



PUBLIC INTEREST LAW  
CENTER OF PHILADELPHIA

AFFILIATED WITH THE LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW

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**VIA EMAIL AND OVERNIGHT MAIL**

Caroline Dumaresq,  
Acting Secretary of Education  
Pennsylvania Department of Education  
333 Market Street  
Harrisburg, PA 17126-003

**Re: Philadelphia School District Lack of Nurses Group Complaint**

Dear Acting Secretary Dumaresq:

One child has died already. Others are at risk. On behalf of Parents United for Public Education and the thousands of children in the City of Philadelphia who need to be safe in their schools, we write to request that the Pennsylvania Department of Education and other leaders take **immediate action** to ensure that there are sufficient nurses in **all** Philadelphia schools. In brief, the School District of Philadelphia (“District”) has effectively created a situation where the majority of nursing care in the schools is half-time or less despite the fact and the legal reality, as one Pennsylvania court has already found, “...there is no such thing as half a nurse in the real world.”<sup>1</sup>

**The Children At Risk.**

The Pennsylvania Department of Education reports an enrollment in Philadelphia County for public and charter schools of 200,268 children.<sup>2</sup> This number does not, however, include an estimated 22,913 children who attend parochial schools within Philadelphia.<sup>3</sup> By state law, the District is responsible to provide nursing care to public, parochial and charter schools.<sup>4</sup> Assuming the best numbers presently known, there are just 179 full-time nurses for 223,181 students, who are distributed primarily on a part-time basis throughout the schools and who are responsible for the care of children in more than one school. This is simply not enough.

<sup>1</sup> *Battaglia, Musari v. Lakeland School District*, 677 A.2d 1294 (Pa. Commonwealth, 1996).

<sup>2</sup> [www.portal.state.pa.us/porta/server.pt/community/enrollment/7407/public\\_school\\_enrollment\\_reports/620541](http://www.portal.state.pa.us/porta/server.pt/community/enrollment/7407/public_school_enrollment_reports/620541).

<sup>3</sup> Number based upon oral report from Archdiocese, October 22, 2013.

<sup>4</sup> The District receives reimbursement for the care to non-public schools.

### **The Nursing Shortage Is Well-Documented and the SRC is Aware of It.**

In February of 2012, the Law Center wrote the School Reform Commission (“SRC”) and attended an SRC meeting to express concern about an insufficient number of nurses.<sup>5</sup> Specifically, we stated:

“Second, we are concerned about the reduction in nursing services within the SDP. For many children with disabilities, nursing services are a critical service that enables them to attend school. Children with diabetes, asthma, and other serious health problems need nursing care to remain in school uninterrupted. Without proper nursing services, children will be at risk of harm and injury which is unacceptable.”<sup>6</sup>

On June 21, 2012, the Law Center wrote the SRC again and requested that they ensure that there were sufficient nurses in the school district.<sup>7</sup>

In March, 2013, the Public Interest Law Center’s Executive Director, Jennifer Clarke wrote and asked Superintendent Hite to ensure appropriate services for all children including children with disabilities in light of the District’s announced closures of schools.<sup>8</sup> In response, Superintendent Hite wrote and assured us that all would be well for children with disabilities as the School District of Philadelphia (“District”) closed schools and reduced and redistributed staff.<sup>9</sup> All is not well.

In May, 2013, the Education Law Center (“ELC”) published “*The School Nurse Shortage in Philadelphia: Prognosis and Prescription for Change*.”<sup>10</sup> In a review of the shortage that included a survey of school nurses and others, interviews and published research, ELC confirmed that as of that time, the District had just 195 nurses serving approximately 200,000 students in public, parochial, and private schools, including approximately 150,000 students in the District’s public schools.<sup>11</sup> ELC concluded: “This is clearly insufficient to address the health and education needs of students.”<sup>12</sup> The ELC found that full-time nurses are 6-12 times more likely than part-time nurses to be involved in activities such as responses to critical incidents and trauma, asthma visits, mental health counseling and health education

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<sup>5</sup> Letter from Kerr to SRC, February 16, 2012.

<sup>6</sup> Id.

<sup>7</sup> Letter from Kerr to SRC, June 21, 2012.

<sup>8</sup> Letter to Hite from Clarke, Kerr, and others, March, 2013.

<sup>9</sup> Letter from Hite to Clarke, March 28, 2013.

<sup>10</sup> School Nurse Shortage in Philadelphia, May 2013, [www.elc-pa.org](http://www.elc-pa.org), accessed 13.10.16

<sup>11</sup> Id, at 7.

<sup>12</sup> Id. at 7.

activities; in short, students attending schools with part-time nurses may not have adequate access to health services.

From what we can estimate based upon newspaper accounts, there appear to presently be the equivalent of 179 nurses in the District. However, only about 81 schools have a full-time nurse. Not only is this unpractical, it is also actually contrary to law.

### **Legal Analysis.**

Under state law, and federal law, the District must ensure sufficient nursing services as explained below. We are specifically requesting that the Pennsylvania Department of Education, as well as the Bureau of Special Education and any and all other state entities responsible for the safety of children in our schools investigate this complaint.

Pennsylvania School Code requires Philadelphia to have school nurses. 24 P.S. §14-1402(a.1) requires that **“each child of school age shall be provided with school nurse services; provided, however, that the number of pupils under the care of each school nurse shall not exceed 1,500.”** The Code which was passed in 1949 preceded by some twenty plus years the attendance of children with disabilities in Pennsylvania public schools.<sup>13</sup> Consequently, the outmoded ratio of 1:1500 was passed by a state legislature that could not have taken into account the specific school nurse responsibilities for children with disabilities which certainly adds substantially to the duties of school nurses. Because of student need, the National Association of School Nurses (NASN) presently recommends a ratio of 1:750 for healthy students and for students with special health care needs, it recommends a nurse-to-student ratio of 1:250 and a ratio of 1:125 for medically complex students. Some students may even need a full-time 1:1 nurse.<sup>14</sup> Pennsylvania’s code regarding the nurse-to-student ratio does not currently take into account the higher level of care required for students with special health needs and those students with medically complex needs.

But just as significantly, in the current configuration, even applying a 1:1500 ratio, the District is now largely out of compliance because the statute states that **“each child of school age shall be provided with school nurse services.”** *Id.* The creators of the statute could not have possibly envisioned the present configuration of school nurse services where, as here, the District employs 179 nurses to try to provide

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<sup>13</sup> *PARC v. Commonwealth of Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa., 1971), 343 F. Supp. 279 (E.D. Pa. 1972) (contesting Pennsylvania’s statutory exclusion of children with disabilities).

<sup>14</sup> Caseload Assignments Position Statement 2010, [www.nasn.org](http://www.nasn.org).

school nurse services to “each child of school age” in excess of 200,000 students in approximately 200+ schools.

In a June 2012 listing of school nurses assignments, schools have a nurse assigned, but the amount of care time is minimal.<sup>15</sup> Assignments range from just “.01, .02, .05, .10, .15, .40” to 1.00 of a Full Time Equivalency (“FTE”) position. Many are very limited in time, and a full-time position is spread over more than one school. As an example:

Nurse A	Nebinger	Acad-Palumbo	Girard	Total
1.00 FTE (32 hrs)	.20 (6.4 hours)	.40 (12.8 hours)	.40 (12.8 hours)	
Total Students <sup>16</sup>	267	718	599	1584 Students
Special Education Students <sup>17</sup>	18.7%	3.9%	9.7%	
Medical Condition Students <sup>18</sup>	Unknown	Unknown	Unknown	

The only court to consider the ratio, *Battaglia, Musari v. Lakeland School District*, 677 A.2d 1294 (Pa. Commonwealth, 1996) soundly rejected the concept of a “part-time nurse.” In examining a situation where a district reduced a nurse from full-time to part-time due to reduced enrollment, the Court explained that in reality there is no such thing as a part-time school nurse because health incidents of children simply cannot be scheduled. The District has essentially tried to extrapolate the numbers so that relying on 179 nurses for in excess of 200,000 students in public, parochial and charter schools seems to be in compliance. Assuming a total of 223,181 (all schools), the nurse-to-student ratio would be 1,246.

The problem is that students, and particularly those with disabilities, cannot neatly time their medical needs with the schedules of the part-time nurses who now

<sup>15</sup> June 21, 2012, OSIS/School Health Services, Nurses Names Redacted.

<sup>16</sup> Enrollment figures are based on 2012-2013 figures from the District’s website under each school’s enrollment data.

<sup>17</sup> The number of students with IEPs who have health services in their IEP is unknown.

<sup>18</sup> The number of students with medical conditions not on IEPs is unknown; some would be on Section 504 plans and some would not.

routinely cover more than one school, thus leaving the majority of schools without a full-time nurse. Moreover, children in Philadelphia have a high rate of asthma and Type I diabetes, both of which necessitate a full-time nurse on duty at school.<sup>19</sup>

The sad case of ██████████, a 12 year old with asthma, who died following an asthma attack at Bryant Elementary on Wednesday, September 25<sup>th</sup> is exemplary of the problem. The Bryant nurse is scheduled only for Tuesdays and Thursdays. It is simply not possible, as at least one court has found, to have a “part-time nurse” in a school setting. Childrens’ serious medical concerns know no schedule.

In addition, for children with identified disabilities who are receiving special education services, the Individuals with Disabilities Education Improvement Act, (“IDEA”)<sup>20</sup>, et seq requires that school districts have staff available to provide all services that children with disabilities need, including school nurses and nursing services. 34 C.F.R. §300.34 describes related services as including supportive services required to assist a child with a disability to benefit from special education and includes “school health services and school nurse services.” The regulations explain that “School health services and school nurse services means health services that are designed to enable a child with a disability to receive a free appropriate public education as described in the child’s IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.” 34 C.F.R. 300.34(c)(14). See, e.g. *American Nurses Association v. Torlakson*, 304 P.3d 1038 (Cal. Supreme Court, 2013) (finding that school districts could train unlicensed personnel to administer insulin injections but only if they received approval of the child’s physicians and parents). The number of students whose IEPs require nursing services is not known at this time but it is likely that while some have nursing services listed in their IEPs, many more do not simply because of the well-known shortage.

Moreover, one of the most common disabilities identified pursuant to the IDEA is autism. Latest statistics show that as of December, 2012, the District reported about 8% of its children with disabilities as having autism.<sup>21</sup> Children with autism are frequently prescribed and take psychotropic medications which may have side effects and should be monitored in a school setting by a nurse. In fact, a recent

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<sup>19</sup> ELC reported an estimated 20-25 percent of children screen positive for asthma, and the incidence rate of Type 1 diabetes has increased almost 30 percent since 1985. ELC report at p. 8.

<sup>20</sup> 20 U.S.C. §1400, et seq; and see, especially §1401(26). Federal regulations at 34 C.F.R. 300.34(a) and 300.34(c)(14) describe the services in more detail.

<sup>21</sup> [www.penndata.com](http://www.penndata.com), accessed 2013/10/21.

Drexel University study found that some 64% of children with autism are prescribed and take such medication.<sup>22</sup>

Certainly many children not identified by the District as needing special education may still have legally cognizable disabilities, including asthma, Type I diabetes and ADHD/ADD, all of which require the District to ensure that they are provided assistance under Section 504 of the Rehabilitation Act and Chapter 15 of state law. These children may need nurses depending upon the particular aspects of the child's situation, especially in the area of medication. The failure of a nurse to implement a child's Section 504 plan can subject a district to liability. *Nixon v. Greenup County School District*, 10-67-HRW (E.D. KY Sept. 12, 2012). At the time of the filing of this complaint, the number of children in the District who receive or are to receive Section 504 services, and who may be receiving medication in school is unknown to us. We request you to investigate the number of such children and review their Section 504 plans to determine which plans include nursing assistance.

### **The Impact**

We have forwarded to you already a number of complaints about the lack of services in Philadelphia this year. We received approximately 100 concerning the lack of nursing services at schools in the District. We have compiled all of these and all of them have been forwarded to you already and more are being forwarded through MyPhillySchools.com. But to help you understand the extremely serious situation, here are some examples:

1. Fox Chase School. A number of parents from Fox Chase have reported concerns about the lack of nursing services. A nurse is assigned to the school but the report of her schedule there varies from one ½ day per week to one and ½ day per week. The lack of a nurse has real consequences to real children.

- [REDACTED] filed a complaint concerning her son [REDACTED]. [REDACTED] is 6 years old and has asthma; [REDACTED] was under the impression there would be a nurse at Fox Chase for 2 days a week, Tuesday (part-time) and Thursday. On October 10, 2013, a Thursday, Samir was dropped off and complained of a headache. [REDACTED] directed him to go to the nurse if he didn't feel better. Unbeknownst to [REDACTED], no nurse was in the school that day. Samir was ill all day, vomited more than once, complained to three staff members and his parent was never called. After retrieving [REDACTED] at the end of the day, [REDACTED] took him to the hospital where he stayed for a three day period.

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<sup>22</sup> [www.disabilityscoop.com/2013/10/21/nearly-two-thirds-meds/18822/](http://www.disabilityscoop.com/2013/10/21/nearly-two-thirds-meds/18822/)

- [REDACTED] and [REDACTED] both parents of children at Fox Chase reported a concern that there is a lack of nursing services for their children. One child has seizures, cerebral palsy and asthma and the other two children have asthma.
- Another parent at Fox Chase reports her child has ADD and is on medication for that.
- There are apparently about 8-10 children with medical needs at Fox Chase whose parents have expressly complained, including 7-8 with asthma.
- Another parent, [REDACTED] has complained that Fox Chase staff who are there when the nurse is not, are not trained in first aid or CPR.

2. C.W. Henry. [REDACTED], has a seven year old child who attends C.W. Henry. He uses an inhaler on a PRN basis once evaluated but because he is only seven, he cannot yet evaluate himself. No nurse is regularly available and as his mother points out, "asthma attacks cannot be scheduled to occur when she [the nurse] is on site."

3. Feltonville School of Arts and Sciences. [REDACTED], a parent volunteer who is in the school every day but Friday, reports that Feltonville School of Arts and Sciences needs a full-time nurse. She explains that as a parent volunteer, students constantly come to her seeking help that should be provided by a nurse for example, a student who had a sprain sought ice, another student had feminine issues, and another student experienced nausea. [REDACTED] has a background as a medic in the Air Force; directions to her as a volunteer have been to have the student call the parent for a ride home. She cannot dispense aspirin or provide any real medical assistance.

4. Willard School. [REDACTED] has a daughter with ADHD who has to be picked up from school more often now that there isn't a nurse every day. [REDACTED] reported that because of the staff shortage, students aren't allowed to go to the bathroom every time they need to and that her daughter ended up urinating on herself as a result.

6. Nebinger Elementary School. [REDACTED], whose child attends Nebinger Elementary School, filed a complaint concerning the lack of nursing services. She noted that there had been some "really hairy moments" in the school, citing to an online article in which she was interviewed called "Slight Care." There are about 30 children with autism in Nebinger, and several of them are on medication. There has been an incident of a child taking another child's medication when no nurse was present resulting in the child being rushed to the hospital.

7. Hill-Freedman, [REDACTED] reports that the school has a very high population of students with special needs and severe medical issues who are not safe on the days that the nurse is not there. She notes, for example, that one day the nurse had to leave a student with a head injury at another school to administer medication to a student at Hill-Freedman.

Several complaints have expressed concern about whether nurses are keeping up with immunization records; one parent has indicated a child coming home with pink eye with no nurse to handle same.

### **Suggested Resolution/Solutions**

Children must be safe in their schools and they must have school nurses to be safe. The Commonwealth owes a duty to children in Philadelphia to ensure that they receive the school nurses as required by state law and federal law. Towards that end, the Commonwealth should:

1. Immediately provide whatever additional funding is required to place a certified school nurse in every school on a full-time basis for the remainder of the 2013-2014 school year.
2. Hire sufficient staff to ensure immunizations are up to date and reported as required.
3. Launch an investigation into the number of nurses, the configuration of services and the delivery of services to determine if state law should be changed or better enforced to ensure that all children actually do have access to a nurse when in school.

### **Conclusion**

The Commonwealth and the District have responsibilities to ensure that children with disabilities and with medical conditions as well as healthy children have access to nurses. The Commonwealth and the District cannot shirk these responsibilities in the name of lack of funding. We encourage you to find a solution to this situation which appears to be a medical crisis.

We will continue to update you with additional complaints on this issue as they are forwarded to us.

Should you have any questions, please do not hesitate to contact me at 267-546-1319. We are happy to discuss this matter with you if you would like to do so. We




Letter to Caroline Dumaesq

October 22, 2013

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implore you to take firm, immediate action to protect the lives and well-being of the children in Philadelphia.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sonja D. Kerr". The signature is fluid and cursive, with a large initial "S" and a distinct "K" at the end.

Sonja D. Kerr

Director, Disability Rights

Encls.

cc: Bureau of Special Education  
Mayor Nutter, Lori Shorr  
Members of the City Council  
Members of the School Reform Commission  
Helen Gym, Parents United