

**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: 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

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.
- 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.

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:

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 1/10

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
 Central File

Completion of Corrective Action

Dear Mr. McGrath:

This form provides you with the opportunity to notify Bureau of Special Education (BSE) staff if you believe that the corrective action specified in the complaint investigation report was not completed. If you believe that the corrective action was not completed, please complete the form, and return it to the BSE. This form must be received in the BSE no later than 10 calendar days after the due date of the corrective action. Please address and send this form to:

Attn: Ruth Furman
Corrective Action Verification Form
Bureau of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

- 1. Child's name: **Multiple Children**
- 2. Name of complainant: **Sean J. McGrath, Esquire**
- 3. Name of school district/charter school: **School District of Philadelphia**
- 4. Date of complaint investigation report (CIR): **October 6, 2017**
- 5. Date of corrective action:
 - Issue 1: **December 29, 2017**
 - Issue 2: **None Required**
 - Issue 3: **December 29, 2017**
 - Issue 4: **December 29, 2017**

Other Issues:

6. Specifically for each issue, what part of the corrective action was not completed?

Signature _____ Date _____

Early Intervention Transition: Preschool Programs to School-Aged Programs

DATE OF ISSURANCE: July 1, 2003

DATE OF REVIEW: October 19, 2009
June 30, 2006

Replaces: Early Intervention Transition: Preschool Programs to School-Aged Programs, 11 P.S. §875-304, issued July 1, 2003

PURPOSE

The purpose of this announcement is to clarify the procedures concerning the transition of children from Preschool Early Intervention programs to the kindergarten or first grade programs of their school districts of residence or local charter school. Act 212 of 1990, the Early Intervention Systems Act, established Early Intervention services in Pennsylvania for eligible children from age three to the "age of beginners". Age of beginners is defined as the minimum age established by each school district's board of directors for admission to the school district's first grade under 22 Pa. Code 14 §14.101. A transition, without interruption in program, and with appropriate procedural protections, is required under 20 U.S.C. §1419 (IDEA). All children who are not provided with the transition procedures described in this circular will remain eligible for the Early Intervention services described in their preschool Individual Education Program (IEP) when they enter kindergarten or first grade. Moreover, violations of a child's right to procedural protections or pendency may result in a child's eligibility for compensatory services.

The Bureau of Special Education (BSE) and the Bureau of Early Intervention Services (BEIS) intend to facilitate the smooth transition of preschool children from Early Intervention programs to the school district or charter school program, while respecting parental choices. This will require Preschool Early Intervention programs and school districts or charter schools to work cooperatively and be flexible in planning in order to accommodate the implementation of these procedures. To assist in this process, BSE and BEIS have developed standardized procedures and forms to be utilized by the Preschool Early Intervention programs and school districts or charter schools throughout the transition process.

While parents have the option of having their child remain in Early Intervention when their child is eligible for kindergarten, it is incumbent on the IEP team to fully inform the parents of the advantages of transitioning to school age programming with same age peers. In the event that the child will remain in Early Intervention an additional year, the child's evaluation must reflect that the team will be providing an additional year of Early Intervention at the request of the family.

Beginning the Transition Process

22 Pa. Code Chapter 14.154(e) requires the IEPs of children in Early Intervention who are within one year of transition to a school age program, to include goals and objectives which address the transition process.

By February 1 of each year, Preschool Early Intervention programs must identify the children in their programs who are approaching the age for kindergarten or first grade in

their districts of residence and must send their parents a letter explaining the transition process. The *Notice of Your Child's Transition to School Age Meeting* ([Attachment 1](#) - pdf), should be utilized by Preschool Early Intervention programs when notifying parents of the transition to school age process. This letter includes information for parents on the meeting to discuss transition to school age, explains the parents' option to register their child in a kindergarten program or have their child remain in Preschool Early Intervention programming for another year; and informs parents that their children cease to be eligible for Early Intervention services when they reach the age for first grade, regardless of whether the parents actually enroll their children in the district program or charter school.

The Early Intervention records of children who are no longer eligible for special education services cannot be shared with school districts or charter schools without parental consent (§301(14) of Act 212 of 1990).

It is recommended that the records of children who will be transitioning to the local school district or charter school be transferred from the Preschool Early Intervention program to the local school district or charter school at the time of the transition meeting. If a transition meeting is not held, the records transferred upon the child being registered with the local school district or charter school or when the child is no longer receiving Preschool Early Intervention services

The Transition Meeting

The Preschool Early Intervention program must convene transition meetings by the end of February for all children approaching the age for kindergarten or first grade. This transition meeting may need to be held earlier if the child's school district of residence registers children for kindergarten between February 1 and the end of February. If the IEP team has already decided that a child approaching kindergarten age will remain in an Early Intervention program, then the parents and Preschool Early Intervention program can agree that a transition meeting is not necessary. For those children whose parents are uncertain, or who have decided that the child should move on to kindergarten or first grade, a transition meeting must be held, in which the school district of residence or charter school representative must participate. (Note that transition meetings are not necessarily IEP meetings, but they may also serve as such if the necessary participants are present.)

At the transition meeting, the Preschool Early Intervention program must provide to parents the appropriate *Intent to Register* form, ([Attachment 2](#) (pdf) for children who are kindergarten age eligible or [Attachment 3](#) (pdf) for children who are eligible for first grade). This form enables parents to indicate whether they intend to register their child with the school district of residence or charter school. The Preschool Early Intervention program should review the available options on the form with parents during the transition meeting. If the parents decide that a child approaching the age for kindergarten should move into a school age program, or if the child is approaching the age for first grade, the parents must indicate on the *Intent to Register* form that they intend to register the child in the school district or charter school for the next school year.

School districts' or charter schools' responsibilities for the transition process for the new school year commence with receipt of the parents' *Intent to Register* form. School districts or charter schools may conduct a re-evaluation and develop individualized education programs (IEP) in accordance with the timelines mandated in 22 Pa. Code Chapter 14. The school district or charter school, and the parent may agree to waive a required reevaluation that is allowed under 34 CFR Sec. 300.303(b)(2) or may agree to implement the existing evaluation or IEP.

Re-evaluations and IEPs

During the transition meeting, if the parents intend to register their child with the school district or charter school, *the Notice of Options For Your Child's Transition (Attachment 4 - pdf)* must be reviewed with parents by the school district or charter school. The following options should be considered by the parents and the school district team or charter school team:

(1) The parents and the school district or charter school can agree to adopt and implement the child's Preschool Early Intervention IEP for the new school year and, if so, the school district or charter school would then issue the Notice of Recommended Educational Placement (NOREP) indicating this recommendation.

(2) Parents and the school district or charter school can decide to adopt the Preschool EI IEP with revisions. The school district or charter school and parents would discuss the proposed revisions. The school district or charter school would then issue the revised IEP and NOREP indicating this recommendation.

(3) Parents and the school district or charter school will decide if a reevaluation is necessary. The school district or charter school may conduct a reevaluation consisting of a review of existing data and information prior to the development of an IEP. The district or charter school is not required to issue the *Permission to Reevaluate – Consent Form* to obtain parental consent prior to a reevaluation limited to a review of existing data. The school district or charter school will notify the parent in writing within a reasonable amount of time after receipt of the Intent to Register that a reevaluation, which will consist of a review of existing data and information will be conducted. The school district or charter school may notify the parent using a letter/notice developed by the school district or charter school. If the team is meeting to review existing evaluation data, the *Invitation to Participate in the IEP Team Meeting or Other Meeting* notice can be used, noting that the meeting is to review data as part of a reevaluation. This review of existing data should commence within a reasonable amount of time after receipt of the *Intent to Register*. The *Reevaluation Report* will summarize the data reviewed during reevaluation, the decision about whether additional evaluation data are needed, and a determination about the child's continued eligibility for special education services.

(4) If, through the review of existing evaluation data the IEP team as described above determines that additional data are needed, the school district and charter school will issue the *Permission to Reevaluate – Consent Form* to obtain parental consent to collect the additional data. Within 60 days of the date the school district or charter school receives parental consent (not including summer days) to collect additional data; the parent will receive a copy of the *Reevaluation Report*. The *Reevaluation Report* will summarize the data reviewed during reevaluation, the decision about whether additional evaluation data are needed, and make a determination about the child's continued eligibility for special education services.

(5) Waiving the reevaluation is not part of the reevaluation process. Waiving the reevaluation is recommended by the school district or charter school, not the IEP team. The parent must be in agreement with the determination to waive the reevaluation. Parent signature is required on the *Agreement to Waive Reevaluation* form.

An IEP meeting will be held within 30 calendar days of the *Reevaluation Report*, and a new IEP and NOREP will be issued.

Within a reasonable period of time from the receipt of the signed *Intent to Register* form, but no later than April 15, the school district or charter school will notify the parent in writing and initiate one of the options as noted above. Regardless of which option is chosen, an IEP will be implemented no later than 10 school days after its completion, in order to ensure that the special education programs of young children with disabilities are not interrupted when they transition from Preschool Early Intervention programs to school-age programs.

All children currently eligible for special education in Preschool Early Intervention and registered with the school district or charter school remain eligible for special education in their school districts or charter schools unless the school district, charter school or Preschool Early Intervention Program completes a reevaluation that determines the child is no longer eligible for special education. If no longer eligible for special education services, school district, charter school, or Preschool Early Intervention programs must issue a NOREP. If parents disagree with the IEP offered by their school districts or charter schools and initiate a due process hearing or both parties agree to mediation, the children who will transition into kindergarten or school age programs must continue to receive the services described in their preschool IEP (ensuring "status quo") pending completion of dispute resolution options of mediations or due process hearings

REFERENCES:

Purdon's Statutes

11 P.S. §875-101 – §875-502

State Board of Educational Regulations

22 Pa. Code Chapter 14

Federal Law

Act 20 U.S.C. §1400 et seq. (IDEA)

Federal Regulations

34 CFR Part 300

BUREAU/OFFICE CONTACT:

Bureau of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Voice: 717.783-6134
Fax: 717.783.6139

Special Education Compliance

22 Pa. Code §14.102. (a)(4)

22 Pa. Code §711.4

DATE OF ISSUE: Sept. 1, 1997 (formerly 22 Pa. Code §14.8)

DATE OF REVIEW: Nov., 30, 2009

June, 2002 (revised)

Oct. 27, 2011 (Revised)

PURPOSE

The Pennsylvania Department of Education (PDE) is responsible for developing and maintaining a system that ensures that each child with a disability receives a free appropriate public education (FAPE) and that each family has access to a system of procedural safeguards. While Local Education Agencies (LEA) (including charter and cyber charter schools) and Mutually Agreed Upon Written Arrangement (MAWA) holders have the primary and direct responsibility for providing FAPE, federal law places upon the PDE a general supervision responsibility; as well as an obligation to directly provide special education and related services to children with disabilities when it has determined that the LEA is unable to establish or maintain FAPE.

State and federal laws call upon the Secretary to oversee the system and enforce the special education requirements. To accomplish this oversight, the PDE created a comprehensive system that coordinates various planning, monitoring, funding and compliance elements. The PDE makes determinations annually about the performance of each LEA, MAWA holder, or other public agency using the following categories: meets requirements; needs assistance; needs intervention; needs substantial intervention. The PDE also reports the performance of each LEA, MAWA holder, or other public agency annually, and enforces the one-year timeline for correction of any identified noncompliance issues.

LEA or MAWA Holder Compliance with Special Education Statutes and Regulation

The PDE recognizes that the creation of quality programming and successful outcomes for students with disabilities requires more than technical compliance with procedural rules. The PDE believes, however, that legal compliance is the base on which high quality programs are built. Conflict between parents and LEAs, MAWA holders, or other public agencies over unresolved compliance issues diverts energy from other educational tasks that deserve our attention. Similarly, the need to provide compensatory education, to reimburse parent expenses, and to pay attorney's fees at the end of a long conflict divert resources from direct educational services. In an attempt to avoid these diversions of resources, the PDE promotes and ensures compliance with special education statutes and regulations through its coordinated program of plan review, complaint management, monitoring, technical assistance and funding decisions.

When compliance issues arise, they are almost always resolved amicably and without undue

2/2/2012

delay. Thus, the main task for the PDE is to address compliance issues clearly and promptly, to take action to ensure compliance and to enforce the one-year correction timeline.

PDE RESPONSE

Noncompliance Issues

In particular, the following will be treated as compliance problems that warrant a prompt response:

- failure to submit an acceptable local plan, or in the case of a charter school, an acceptable annual report;
- failure to implement any component of the corrective action required through the complaint process of the Bureau of Special Education (BSE) within applicable times; (including, but not limited to, the failure to submit compliant procedures and protocols or the failure to provide compensatory education services as directed) as per 34 CFR § 300.151-153;
- failure to implement the corrective action required through BSE monitoring;
- failure to submit required reports, including the reports regarding a need for intensive interagency coordination; and
- failure to comply with due process decisions.

PDE's General Procedures for Addressing Noncompliance

In an effort to expedite compliance with the applicable regulations, if corrective action required by targeted, focused or cyclical monitoring, through BSE's complaint process, or by court order has not been implemented in a timely manner, BSE in collaboration with the PDE's Office of Chief Counsel will implement the following procedures:

- Within 10 calendar days after the due date for completing corrective action, the Special Education Advisor will contact the LEA, MAWA holder, or other public agency to determine the status of any incomplete corrective action and forward a summary to BSE's Division Chief.
- The Division Chief will contact the Superintendent, Chief Executive Officer or Executive Director to determine the actions needed to implement the required corrective action and assign a due date for reaching compliance.
- Continued noncompliance will result in a recommendation to the Bureau Director to schedule a meeting in the PDE which the Superintendent, Chief Executive Officer, or Executive Director will be required to attend to address the noncompliance and, if necessary, the enforcement mechanisms that will be utilized to obtain compliance.
- Within 10 calendar days of this meeting, the PDE will issue a letter summarizing the results of the meeting (i. e., either confirming the LEA's, MAWA holder's, or other public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the PDE has decided is appropriate for the noncompliance).

The specific action chosen by the PDE will vary from case to case. This process is intended to ensure compliance rather than to be punitive. The main features of the PDE's efforts will be to explain the problem, call upon the LEA, MAWA holder, or other public agency to implement the corrective action, including corrective action specified in a CIR, and assist the LEA, MAWA holder, or other public agency in achieving compliance. If compliance is not obtained within 30 calendar days of the deadline for the corrective action specified in a CIR, the PDE will take enforcement action.

PDE's Procedures for Addressing Noncompliance Related to the State Complaint System.

The PDE, through the BSE and Office of Child Development and Early Learning (OCDEL), Bureau of Early Intervention, administers a complaint system in which it investigates allegations of noncompliance by LEAs, MAWA holders, or other public agencies and orders corrective action to address the needs of the child and the future provision of services for all children with disabilities. BSE/OCDEL orders corrective action, if appropriate, in the Complaint Investigation Report (CIR). The complainant and/or LEA, MAWA holder, or other public agency may seek reconsideration of the CIR with BSE/OCDEL within 10 calendar days of the CIR. The CIR, or amended CIR if a timely request for reconsideration is made, is the PDE's final decision regarding the complaint and will be enforced. Final CIRs will not be revised or amended by the PDE and are not appealable.

- Ten calendar days prior to the due date of corrective action, BSE will send a letter to the LEA, MAWA holder, or other public agency reminding them of the deadline.
- Within five calendar days after the due date for corrective action, the Special Education Advisor will contact the complainant (by telephone and in writing) and the LEA, MAWA holder, or public agency to verify completion of the corrective action and to obtain written assurance and documentation from the LEA, MAWA holder, or public agency. This documentation will be described in a letter to the complainant and the complainant will be provided with information about how to contact BSE if the complainant believes the corrective action has not been implemented.
- Within 10 calendar days after the due date of corrective action, the Division Chief will contact the Superintendent, Chief Executive Officer, or Executive Director of the LEA, MAWA holder, or other public agency in writing to determine the actions needed to implement the required corrective action and assign a due date for finalizing corrective action. Proposals made by the LEA, MAWA holder, or other public agency related to compliance with corrective action mandated by a CIR will be shared with the complainant.

Within 20 calendar days after the due date of corrective action, the Bureau Director will schedule a meeting in PDE, which the Superintendent, Chief Executive Officer, or Executive Director will be required to attend to address the noncompliance and, if necessary, the enforcement mechanisms that will be utilized to obtain compliance. Bureau personnel in attendance at this meeting will include the Bureau Director (or designee), Special Education Advisor, Division Chief, and if requested, an attorney from the Office of Chief Counsel. At the discretion of the Bureau Director, other individuals may be required or invited to attend, including the complainant. The complainant will be informed of this meeting.

- Within 10 calendar days of this meeting, the PDE will issue a letter summarizing the results of the meeting (i. e., either confirming the LEA's, MAWA holder's, or other

public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the PDE intends to impose). The PDE will send a copy of the letter to the complainant.

- If compliance is not obtained within 30 calendar days of the deadline for the corrective action specified in the CIR, the PDE will take enforcement action.

PDE Resolution if Noncompliance Continues and Enforcement Actions

If, however, the PDE does not succeed in obtaining prompt compliance, the PDE takes more rigorous steps to ensure that the compliance issue is resolved within 30 calendar days of the deadline specified for the corrective action. Such enforcement action may include, but is not limited to, the following measures:

- a local special education plan or annual report may be disapproved and, in the case of a charter school, the chartering entity will be notified of the noncompliance;
- consistent with state and federal law, the disbursement of funds, including basic education funding, may be deferred pending resolution of the issue, and, in the case of a charter school, the PDE may direct the chartering entity to take appropriate action;
- action consistent with state and federal law may be taken to reduce the amount of funds paid to the LEA, MAWA holder, or other public agency to offset the amount of money needed to provide an education to a particular child or children if an LEA, MAWA holder, or other public agency is unwilling or unable to provide services;
- the PDE may seek court action against the LEA, MAWA holder, or other public agency to obtain an order requiring it to take specific actions consistent with state and federal law;
- the PDE may join in legal action initiated by parents; or
- The PDE may take action affecting the commission of the superintendent or other commissioned officer responsible for administering the educational program.

Prior to imposing sanctions upon an LEA, MAWA holder, or other public agency for failure to implement corrective action resulting from cyclical or target monitoring regarding a child with a disability whom the LEA, MAWA holder, or other public agency is responsible to educate, the PDE will provide the LEA, MAWA holder, or other public agency the opportunity to request a hearing under the *Administrative Agency Law*, 2 Pa.C.S. §§501-508. A hearing under the *Administrative Agency Law*, 2 Pa.C.S. §§501-508 is not available to either party to challenge the corrective action ordered via a CIR.

Violations of federal laws and regulations governing children with disabilities can form the basis of the nonrenewal or termination of a charter.

None of these steps is desirable, and none should be necessary if each LEA, MAWA holder, or other public agency is familiar with and attentive to the laws governing special education and complies with corrective action within set time periods. It is PDE's goal that consultation between the PDE and LEAs, MAWA holders, or other public agencies will avoid the need to

take any of the compliance and enforcement actions described above. It is the obligation and the policy of the PDE however, to use these compliance and enforcement measures whenever necessary to ensure that the rights of Pennsylvania's children with disabilities are met in accordance with the state's obligations.

Direct Services to Students Pending Enforcement Procedures

If necessary, the PDE may take additional steps to ensure that student services are provided during the appeal, enforcement or reconsideration process, which may include the PDE providing and/or arranging for student services at the expense of the LEA, MAWA holder, or other public agency.

REFERENCES:

Purdon's Statutes

24 P.S. Section §13-1357
24 P.S. Section §13-1372
24 P.S. Section §17-1729-A(a)(5)
24 P.S. Section 17-1728-A(b)
24 P.S. Section 17-1732-A(c)(1)-(2)
24 P.S. Section §25-2552

State Board of Education Regulations

22 Pa. Code Chapter 14
<http://www.pacode.com/secure/data/022/chapter14/chap14toc.html>

22 Pa. Code Chapter 711
<http://www.pacode.com/secure/data/022/chapter711/chap711toc.html>

Federal Statute

20 U.S.C. Section 1412
20 U.S.C. Section 1416
20 U.S.C. Section 1232d

Federal Regulation

34 CFR Part 300

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