

**Testimony of the Education Law Center**  
**Board of Education of the School District of Philadelphia Public Hearing**  
March 18, 2021

My name is Margie Wakelin from the Education Law Center. Thank you for hosting this public hearing. I am speaking today about the backlog of special education evaluations that the pandemic has created which has exacerbated preexisting delays. This is a crisis particularly impacting Black and Brown students, which requires immediate intervention and strategic planning.

Federal and state special education laws create a “continuing obligation” on school districts with specific timelines to “identify and evaluate all students who are reasonably suspected of having a disability.”<sup>1</sup> An unreasonable delay in these timelines is a violation of the law.<sup>2</sup>

In 2019, based on increasing concerns raised by District parents seeking evaluations, particularly for Black and Brown students, ELC filed a complaint with the Pennsylvania Department of Education. After a comprehensive investigation, in May 2020, PDE found that at least half of evaluations in the District were untimely.<sup>3</sup> It found that schools were not properly responding to requests for evaluations or identifying students in need of evaluations. Based on these findings and others, it ordered three years of comprehensive monitoring of the District’s evaluation process.

While this extraordinary requirement was necessary due to the severity of the violation, it has only grown since the pandemic.

When PDE issued this decision, the District had stopped conducting evaluations *entirely*. Students whose parents had already signed consent forms remained waiting without critical services. New students were referred for evaluations due to needs that arose during the pandemic when instructional losses and isolation compounded. Nearly a year passed without *any* in-person evaluations.

---

<sup>1</sup> *P.P. v. West Chester Area Sch. Dist.*, 585 F.3d 727, 738 (3d Cir. 2009) (citation omitted); see 20 U.S.C. § 1412(a)(3) (explaining that states must “identif[y], locate[ ], and evaluate[ ]” all children with disabilities who are in need of special education, and must develop “a practical method ... to determine which children with disabilities are currently receiving needed special education and related services”). The IDEA requires the LEA to complete an educational evaluation within 60 calendar days of the IDEA parent’s consent for evaluation. 34 C.F.R. § 300.301(c)(1)(i). Additionally, Pennsylvania law states that school districts must make Permission to Evaluate forms readily available when a parent makes a written request for an evaluation. 22 Pa Code § 14.123(c). Specifically, when parents request the evaluation orally, the District must provide the parent with a Permission to Evaluate within 10 days. 22 Pa Code § 14.123.11.

<sup>2</sup> *D.K. v. Abington Sch. Dist.*, 696 F.3d 233, 249-50 (3d Cir. 2012).

<sup>3</sup> Bureau of Special Education, Complaint Investigation Report, May 6, 2020, available at <https://www.elc-pa.org/wp-content/uploads/2020/06/CIR-SDP-Systemic-Evaluations-Amended-2-1-Redacted.pdf>.

Now, a significant problem that existed prior to the pandemic has escalated to a crisis. When the Regional Centers opened in late January, six-hundred students were identified for in-person evaluations, which was just a fraction of those waiting. Those evaluations are not complete. Many more children remain to be evaluated and we know that more children are coming. All of the children transitioning from Elwyn's Preschool Early Intervention will need reevaluations, which typically has been nearly 1000 children.<sup>4</sup>

When evaluation demand is higher than the already overflowing caseloads for school psychologists who are struggling to manage multiple obligations, the consequences can be devastating. Children who are not appropriately identified for special education will fall far behind. Children who receive rushed evaluations may be subject to misdiagnosis, which may lead to children being forever tracked into programming that is not appropriate.

We urge the District to take the following steps to address this significant backlog of evaluations:

- **Develop an order for prioritization of expedited completion of the evaluations with an emphasis on students with Permissions to Evaluate that predate the pandemic, youth in foster care, youth experiencing homelessness, and youth in juvenile justice systems;**
- **By agreement of parents and the District provide special education services to students who are suspected of having a disability or who present with additional educational needs prior to conduct of an evaluation;**
- **Allocate targeted funding from the American Rescue Plan to hire or contract with at least ten additional culturally competent school psychologists to meet the high demand;**
- **Coordinate with the FACE office to provide Bilingual Counseling Assistants (BCAs) to ensure parent input, identify needed bilingual school psychologists and provide interpretation services as needed; and**
- **Develop a timeline for the completion of reevaluations for students transitioning from Elwyn's Preschool Early Intervention Program.**

As a District, we cannot afford to let this crisis go unaddressed.

Respectfully Submitted,

Margie Wakelin, Esq.

Staff Attorney

---

<sup>4</sup> Bureau of Special Education, Complaint Investigation Report, November 14, 2017, available at <https://www.elc-pa.org/wp-content/uploads/2018/03/MC-AMENDED-CIR.pdf>.