertain the cause of Julie's academic regression and the increased behavioral issues observed by school personnel. Subsequent to the Smith's request but prior to the completion of the reevaluation process, the

District, with the agreement of the Smiths, on January 25, 2008 placed Julie in its Alternative Education Program (“AEP”) for Language Arts and Math. The Smiths understood this to be a temporary program designed for children having academic issues or behavioral issues within the regular education setting. The actual curriculum being used within the AEP was different from that used in the general education environment. Julie’s behaviors continued to escalate after her placement in the AEP. The District issued a NOREP on February 22, 2008, which the Smiths accepted, reflecting the change in placement to the AEP. Unlike Julie’s previously agreed upon part-time placement solely for Language Arts and Math with participation in general education with typical peers for certain core classes, lunch and specials, the offered placement in the AEP was full-time. It is notable that the NOREP was issued prior to the completion of the reevaluation and that the District failed to revise Julie’s IEP to include any behavior goals, despite its contention that this highly restrictive placement was predicated on her significant behavioral needs.

On March 15, 2008, the District issued its Reevaluation Report. The RR did not contain any curriculum-based assessments, nor did it assess Julie’s communication and behavioral needs at all, even though the District had previously acknowledged her significant needs in these areas. The RR found Julie eligible for special education services as an emotionally disturbed student, whereas previous eligibility determinations were based on Julie’s learning disabilities. The IEP generated from the information contained in the RR was completely devoid of any information regarding Julie’s behavioral issues, let alone goals or specially designed instruction in that area. Additionally, although the RR identified Julie’s speech and language needs, even without a comprehensive assessment, the IEP contained no goals and objectives or specially designed instruction to address those needs in any way reasonably calculated to allow her to make meaningful educational progress.

Without appropriate behavioral supports in place, Julie’s behavior continued to decline. During the 2007-2008 school year, Julie received two in-school suspensions. The first suspension pertained to an incident occurring at a movie theater after school hours that had, at most, a tangential connection to the school. Both suspensions resulted in Julie’s removal from the AEP. Together, these in-school suspensions initially totaled twenty days, which should have given rise to the disciplinary protections afforded to a student with a disability pursuant to the IDEIA. The District instead reduced the second in-school suspension to one day to prevent Julie from being suspended for an excessive amount of days, thus sidestepping the requisite hearing and manifestation determination meeting. At no time subsequent to the two in-school suspensions and other numerous disciplinary referrals did the District attempt to conduct a behavioral

evaluation, nor did it revise Julie's IEP to include appropriate behavioral goals or supports necessary to mitigate the ongoing and escalating problems.

Despite the continued behavioral problems that culminated into multiple disciplinary actions, academic regression, increased behaviors and significant needs as identified in the District's less than appropriate RR, the District offered an IEP that addressed few to none of Julie's issues or needs through measurable goals and objectives, specially designed instructions, related services or supports for school personnel. The current IEP proposed by the District is inappropriate in that it does not sufficiently address Julie's educational needs and provide the services and supports necessary to allow her to make meaningful educational progress.

The Smith family therefore seeks a full year of compensatory education for the 2007-2008 school year in the form of services or a compensatory education fund sufficient to replace lost services and to remedy the harm caused to Julie by the District's failure to provide a free appropriate public education in the least restrictive environment, and for its violations of her rights under IDEA and the antidiscrimination provisions of Section 504 of the Rehabilitation Act of 1973. The Smiths further seek an independent educational evaluation at District expense due to the District's failure to conduct an appropriate evaluation to determine programming designed to meet Julie's unique needs and placement in the least restrictive environment. They also seek reasonable costs and attorneys' fees and reserve the right to seek damages in an appropriate forum.

This letter is a formal demand in accordance with IDEIA section 615(b)(7)(A). We are simultaneously sending a copy of this letter to the Office for Dispute Resolution. It is our belief and intent that this letter satisfies the notice requirements of the IDEIA. It is the District's affirmative duty to notify us in writing if it believes that this Due Process Hearing Request is insufficient. The Smith family requests a closed, daytime hearing.

I look forward to hearing from you to schedule a prompt resolution meeting in this matter, if you believe it to be necessary. As always, we are willing to discuss an amicable resolution of these matters.

Very truly yours,

Caryl Andrea Oberman

cc: Mr. and Mrs. Smith  
ODR