

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS Bethlehem Area School District</p> <p>(b) County of Residence of First Listed Plaintiff <u>Northampton</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Glenna M. Hazeltine, Esq., King, Spry, Herman Freund & Paul, LLC, One W. Broad St., Ste. 700 Bethlehem, PA 18017</p>	<p>DEFENDANTS Diana Zhou</p> <p>County of Residence of First Listed Defendant <u>Northampton</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1</td> <td><input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights IDEA	<input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Individuals with Disabilities Act, 20 USC §§1400, et seq.

Brief description of cause:
Filing for Recovery of Attorneys' Fees

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE July 31, 2009

SIGNATURE OF ATTORNEY OF RECORD: Glenna M. Hazeltine, Esquire

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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

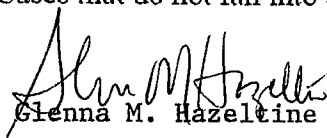
CASE MANAGEMENT TRACK DESIGNATION FORM

Bethlehem Area School District	:	CIVIL ACTION
Plaintiff	:	
v.	:	
	:	
Diana Zhou	:	NO.
Defendant	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (x)

July 31, 2009	 Glenna M. Hazeltine	Plaintiff
_____	_____	_____
Date	Attorney-at-law	Attorney for
(610) 332-0390	(610) 332-0314	ghazeltine@kingspry.com
_____	_____	_____
Telephone	FAX Number	E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1516 Sycamore Street, Bethlehem, PA 18017

Address of Defendant: 2500 Country Top Trail, Bethlehem, PA 18020

Place of Accident, Incident or Transaction: Bethlehem Area School District (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes No [X]

Does this case involve multidistrict litigation possibilities? RELATED CASE, IF ANY: Yes No [X]

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

CIVIL: (Place [X] in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases

11. [X] All other Federal Question Cases Individuals with Disabilities Act, 20 USC §§1400, et seq. (Please specify)

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, counsel of record do hereby certify: Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought. Exclusive Jurisdiction in the Federal Courts under the IDEA, 20 USC §§1415 (I)(3) DATE:

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: July 31, 2009 Glenna M. Hazeltine, Esquire 40403 Attorney I.D.#

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

BETHLEHEM AREA SCHOOL DISTRICT	:	No.
	:	
Plaintiffs,	:	
v.	:	
	:	
DIANA ZHOU	:	
Defendants	:	

BETHLEHEM AREA SCHOOL DISTRICT V. DIANA ZHOU

The Bethlehem Area School District, through Counsel King, Spry, Herman, Freund & Faul, LLC, files this Complaint and in support thereof avers the following.

I. PARTIES

1. Plaintiff Bethlehem Area School District (the “District”) is a duly constituted school district of the Commonwealth of Pennsylvania existing under the provisions of the Pennsylvania Public School Code of 1949 §§ 1-101, *et seq.*, with its principal offices located at 1516 Sycamore Street, Bethlehem, Pennsylvania 18017.

2. Defendant Diana Zhou (the “Parent”) is an adult individual currently residing at 2500 Country Top Trail, Bethlehem, Pennsylvania 18020.

3. Parent is the parent and legal guardian of students M.Z. and J.Z. (collectively, the Students) who are enrolled as students in the District.

4. Student M.Z., born November 14, 1995, is identified as a student eligible for special education services under the Individuals with Disabilities Education Act, 20 U. S.C. §§ 1400, *et seq.* (the “IDEA”), and for gifted services under Pennsylvania law and regulations, 24 P.S. §§ 13-1371-1372; 22 Pa. Code Chapter 16 (the “Gifted Laws”), enrolled during the 2008-2009 school year in the eighth grade of a middle school of the District.

5. Student J.Z., born February 23, 1999, is a student identified as eligible for gifted services under the Gifted Laws, enrolled during the 2008-2009 school year in the fifth grade of an elementary school of the District.

II. JURISDICTION

6. Jurisdiction arises under 28 U.S.C. §§ 1331 and 1343 and 20 U.S.C. §§ 1400, *et seq.* (the IDEA), and specifically under 20 U.S.C. § 1415(i)(3)(B)(II).

7. Under the IDEA, school districts are responsible for providing annual Individualized Education Programs (IEPs) specifying the special education program and placement, supports and services to be provided to students eligible for services under the IDEA. 20 U.S.C. § 1414(d).

8. A team which includes the parents is to be convened annually pursuant to the IDEA to develop the IEP. 20 U.S.C. § 1414(d)(1)(B).

9. A team may be convened more frequently than once a year to address a student's progress and/or concerns by providers or the parents. 20 U.S.C. § 1414(4).

10. In the event that the parents and a school district cannot agree on the IEP, each may request a pre-hearing conference, mediation, and/or a due process hearing. 20 U.S.C. § 1415.

11. In the event that a school district and a parent cannot come to agreement, the last approved IEP stays in place pending the outcome of all due process procedures (the "Pendent IEP"). 20 U.S.C. § 1415(j).

II. STATEMENT OF THE CLAIM

A. Background

12. The Students have been enrolled in the District for their entire school-age experience to date.

13. M.Z. has been enrolled in the District since he entered kindergarten in the 2001-2002 school year.

14. J.Z. has been enrolled in the District since he entered first grade in the 2005-2006 school year.

15. The Parent has a pattern and a history of requesting multiple meetings to develop programs for the Students under federal and state law.

16. The Parent has a pattern and a history of refusing to approve services offered to the Students under federal and state law.

17. The Parent has a pattern and a history of requesting multiple mediation sessions for the Students under federal and state law.

18. The Parent has a pattern and a history of requesting multiple due process hearings for the Students under federal and state law.

19. The Parent's pattern escalated during the 2008-2009 school year.

20. At one of the mediation sessions, convened under the IDEA as to M.Z. on November 24, 2008, the Parent abused the process and indicated her intent regarding her pattern and practice.

21. At mediation, the Parent advised the Mediator that it was not her intention to come to an agreement with the District; the Parent advised the mediator that, in fact, it was her

intention to drive up costs for the District so that the District would agree to pay for private school tuition for the Students.

22. In the spring of 2009, the Parent applied for admission of the Students to Moravian Academy, a private school located in Bethlehem, Pennsylvania.

B. M.Z.: Special Education

23. Before M.Z. attended kindergarten in a District elementary school, in the summer of 2001, the Parent requested a pre-hearing conference with the District under the IDEA.

24. In the summer of 2001 before M.Z. attended kindergarten in a District elementary school, the Parent requested a due process hearing with the District under the IDEA.

25. The Parent requested a pre-hearing conference in the summer of 2002 as a result of the District's refusal to evaluate M.Z. two times in the 2001-2002 school year.

26. The Parent requested a pre-hearing conference August 2, 2002, which was convened August 29 and September 30, 2002.

27. The Parent disapproved of the results of the pre-hearing conference held in the summer of 2002 and requested a due process hearing as a result of the District's refusal to evaluate M.Z. two times in the 2001-2002 school year.

28. The Parent was issued invitations to participate in Individualized Education Program ("IEP") team meetings to be convened December 13, 2002, January 9, 2003, January 16, 2003, April 24, 2003, and June 13, 2003.

29. The Parent disapproved of the services offered by the District by Notice of Recommended Educational Placement ("NOREP") dated January 30, 2003.

30. The Parent requested a pre-hearing conference, Mediation and a due process hearing in March of 2003.

31. The District received notice of Mediation to be convened April 7, 2003.
32. The Parent disapproved of services offered by the District by NOREP dated June 13, 2003.
33. A due process hearing convened in July of 2003.
34. The hearing officer's decision dated November 6, 2003, held for the District.
35. The Parent appealed by way of exceptions to the Appellate Panel then-existing pursuant to the IDEA.
36. The Appellate Panel's decision dated January 2, 2004, held for the District.
37. The Parent was issued invitations to participate in IEP team meetings to be convened January 27 and May 25, 2004.
38. The Parent disapproved of services offered by NOREP dated January 27, 2004.
39. A pre-hearing conference convened March 3, 2004, which resulted in approval by the Parent.
40. The Parent was issued invitations to participate in IEP team meetings to be convened January 13, January 18 and February 10, 2005.
41. The Parent disapproved of services offered by NOREP dated January 27, 2005.
42. A pre-hearing conference convened in February of 2005, which resulted in approval by the Parent.
43. The Parent was issued invitations to participate in IEP team meetings to convene October 24, 2005, January 13, 2006, and February 9, 2006.
44. The Parent disapproved of the services offered by NOREP dated January 31, 2006.

45. A pre-hearing conference convened in February of 2006 and a NOREP was approved in February of 2006.

46. The Parent requested a due process hearing by letter dated October 19, 2006.

47. A pre-hearing conference convened November 6 and November 9, 2006.

48. The Parent withdrew the request for hearing November 21, 2006, and requested an Independent Educational Evaluation (“IEE”).

49. The parent was issued invitations to participate in IEP team meetings to be convened January 17, 2007, March 26 and 28, 2007, and April 17, 2007.

50. The Parent was issued a Permission to Re- Evaluate (“PTRE”) from the District dated December 5, 2006.

51. The Parent approved the PTRE December 14, 2006.

52. The Parent disapproved of the services offered by NOREP dated January 17, 2007, and requested a meeting.

53. The Parent disapproved the NOREP dated April 12, 2007.

54. The District met with the Parent on April 17 and May 7, 2007.

55. The Parent disapproved of the NOREP dated May 9, 2007.

56. The District met with the Parent on May 31, 2007.

57. The Parent disapproved the NOREP dated May 31, 2007.

58. A due process hearing was scheduled for June 6, 25 and 26, 2007.

59. The decision of the hearing officer held for the District.

60. On or about July 31, 2007, the Individualized Education Program (IEP) for M.Z. for the 2007-2008 school year was approved as appropriate by a hearing officer at a due process hearing conducted pursuant to the IDEA, 20 U.S.C. § 1415(f).

61. The hearing officer's decision ordered the District to implement the Student's IEP dated May 31, 2007.

62. On or about October 24, 2007, the Parent called the District and challenged the appropriateness of the May 31, 2007, IEP approved by the hearing officer and requested that the IEP team convene.

63. By NOREP dated October 30, 2007, the District advised the parent of its refusal to convene an IEP team to address an IEP just approved by a hearing officer.

64. On or about November 13, 2007, the parent disapproved the NOREP dated October 30, 2007, but made no request as to any action thereafter.

C. 2008-2009 School Year: M.Z.: Special Education

65. During the 2007-2008 school year, the District met on March 10, 2008, for the annual IEP meeting for M.Z. convened pursuant to the IDEA to review Student M.Z.'s IEP proposed for the 2008-2009 school year.

66. The Parent failed and refused to approve the IEP.

67. In an attempt to resolve the issues in contention, the IEP team reconvened May 16, 2008.

68. The Parent failed and refused to approve the IEP.

69. In a further attempt to resolve the issues in contention, the IEP team met October 22, 2008.

70. The Parent failed and refused to approve the IEP for M.Z.

71. Pursuant to the IDEA, the Parent requested Mediation.

72. The Mediation (the Mediation) convened at M.Z.'s school on November 24, 2008, with mediator William Haussman (the Mediator).

73. Mediation failed.

74. The Parent abused the mediation process and at the Mediation indicated her intent regarding her pattern and practice.

75. At the Mediation, the Mediator advised District personnel that there could be no settlement or resolution with the Parent.

76. At the Mediation, the Mediator informed District personnel that the Parent had advised the Mediator that the reason that she was engaging in due process procedures, including Mediation, was to drive up costs for the District so that the District would finally agree to pay for M.Z. and J.Z. to go to a private school.

77. Immediately thereafter, on or about December 16, 2008, the Parent requested a due process hearing for M.Z. pursuant to the IDEA

78. During the 2008-2009 school year, the Parent filed two complaints against the District under the IDEA, requesting two due process hearings.

77. During the 2008-2009 school year, the Parent failed and refused to provide permission to the District to conduct timely, necessary and appropriate evaluations of student M.Z. necessitating an additional due process hearing under the IDEA.

78. During the 2008-2009 school year, the Parent requested two mediation sessions, one under the IDEA and one under Pennsylvania's gifted regulations, Chapter 16.

79. During the 2008-2009 school year, the Parent filed two complaints against the District with the federal Office of Civil Rights (OCR).

80. At the beginning of the 2008-2009 school year, the Parent disapproved of the District's proffered program and placement; therefore, under the IDEA, 20 U.S.C. § 1415, the

District was required to implement the last-agreed upon program for M.Z., which was that approved by a hearing officer in 2007.

D. 2008-2009 School Year: M.Z. Gifted Education

81. On or about May 19, 2008, the Parent requested a due process hearing under the Gifted Laws.

82. The due process hearing convened August 15 and September 18 and 25, 2008.

83. On or about October 19, 2008, the Gifted Individualized Education Plan (GIEP) for M.Z. for the 2007-2008 school year was approved as appropriate by a hearing officer.

84. The Parent appealed the decision of the hearing officer to the Appellate Panel then established in Pennsylvania.

85. On or about October 7, 2008, and again on October 24, 2008, the GIEP team convened to develop a GIEP for M.Z. for the 2008-2009 school year.

86. On or about October 24, 2008, the Parent approved the GIEP for M.Z., with reservations expressed as to the need for evaluations of M.Z.

87. In response to the Parent's reservations as to evaluations, the District issued a Permission to Re-evaluate (PTRE) M.Z., requesting permission to proceed with the evaluations of M.Z. pursuant to Pennsylvania gifted regulations, Chapter 16, and to the IDEA, 20 U.S.C. §1414(a)(2)(A)(ii).

E. PTRE: M.Z.: Special Education and Gifted

88. On or about October 30, 2008, the Parent initially approved the PTRE.

89. However, the Parent subsequently withdrew permission to evaluate.

90. The Parent first withdrew her agreement as to certain of the evaluations on November 12, 2008; the Parent withdrew permission as to certain additional evaluations on November 24, 2008.

91. On December 3, 2008, the Parent disapproved the PTRE.

92. On December 9, 2008, the Parent requested an Independent Educational Evaluation (IEE) of M.Z.

93. On or about December 10, 2008, the District requested a due process hearing to obtain timely, necessary and appropriate evaluation of M.Z., as provided by the IDEA and by state law and regulations for gifted education, in response to the Parent's initial request but subsequent rejection of the PTRE.

94. On or about December 16, 2008, the District issued a second PTRE in response to the Parent's request for an IEE in hopes of resolving the Parent's issues and avoiding due process.

95. The Parent failed and refused to approve the second PTRE.

96. On February 24, 2009, the due process hearing requested by the District convened for M.Z. to obtain timely, necessary and appropriate evaluation of M.Z.

97. Subsequent sessions of the due process hearing requested by the District regarding evaluation of M.Z. convened on March 5, 2006, April 1 and April 2, 2009.

98. On or about May 14, 2009, the hearing officer issued a Decision in favor of the District approving the evaluations of M.Z.

99. On May 19, 2009, the due process hearing requested by the Parent regarding the IEP and GIEP for M.Z. convened.

100. On May 19, 2009, the Parent appeared but refused to participate in the due process hearing that she herself had requested.

101. On or about June 2, 2009, the hearing officer issued a decision in favor of the District.

F. OCR: M.Z.

102. On October 27, 2008, the Parent filed a complaint with the Office of Civil Rights (OCR) claiming discrimination as to M.Z.

103. Pursuant to the Parent's Complaint, OCR conducted an extensive investigation, including document requests and interviews with District personnel.

104. By letter dated April 24, 2009, OCR dismissed the Parent's complaints against the District.

G. Summary: M.Z.

105. Pursuant to the IDEA, the Parent has submitted ten requests for due process hearings for M.Z. during the period of time prior to his attendance in a District kindergarten to the end of the 2008-2009 school year.

106. During the 2008-2009 school year, the Parent has requested due process hearings for M.Z. six times pursuant to the IDEA and the Gifted Laws.

107. During the 2008-2009 school year, the Parent filed four complaints under the Gifted Laws requesting four due process hearings, two such complaints submitted while the first hearing was already in progress and one such request while the hearing officer still retained jurisdiction.

108. During the 2008-2009 school year, the Parent refused permission to evaluate M.Z. resulting is a seventh request for a due process hearing pursuant to the IDEA and the Gifted Laws.

109. The District has prevailed at all Due Process Hearings for M.Z. convened under federal and/or state law.

110. In the 2008-2009 school year, the Parent filed two complaints with OCR.

111. OCR dismissed the Parent's complaints.

H. J.Z: Gifted:

112. Student J.Z.'s GIEP dated June 20, 2007 was approved by a hearing officer by decision dated July 17, 2007.

113. At the beginning of the 2008-2009 school year, the District could implement programs for J.Z. only because a hearing officer had previously approved the program.

113. On June 12, 2008 a meeting convened at his school to update the GIEP.

114. The Parent failed and refused to approve the GIEP.

115. On September 8, 2008, the GIEP team reconvened to review and revise the GIEP.

116. The Parent failed and refused to approve the GIEP.

117. On October 13, 2008, the District issued a Notice of Recommended Assignment (NORA) seeking Parent's approval of the GIEP.

118. During 2008, the District met numerous times pursuant to state law and regulations to review Student J.Z.'s GIEP.

119. The Parent failed and refused to approve the GIEP for Student J.Z.

120. The Parent notified the District on November 13, 2008, of her intention to pursue Mediation.

121. On November 17, 2008, Mediation convened but was unsuccessful.

122. On December 2, 2008, the Parent requested a due process hearing for J.Z. pursuant to state law and regulations.

123. On February 6, 2009, the due process hearing requested by the Parent for J.Z. convened.

124. On February 8, 2009, the Parent filed a second request for due process while already in the hearing convened February 6th.

125. On March 13, 2009, Parent attempted to withdraw her request for the February 6th hearing, then currently in progress.

126. On May 5, 2009, the Parent filed her third request for due process before the hearing first convened February 6th was completed.

127. The hearing officer presiding over the hearing convened February 6th dismissed the Parent's third request and incorporated her issues into the hearing already underway.

128. Subsequent sessions of the due process hearing first convened February 6th convened on May 29, 2009, and on June 2, 2009.

129. At the hearing session convened June 2nd, the Parent abruptly departed from the hearing before its conclusion.

130. On or about June 12, 2009, the hearing officer issued his decision in favor of the District, ordered that a GIEP team meeting convene on or before July 1, 2009, and retained jurisdiction.

131. On June 26, 2009, the Parent requested a due process hearing

132. The Parent informed the District that she would attend the ordered GIEP team meeting called for June 29, 2009..

133. The Parent failed to attend the GIEP meeting called for June 29, 2009.

134. The Parent appealed all decisions of the hearing officer to the Commonwealth Court.

135. On July 20, 2009, the Parent filed yet another complaint requesting a due process hearing while the complaint of June 26, 2009, and the District's Motion to Dismiss in response was still being considered by a hearing officer.

136. On July 21, 2009, the Parent attempted to amend her complaint of June 26, 2009.

137. On July 24, 2009, the hearing officer granted the District's Motion to Dismiss the Parent's June 26, 2009, complaint, finding that the Parent's allegations were not within the jurisdiction of a hearing officer and/or were duplicative of complaints made in previous hearings and other fora and thus were *res judicata*.

138. On or about July 28, 2009, the District filed its Motion to Dismiss Parent's July 20, 2009, complaint, arguing that the Parent's allegations were not within the jurisdiction of a hearing officer and/or were duplicative of complaints made in previous hearings and other fora and thus were *res judicata*.

I. OCR: J.Z.

139. On January 9, 2009, the Parent filed a complaint against the District with OCR claiming retaliation by the District as to J.Z. for her complaint filed as to M.Z.

140. OCR requested extensive documentation, which was provided by the District.

141. By letter dated June 15, 2009, OCR dismissed the Parent's complaints against the District.

J. Summary: J.Z.

142. During the 2008-2009 school year, the Parent has requested one Mediation session.

143. During the 2008-2009 school year, the Parent has requested four due process hearings, two filed while a hearing was currently in progress and one filed while the hearing officer retained jurisdiction.

144. During the 2008-2009 school year, the Parent filed one complaint with OCR.

145. The District prevailed at all due process hearings.

146. OCR dismissed the Parent's complaint.

K. Interpreter- Translation Services

147. In June of 2007, for the first time, the Parent, a native speaker of Mandarin Chinese, began requesting that interpreter services be provided at IEP and at GIEP meetings and at due process hearings for M.Z.

148. On December 16, 2008, for the first time, the District received a request for a translator for J.Z. at all meetings and translation of all evaluations.

149. Prior to June of 2007, the Parent had never requested that the District provide interpreter services at any parent conference, IEP meeting, prehearing conference, mediation session, or due process hearing for either M.Z. or J.Z.

150. At no time did the Parent request that any documents be translated for J.Z.

151. As to M.Z., for the first time, at the hearing convened in the spring of 2008, the Parent requested that all documents related to the hearing for M.Z., including transcripts, motions and the decision and order be translated into Mandarin Chinese.

152. At the subsequent hearings for M.Z. and for J.Z. during the 2008-2009 school year, the Parent requested the services of an interpreter at all sessions of all due process hearings.

153. At the subsequent hearings for M.Z. and for J.Z, during the 2008-2009 school year, the Parent requested that all documents related to the hearings, including transcripts, motions and the decision and order be translated into Mandarin Chinese.

154. The estimated cost for translation of the hearing transcripts for one hearing, conducted in the Spring and Fall of 2008, approaches \$40,000.00.

155. There is no entitlement under any law or regulation to translation of any of the documents requested by Parent. *Bethlehem Area School District v. Diane Zhou*, __A.2d__(Pa. Commonw. Ct 2009)(Docketed at No. 2406 C.D. 2008 and decided July 24, 2009).

156. OCR's letter dismissing the Parent's complaints points, *inter alia*, to the Parent's history of communicating frequently with District personnel in English over the course of eight years.

157. The Parent has engaged in a course of conduct which is vexatious, without legal merit, and not intended to bring about the relief for which she is legally entitled, but, rather which is deliberately designed to harass, annoy and waste the funds and assets of the District.

COUNT I
Attorneys' Fees

158. The averments in Paragraphs 1 through 157 are incorporated herein as if fully set forth below.

159. Student M.Z. is a student eligible for services under the IDEA.

160. The District is the local education agency (LEA) for M.Z.

161. The District has prevailed at all mediations, due process hearings and OCR complaints filed by the Parent to date as to both M.Z. and J.Z.

162. Under and pursuant to the IDEA:

[T]he Court, in its discretion, may award reasonable attorney's fees as part of the costs to a prevailing...local educational agency against... the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

20 U.S.C. § 1415(i)(3)(B)(i)(II)

163. During the 2008-2009 school year alone, the parent has submitted four requests for due process hearings, two requests for mediation and two complaints to the OCR. In addition, the Parent refused her permission to evaluate M.Z., which she herself requested, requiring that the District submit for due process, resulting in a fifth request for a due process hearing necessitated by the Parent this school year.

164. The Parent's allegations in her complaints are redundant and repetitive of each other and are an attempt to relitigate the same or similar issues repeatedly.

165. The Parent engages in repetitive and persistent filings, filing complaints while hearings convened to hear the same or similar issues are still in process.

166. Once the Parent files a complaint, the District has no way to avoid costs under the scheme provided in the IDEA to address parents' complaints.

167. The District has prevailed at all due process hearings convened to date, as well as before the OCR, and in Commonwealth Court on the Parent's request for translation of documents.

168. At the mediation session conducted at the Parent's request, on November 24, 2008, the Parent advised the Mediator that she was engaging in due process procedures to drive up costs for the District so that the District would agree to pay for M.Z. and J.Z. to go to private school.

169. The Parent's complaints were presented for an improper purpose, to harass and to increase the cost of litigation needlessly.

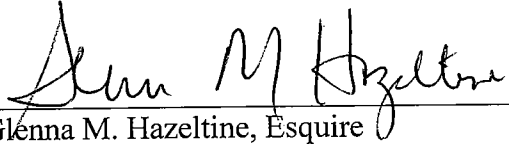
170. The Parent has recently requested certain District personnel to write letters of recommendation for M.Z. and for J.Z. in support of her application for them to attend Moravian

III. DEMAND FOR JUDGMENT

Now, therefore, pursuant to 20 U.S.C. § 1415(i)(3)(B)(i)(III), the District requests that the this Court order the Parent to pay for attorneys' fees for complaints presented under the IDEA for improper purposes, for harassment and to needlessly increase costs of litigation to the District.

Respectfully submitted:

KING, SPRY, HERMAN, FREUND
& FAUL, LLC

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