

Via Electronic Mail

Walter Howard
Division of Monitoring and Improvement – East
Pennsylvania Department of Education
Bureau of Special Education
333 Market Street
Harrisburg, PA 17126

January 30, 2018

RE: CIR for Multiple Children – Recommendations for the Transition Process from Early Intervention to School-Aged Programming in the School District of Philadelphia

Dear Mr. Howard:

The Education Law Center (“ELC”) files these recommendations in response to the corrective action required in the Amended Complaint Investigation Report (“ACIR”) issued by the Bureau of Special Education (“Bureau”) on November 14, 2017. Critically, the Bureau ordered the School District of Philadelphia (“District”) to create and submit for approval a detailed transition process that complies with the Early Intervention Transition Basic Education Circular. This corrective action was ordered to prevent the large-scale IDEA violations of the District’s 2017 transition process from recurring. To ensure this goal is achieved, ELC believes it is critical that the Bureau and the District put into place a robust process that addresses and eliminates systemic failures. To date, the District has declined several invitations to work collaboratively and share our concerns and feedback on a new process. As a result, ELC submits the following recommendations in an effort to ensure the new process prevents future widescale deprivations of a free, appropriate, public education for our youngest learners.

1. Ensuring Transition Options Are Effective and Comply with IDEA Requirements

As the ACIR laid bare, widespread failures occurred last year in conducting timely reevaluations after transition meetings. Additionally, parents and advocates report that children who only receive speech therapy through early intervention, were simply issued a NOREP to continue the child’s speech therapy – ostensibly utilizing the option under the transition BEC to “adopt and implement the child’s Preschool Early Intervention IEP” without discussion or

consideration of the child's needs. We believe this practice, contravenes IDEA regulations and that the Guidance requires modification.¹

Recent statements by the District about the forthcoming transition process have raised additional concerns. The District has stated an intention to create a two-step procedure dividing the submission of an intent to register form and the consideration of options for transition. We are concerned this will create undue delays and prevent the timely completion of the transition process prior to the summer break. As a result, we recommend the following:

- A. When the District and parent agree at the transition meeting to adopt a child's Early Intervention IEP, with or without revisions, an IEP meeting must still be scheduled and held for each child prior to the beginning of the summer to ensure that the placement and goals in the child's new District-adopted IEP are appropriate based on the child's needs. A NOREP should not be issued prior to the convening and deliberation of an IEP team.
- B. If the District and parent agree that a reevaluation is necessary, the District's process should:
 - a. Ensure that reevaluations assess the child's needs in all areas of suspected disability including occupational and physical therapy needs.
 - b. Ensure that reevaluations consisting of a review of existing data are completed within a reasonable time not to exceed 30 days.
 - c. Ensure that when additional data is needed the PTRE is issued to the parent simultaneously and that the reevaluation is completed within 60 days of the date of receipt of a signed PTRE.

2. Ensuring Equitable Language Access

Families who have limited English proficiency have the same rights to informed decision making and a smooth transition for their children. The Bureau's ACIR reported that more than 45 percent, or 380 out of 836, of children for whom a PTRE had been issued spoke a language other than English. However, these families are often denied these rights due to failures to: (1) notify families of transition meetings in a language they understand, (2) meet their needs for in-person interpretation; (3) provide timely translation of all essential special education documents; and (4) conduct bilingual evaluations. As a result, the District's process should address the following:

¹ The current Basic Education Circular adopted in OCDEL Announcement 3I-09 #19 (Oct. 20, 2009) allows parents and districts to consider several options to choose from during a transition meeting. These options include adopting a child's EI IEP with or without revisions. An IEP must be developed by an IEP team considering a child's strengths, parental concerns, results of recent evaluations, academic, developmental and functional needs. 34 CFR 300.324(a). The issuance of a NOREP without the full consideration and input of an IEP team to determine appropriate goals, services, and placement contravenes the clear directives of federal regulations.

- A. Notify families of transition meetings in a mode and language they understand and reference the availability of interpreters at the meeting.
- B. Clearly delineate the District's and Elwyn's responsibilities to provide in-person interpretation for the transition meeting, subsequent transition-related communications, and which documents the District will translate for parents with limited English proficiency.
- C. Ensure sufficient resources are available and devoted to the completion of bilingual evaluations, including the use of bilingual evaluators for as many children as possible.
- D. Ensure that when a bilingual evaluator cannot be made available an English-speaking evaluator will use Bilingual Counseling Assistants to conduct the evaluation, regardless of whether verbal or non-verbal assessments are conducted.

3. Improving the Registration Process for Transitioning Children

Under state guidance, the receipt of an "Intent to Register" form marks the beginning of the "school districts' or charter schools' responsibilities for the transition process for the new school year."² Thus, smooth transitions for each child depend on a simple registration process that is clearly communicated to parents. However, the Intent to Register form itself, and the lack of a clear process for parents who intend to enroll in a charter school or who cannot attend a transition meeting undermines an efficient and effective transfer of responsibility. As a result, ELC recommends the following:

- A. Ensure parents who intend to register their child in a charter school are informed of how they can register and initiate special education services in the event that the child is not accepted at a charter school and enrolls in the District.
- B. Ensure the children of Parents who were unable to attend a transition meeting or attempted to enroll in a charter school are still afforded a smooth transition process. At minimum this should include a system to determine whether a child has an early intervention IEP during registration at their school and, if so, a procedure for initiating the transition process. If the process is delayed over the summer, the District should hold an IEP meeting within the first two weeks of school to ensure the child's early intervention IEP is implemented with fidelity, in the least restrictive environment, until the District completes a timely re-evaluation of the child.

² EI-09 #19 (Oct. 20, 2009).

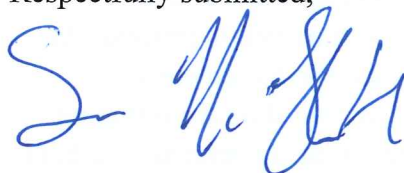
4. Ensuring Communication of Information

Communication of a child's early intervention records is a critical element in the transition process, however barriers exist during the beginning and end of the existing process. First, education records are sent in a paper file to the District at one point in time during the Fall prior to the year the child becomes age-eligible for transition. Aside from the fact that the file is not always transmitted or received in a timely manner, records reviewed by the District may already be out of date. It is our understanding that, Elwyn has offered the District direct access to its Pelican database to facilitate extensive, ongoing access to the entirety of the child's education records. The District's acceptance of this invitation would ensure access to the most recent versions of IEPs, behavioral plans, and other documents that could change between the transmission of records and the development of a new IEP for a transitioning child. Second, no mechanism exists by which Elwyn can identify those children who do not complete the transition to school-age programming and remain eligible and in need of preschool early intervention services. As a result, ELC recommends the following:

- A. The District process should use direct access to the education records of transitioning children through Elwyn's Pelican database to ensure ongoing access to the most current records.
- B. The District process should include a date certain by which it notifies Elwyn with a list of children who transitioned (*i.e.* registered) with a District school.

In view of the foregoing, we respectfully request the following recommendations be taken into consideration by the Bureau as it reviews the process submitted by the District in response to the ACIR. Thank you for your consideration.

Respectfully submitted,



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Cc Ann Hinkson Herrmann, Director for the Bureau of Special Education
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