



pennsylvania
DEPARTMENT OF EDUCATION

November 14, 2017

Sean J. McGrath, Esquire
Education Law Center
1315 Walnut Street
Suite 400
Philadelphia, PA 19107

Dear Mr. McGrath:

In response to your letter dated October 15, 2017, in which you requested a reconsideration to the Complaint Investigation Report (CIR) dated October 6, 2017, the Bureau of Special Education (BSE) has amended the original CIR. The BSE will conduct two additional file reviews as follows:

- The BSE will review the files of students who transitioned from EI to school-aged programming for the 2017-2018 school year and whose evaluations were not completed within the required 60-day timeline and whose IEPs were not completed within 30 days of the completion of the RRs to determine if the Students were denied FAPE.
- The BSE will review the files of students who will transition from EI to school-aged programming during the 2018-2019 school year and whose native language is other than English to ensure the SDP is implementing its evaluation procedures regarding ELL students.

Changes to the attached Cir are noted in **BOLD**. A letter summarizing the findings of the file review will be sent to you at the conclusion of each of the file reviews. If you have any questions regarding this information, please do not hesitate to contact me at (717) 783-6142 or by e-mail at whoward@pa.gov.

Sincerely,

Walter L. Howard, Chief
Division of Monitoring & Improvement - East

Enclosure: Report of Complaint Resolution

cc: Dr. William Hite, Jr., Superintendent
Natalie Hess, Deputy Chief, Office of Specialized Services
Kim Mecca, Interim Executive Director
Abena Osei, OSS Director of Special Education
Cecilia Bradbury, OSS Case Manager
Lisa Werts, Program Manager
Quianna Carthen, SDP EI Coordinator
Ruth Furman, Special Education Adviser
Central File

**PENNSYLVANIA DEPARTMENT OF EDUCATION
BUREAU OF SPECIAL EDUCATION
COMPLAINT INVESTIGATION REPORT**

LOCAL EDUCATION AGENCY: School District of Philadelphia\

DATE RECEIVED: August 9, 2017
DATE OF REPORT: **AMENDED NOVEMBER 14, 2017**
~~October 6, 2017~~

COMPLAINANT: Attorney Advocate

NAME: Sean J. McGrath, Esquire

ADDRESS: Education Law Center
1315 Walnut Street, 4th Floor
Philadelphia, PA 19107

RE: Multiple Children

NEW INFORMATION IS IN BOLD AND DELETED INFORMATION IS INDICATED WITH STRIKETHROUGH.

SPECIFIC COMPLAINT(S):

Issue 1: The School District of Philadelphia (SDP) failed to complete evaluations within 60 calendar days of the signed Permission to Reevaluate Forms (PTREs) for students transitioning from EI to school-aged programming.

Issue 2: The SDP failed to administer EI transitioning evaluations in each students' native language.

Issue 3: The SDP failed to convene an Individualized Education Program (IEP) team meeting within 30 calendar days of completion of the Reevaluation Reports (RR) of students transitioning from EI to school-aged programming.

Issue 4: The SDP failed to provide a copy of the RR to the parent of each student transitioning from EI to school-aged programming 10 school days prior to the IEP meeting.

APPLICABLE REGULATORY AUTHORITY:

Issue 1:

Individuals with Disabilities Education Act (IDEA) Code of Federal Regulations Part 300 - § 300.301 Initial evaluations.

(a) *General.* Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(c) *Procedures for initial evaluation.* The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe;

Chapter 14 Special Education Services and Programs State Regulations § 14.124. Reevaluation.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.303, the reevaluation time line will be 60-calendar days, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term will not be counted.

Issue 2:

IDEA – § 300.304 Evaluation procedures.

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(c) *Other evaluation procedures.* Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

Issue 3:

IDEA – § 300.323 When IEPs must be in effect. (a) (d) (1) (2)(i)(ii).

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.

(c) *Initial IEPs; provision of services.* Each public agency must ensure that—

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child’s IEP.

Issue 4:

Chapter 14 Special Education Services and Programs State Regulations § 14.123. Evaluation.

(d) Copies of the evaluation report shall be disseminated to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing.

SOURCES OF INFORMATION:

This Adviser:

A. Reviewed the complaint letter received by the Bureau of Special Education (BSE) on

August 9, 2017 and spoke to the Attorney by phone on August 14, 2017 and September 20, 2017 and corresponded by email with the Attorney on September 22, 2017.

B. Corresponded by email with Abena Osei, Director of Special Education (Director), on August 17, 2017, August 18, 2017, August 31, 2017, September 7, 2017, September 20, 2017, September 30, 2017, and October 2, 2017 and spoke to the Director by phone on August 31, 2017 and September 29, 2017.

C. Corresponded by email with Kim Mecca, Acting Executive Director, and Director of Psychological Services (Executive Director) on September 25, 2017 and spoke with the Executive Director by phone on September 27, 2017.

Reviewed the following numbered documents:

Ref.	Document	Date	Source
1.	Complaint Letter	Received August 9, 2017	Complainant
2.	SDP 2017 Early Intervention (EI) Process Timeline	September 13, 2017	District
3.	SDP 2017 EI Student PTRE and ER Dates Spreadsheet	Undated	District
4.	SDP 2017 EI Student Non-English-Speaking Spreadsheet	Undated	District
5.	SDP Evaluation of Bi-Lingual Students Procedures	Undated	District
6.	Pennsylvania Department of Education (PDE) Special Education Data Report for the SDP	2016-2017 School Year	PDE
7.	SDP 2017 EI Student IEP Date Spreadsheet	Undated	District
8.	SDP 10-day Waiver Spreadsheet	Undated	District

FINDINGS:

Issue 1:

1. The SDP’s 2017 EI Process Timeline indicates that all reevaluations should be completed by May 31, 2017.
2. A review of the PTRE and ER Dates Spreadsheet reveals that the SDP issued 836 PTREs to Students transitioning from EI to school-age programming for the 2017-2018 school year.
3. The SDP completed 36 or .04% of the evaluations within the 60-day regulated time line.
4. 96% of the evaluations were not completed within the 60-day timeline.
5. 313 or 37% of the evaluations have not been completed at the time of the writing of this report.

Issue 2:

1. The SDP maintains a policy for evaluating non-English speaking students, which is included in the SDP School Psychologists’ Manual. The policy includes the following:

- Procedure for requesting a bi-lingual evaluation from the SDP's Office of Specialized Services (OSS).
 - Procedures for when a primary language evaluator is not available.
2. A review of the EI Student Non-English-Speaking Spreadsheet reveals that the SDP issued 380 PTREs to students transitioning from EI to school-age programming for the 2017-2018 school year whose primary language was other than English.
 3. The chart below indicates the languages of students transitioning from EI to school-age programming for the 2017-2018 school year:

LANGUAGE	NUMBER OF EI STUDENTS
Albanian	1
Arabic	16
Bengali	1
Cambodian	2
Chinese (Cantonese)	9
Chinese (Mandarin)	36
Creole (Haiti French)	2
French	2
Greek	1
Hindi (India)	1
IBO	1
Indonesian	2
Korean	1
Malayalam (India)	4
Other Language	10
Portuguese	16
Russian	12
Sign	1
Spanish	254
Ukrainian	1
Urdu	2

Vietnamese	5
TOTAL	380

4. The SDP completed 239 evaluations for students transitioning from EI to school-age programming for the 2017-2018 school year whose primary language was other than English.
5. 83 or 35% of the evaluations were conducted in the student's native language.
6. The Executive Director explained that the following procedures are followed to determine if an evaluation needs to be conducted in the student's native language:
 - "English language learners (ELL) student's language proficiency is assessed through standardized measures, such as the WIDA. The WIDA Screener is an English language proficiency assessment given to incoming students in Grades 1–12 to assist educators with the identification of students as ELL. If a student is not proficient, the appropriate bilingual psychologist will be assigned. If not feasible, psychologists will use SDP Bilingual Counselor Assistants (BCA) and/or nonverbal measures that are appropriate for the student's known level of language. "
7. The Executive Director explained that other modes of communication, which may be used during an evaluation for an ELL student include the use of BCAs and/or nonverbal measures.
8. The PDE Special Education Data Report for the SDP indicates that there is no disproportionate representation for any ethnicity.

Issue 3:

1. The SDP's 2017 EI Process Timeline indicates that all IEP meetings should be completed by June 20, 2017.
2. A review of the IEP Date Spreadsheet reveals that the SDP needed to complete 739 IEP meetings for students transitioning from EI to school-age programming for the 2017-2018 school year.
3. The SDP completed 253 or 34% of the IEPs within 30 calendar days of completion of the RRs.
4. 17 or .02% of the IEP meetings were not completed within 30 calendar days of completion of the student's RRs.
5. 469 or 63% of the IEP meetings had not been convened at the time of the writing of this report.

Issue 4:

1. A review of the IEP Date Spreadsheet reveals that the SDP held 270 IEP meetings for students transitioning from EI to school-age programming for the 2017-2018 school year prior to the first day of school in September 2017.
2. The SDP had provided the RR to the parents of 64 students or 24% at least 10 school days prior to the IEP meeting date.

3. The SDP provided the RR to the parents of 206 students or 76% in less than 10 school days prior to the IEP meeting date.
4. A review of the 10-Day Waiver Spreadsheet indicates that the SDP issued 174 10-day waivers to 84% of the parents whose RRs were provided in less than 10 school days prior to the IEP meeting date, to give parents the opportunity to indicate they had received the RR and would like to proceed directly to the IEP planning. meeting.

CONCLUSION:

Issue 1:

The SDP is not in compliance with the regulation cited above. The SDP only completed .04% of the RRs for students transitioning from EI to school-age programming for the 2017-2018 school year within the regulated 60 calendar day timeline.

Issue 2:

The SDP is in compliance with the regulation cited above. The SDP maintains and implements an evaluation process regarding ELL students, which allows the evaluation team to make an appropriate determination regarding special education eligibility for ELL students. These procedures are sufficient in preventing the inappropriate over-identification or disproportionate representation by ethnicity.

Issue 3:

The SDP is not in compliance with the regulation cited above. The SDP only convened 34% of the IEP meetings for students transitioning from EI to school-aged programming for the 2017-2018 school year within the required 30 calendar days of completion of the students' RRs.

Issue 4:

The SDP is not in compliance with the regulation cited above. The SDP provided the RRs to 76% of the parents of students transitioning from EI to school-age programming for the 2017-2018 school year with less than 10-school days prior to the IEP meeting date and only issued waivers to 84% of these parents.

CLOSURE/CORRECTIVE ACTION:

Issues 1 and 3:

- A. The SDP has provided this Adviser with a spreadsheet of all EI students who transitioned from EI to school-aged programming for the 2017-2018 school year whose evaluations were not completed within the required 60-day timeline and whose IEPs were not completed within 30 days of the completion of the RRs. If the students are denied FAPE because the SDP has either failed to implement the students' EI IEPs or develop an interim IEP agreed to by the parent, as a result of the delayed RR and IEP, then the students are owed compensatory education from the time that an IEP should have been implemented (30-calendar days from the RR due date + 10-school days for IEP implementation) to the date that an IEP is actually implemented.

IN RESPONSE TO THE COMPLAINANT'S REQUEST FOR RECONSIDERATION THE FOLLOWING CORRECTIVE ACTION HAS BEEN ADDED TO THE COMPLAINT INVESTIGATION REPORT:

THE BSE WILL CONDUCT A FILE REVIEW OF 25 STUDENTS' FILES WHO TRANSITIONED FROM EI TO SCHOOL-AGED PROGRAMMING FOR THE 2017-2018 SCHOOL YEAR WHOSE EVALUATIONS WERE NOT COMPLETED WITHIN THE REQUIRED 60-DAY TIMELINE AND WHOSE IEPs WERE NOT COMPLETED WITHIN 30 DAYS OF THE COMPLETION OF THE RRS TO DETERMINE IF THE STUDENTS WERE DENIED FAPE BECAUSE THE SDP HAD EITHER FAILED TO IMPLEMENT THE STUDENTS' EI IEPs OR FAILED TO DEVELOP AN INTERIM IEP AGREED TO BY THE PARENT, AS A RESULT OF THE DELAYED RR AND IEP. THE FILE REVIEW WILL TAKE PLACE BY MAY 1, 2018 AND WILL INCLUDE INTERVIEWS WITH TEACHERS AND SERVICE PROVIDERS, AS WELL AS A REVIEW OF RECORDS, INCLUDING NOREP, IEP, AND PROGRESS REPORTS.

PENDING REVIEW OF THE RESULTS OF THE FILE REVIEW, THE BSE WILL MAKE A DETERMINATION AS TO WHETHER COMPENSATORY EDUCATION IS OWED FOR FAILURE TO PROVIDE FAPE AS A RESULT OF THE DELAYED RRS AND IEPs.

- B. In addition, the Superintendent or his designee is required to establish a process, subject to the BSE's approval, for transitioning students from EI to school-aged programming to include all of the necessary procedures required in the Basic Education Circular, Early Intervention Transition: Preschool programs to School-Aged Programs and to ensure compliance with the 60-calendar day timeline for issuing a copy of a student's RR to parents and scheduling IEP meetings within 30 days of the date of the RR, as well as the issuing of NOREPs and the implementation of a student's IEP to insure FAPE is provided to the EI transitioning students within 10 school days of their first day of school in the SDP.

The BSE will conduct a file review to ensure that the SDP has incorporated the established process for complying with Federal and State laws with regards to transitioning EI students to school-aged programming. The file review will take place in October 2018 and will include a review of at least 50 student's files who transitioned from EI to school-aged programming for the 2018-2019 school year.

Issue 2:

None Required.

TO ENSURE THAT THE SDP IS IMPLEMENTING ITS EVALUATION PROCESS REGARDING ELL STUDENTS THE BSE WILL CONDUCT A FILE REVIEW OF 25 STUDENTS' FILES WHO WILL TRANSITION FROM EI TO SCHOOL-AGED PROGRAMMING DURING THE 2018-2019 SCHOOL YEAR AND WHOSE NATIVE LANGUAGE IS OTHER THAN ENGLISH. THE FILE REVIEW WILL TAKE PLACE IN OCTOBER 2018 AND WILL ADDRESS THE FOLLOWING ISSUES:

- **HOW MANY PTRES WERE ISSUED TO STUDENTS TRANSITIONING FROM EI TO SCHOOL-AGED PROGRAMMING FOR THE 2018-2019 SCHOOL YEAR WHOSE PRIMARY LANGUAGE WAS OTHER THAN ENGLISH.**

- **HOW MANY EVALUATIONS DID THE SDP COMPLETE FOR STUDENTS TRANSITIONING FROM EI TO SCHOOL-AGED PROGRAMING FOR THE 2018-2019 SCHOOL YEAR WHOSE PRIMARY LANGUAGE WAS OTHER THAN ENGLISH.**
- **HOW MANY EVALUATIONS DID THE SDP CONDUCT IN THE STUDENTS' NATIVE LANGUAGE FOR THOSE STUDENTS TRANSITIONING FROM EI TO SCHOOL-AGED PROGRAMMING FOR THE 2018-2019 SCHOOL YEAR WHOSE PRIMARY LANGUAGE WAS OTHER THAN ENGLISH.**
- **IF AN EVALUATION WAS NOT CONDUCTED IN A STUDENT'S NATIVE LANGUAGE WAS A BILINGUAL COUNSELOR ASSISTANT (BCA) PART OF THE EVALUATION TEAM**
- **DOES THE EVALUATION YIELD ACCURATE INFORMATION ON WHAT THE STUDENT KNOWS AND CAN DO ACADEMICALLY, DEVELOPMENTALLY, AND FUNCTIONALLY.**

PENDING REVIEW OF THE RESULTS OF THE FILE REVIEW, THE BSE WILL MAKE A DETERMINATION AS TO WHETHER FURTHER CORRECTIVE ACTION WILL BE REQUIRED BY THE SDP REGARDING THE NECESSITY TO REVISE ITS ELL EVALUATION PROCEDURES.

Issue 4:

The Superintendent or his designee will issue a memorandum/email to all relevant staff to verify that the SDP is in compliance with the regulation cited above, ensuring that the SDP disseminates a copy of the evaluation report to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing on the 10-day waiver form.

VERIFICATION OF COMPLETION OF CORRECTIVE ACTION:

(CORRECTIVE ACTION DUE DATES WILL REMAIN THE SAME AS INDICATED IN THE OCTOBER 6, 2017 CIR).

The Superintendent or his designee will forward the following documents to this Adviser at:
 Pennsylvania Department of Education, Bureau of Special Education, 333 Market Street, 7th Floor,
 Harrisburg, PA 17126-0333, on or before December 29, 2017:

- A copy of the plan for compensatory education and a copy of the Compensatory Education NOREP/PWN which has been issued to the parent of each student who was denied FAPE because the SDP had either failed to implement the students' EI IEP or develop an interim IEP agreed to by the parent, as a result of the delayed RR and IEP.
- A copy of memorandum/email, which was sent to all relevant staff to ensure that the SDP disseminates a copy of the evaluation report to the parents at least 10 school days prior to the meeting of the IEP team, unless this requirement is waived by a parent in writing on the 10-day waiver form.

The following document is due to this Adviser by February 1, 2018:

- A copy of the SDP's process for transitioning students from EI to school-aged programming to include all of the necessary procedures and timelines required in the Basic Education Circular, *Early Intervention Transition: Preschool programs to School-Aged Programs*.

Ruth B. Furman /D&D

Ruth B. Furman
Special Education Adviser
Division of Monitoring & Improvement – East
(610) 642-1237

NOTICE: In accordance with federal regulations, this report constitutes the Pennsylvania Department of Education's final decision with regard to this complaint.

If either party disagrees with the conclusions in the Complaint Investigation Report (CIR), the party has the right to submit a written request for reconsideration with additional information either not considered or not available at the time of the investigation. The written request for reconsideration must be submitted within ten (10) calendar days of the date of the CIR. The BSE will determine if the additional information is sufficient to warrant a review of the conclusions reached as a result of the investigation. Upon determining the sufficiency of the information, the BSE will notify the parties in writing of its decision to reconsider the conclusions reached. The BSE will issue its decision on the request for reconsideration within 30 calendar days from BSE's receipt of the request.

A local educational agency (LEA) must implement any corrective actions ordered in the CIR without waiting for the BSE's decision on the request for reconsideration.

ENCLOSURES: Form – Completion of Corrective Action
Basic Education Circular – Special Education Compliance
Basic Education Circular - Early Intervention Transition: Preschool programs to School-Aged Programs

cc: Dr. William Hite, Jr., Superintendent
Natalie Hess, Deputy Chief, Office of Specialized Services
Kim Mecca, Interim Executive Director
Abena Osei, OSS Director of Special Education
Lisa Werts, Program Manager
Quiana Carthen, SDP EI Coordinator
Walter L. Howard, Chief, Division of Monitoring & Improvement-East
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