

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

LOCAL EDUCATIONAL AGENCY: School District of Philadelphia

DATE RECEIVED: December 19, 2022

DATE OF REPORT: March 17, 2023

COMPLAINANT: Attorneys

NAME: Margaret Wakelin, Esquire
Maura McInerney, Esquire
Rebecca Preuss, Esquire

ADDRESS: Education Law Center
1800 John F. Kennedy Blvd.
Suite 1900-A
Philadelphia, PA 19103

RE: Multiple Students

SPECIFIC COMPLAINT:

Issue: The School District of Philadelphia (SDP) denied the free appropriate public education (FAPE) of current and former similarly situated 504 students during the COVID-19 crisis.

APPLICABLE REGULATORY AUTHORITY:

34 CFR § 104.33 Free appropriate public education.

- (a) General. A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.
- (b) Appropriate education.
 - (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that
 - (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and
 - (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36.
 - (2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.
 - (3) A recipient may place a handicapped person or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.
- (c) Free education -

- (1) General. For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on non-handicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.
- (2) Transportation. If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

...

22 Pa. Code § 15.3. General.

A school district shall provide each protected handicapped student enrolled in the district, without cost to the student or family, those related aids, services or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities without discrimination and to the maximum extent appropriate to the student's abilities.

22 Pa. Code § 15.7. Service agreement.

- (a) If the parents and the school district agree as to what related aids, services or accommodations should or should no longer be provided to the protected handicapped student, the district and parents shall enter into or modify a service agreement. The service agreement shall be written and executed by a representative of the school district and one or both parents. Oral agreements may not be relied upon. The agreement shall set forth the specific related aids, services or accommodations the student shall receive, or if an agreement is being modified, the modified services the student shall receive. The agreement shall also specify the date the services shall begin, the date the services shall be discontinued, and, when appropriate, the procedures to be followed in the event of a medical emergency.
- (b) If the parents and the school district cannot agree as to the related aids, services and accommodations that should or should no longer be provided to the protected handicapped student, either party may use the procedural safeguard system under § 15.8 (relating to procedural safeguards) to resolve the dispute, and the school district shall notify parents in writing of their rights in this regard.
- (c) In implementing the service agreement, school entities shall address relevant factors, such as educational resources, physical plant and personnel capabilities.

22 Pa Code § 15.5. School district-initiated evaluation and provision of services.

- (a) A school district shall send a written notice to the student's parents if a school district believes that a student meets one or more of the following conditions:
 - (1) Should be identified as a protected handicapped student.
 - (2) Should no longer be identified as a protected handicapped student.
 - (3) Requires a change in or modification of the student's current service agreement.

- (b) The school district's notice to the parents shall be in the parents' native language or mode of communication and shall state the following:
 - (1) The school district believes the student is a protected handicapped student or is no longer a protected handicapped student.
 - (2) The basis for the school district's belief.
 - (3) The proposed change or modification in the service agreement.
 - (4) The parents' right to inspect and review all relevant school records.
 - (5) The parents' right to meet with appropriate school officials to discuss the issues associated with evaluating or accommodating the student.
 - (6) The specific related aids, services or accommodations the school district is proposing.
 - (7) The requirement that the parents agree to the student's identification as a protected handicapped student and execute a service agreement before the school district will provide the proposed related aids, services or accommodations.
 - (8) The school district will not modify or terminate the student's current service agreement without the parents' written consent, pending completion of the procedures in § 15.8 (relating to procedural safeguards).
 - (9) The procedural safeguards available to students and their parents.
- (c) If the school district needs additional information before it can make a specific recommendation concerning the related aids, services or accommodations needed by the student, the district may ask the parents to provide additional medical records which the parents may have and to grant the district permission to evaluate the student.
- (d) The school district-initiated request to evaluate a student shall specifically identify the procedures and types of tests which it proposes to use to evaluate the student and inform the parents that they have the right to give or withhold their written consent to these evaluations.

22 Pa Code § 15.6. Parent initiated evaluation and provision of services.

- (a) Parents shall request in writing that their child be evaluated and provided services if they believe their child meets one or more of the following conditions:
 - (1) Should be identified as a protected handicapped student.
 - (2) Should no longer be identified as a protected handicapped student.
 - (3) Requires a change in or modification of the child's current service agreement.
- (b) The parents should include available relevant medical records along with their written request for the provision of services.
- (c) Whenever possible the parents' request for the provision of services shall state the following:
 - (1) The specific reasons the parents believe the student is or is no longer a protected handicapped student.
 - (2) The specific related aids, services or accommodations the parents believe the student needs.
 - (3) The specific modifications the parents would like the school district to make in the student's current service agreement, if the parents are requesting modification of the student's current service agreement.
- (d) Within 25 school days of receipt of the parents' written request for the provision of services the school district shall evaluate the information submitted by the parents and send a written response to the parents' request.
- (e) The school district's response to the parents shall be in the parents' native language or mode of communication and shall state the following:
 - (1) Whether the parents' request or a portion of the parents' request is being granted or denied.

- (2) The parents' right to meet with the appropriate school officials to discuss the issues associated with accommodating the student.
 - (3) The procedural safeguards available to students and their parents under § 15.8 (relating to procedural safeguards).
 - (4) Parents using the procedural safeguards in this chapter may also file suit in Federal court under Section 504.
- (f) If upon evaluation of the information submitted by the parents, the school district determines that it needs additional information before it can make a specific recommendation concerning the parents' request, the district shall ask the parents to provide additional medical records and grant the district permission to evaluate the student.
- (g) The school district-initiated request to evaluate a student under subsection (f) shall be in writing and specifically identify the procedures and types of tests which it proposes to use to evaluate the student and inform the parents that they have the right to give or withhold their written consent to these evaluations.

Pennsylvania Department of Education
Basic Education Circular
Implementation of Chapter 15
22 Pa. Code Chapter 15
Date of Issue: September 1, 1997
Date of Review: July, 2009 July, 1999 (revised)

Purpose:

Chapter 15 of Title 22 of the regulations of the State Board of Education addresses the responsibility of school districts to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in activities receiving federal financial assistance). The purpose of the federal law and the state regulations is to require that public educational agencies ensure that protected handicapped students have equal opportunity to participate in school programs and extracurricular activities to the maximum extent appropriate to the ability of the protected handicapped student in question. This BEC identifies the duties of the LEA, definitions and descriptions of Protected Handicapped Students, Service Agreements and Procedural Safeguards and provides forms to use for Chapter 15 Notices and Agreements.

Duty of the Local Education Agency (LEA):

LEAs shall provide each protected handicapped student enrolled in the district, without cost to the student or family, those related aids, services, or accommodations which are needed to afford the student equal opportunity to participate in and obtain the benefits from the school programs and extracurricular activities without discrimination, and to the maximum extent appropriate to the student's abilities. To meet the criteria for services under Chapter 15, a student needs to be identified as a protected handicapped student.

Protected Handicapped Student Definition:

To meet the criteria of a protected handicapped student a child must be of school age and have a physical or mental disability that substantially limits or prohibits participation in or access to an aspect of the student's school program. The Americans with Disabilities (ADA) Amendments Act of 2008, Public Law 110-325, which also amends the Rehabilitation Act of 1973, broadens the definition of disability. The extent of an individual's impairment should be evaluated without considering the ameliorative effects of mitigating measures. The amendments took effect January 1, 2009.

Criteria and Process for Protected Handicapped Student Status: Evaluation

A child can be referred for evaluation of protected handicapped status either by the school district or the parents of the child. If the parents are requesting an evaluation, their request needs to be presented to the school district in writing. If the school district is requesting an evaluation, then a written notice must be sent to the parents. Any pertinent information needed to make the decision, including medical records, needs to be presented to the school district.

Service Agreement

If the parents and the LEA agree that the student needs to have a service agreement, then the service agreement is written and executed by a representative of the LEA and one or both parents. The service agreement must specify the related aids, services, and accommodations that the student will receive, and the date the services will begin and end. If appropriate, a service agreement should also identify procedures to occur in the event the student has a medical emergency.

Procedural Safeguards

Parents and LEAs are entitled to the following Procedural Safeguards:

NOTICE - A written explanation of why either the district or the parents desire to determine whether a student is a protected handicapped student. A written explanation when a school district is either going to initiate or terminate a service plan for a student.

REQUEST FOR RESOLUTION - The Department will investigate and respond to written requests for assistance made by parents within 60 calendar days of receipt of the request unless exceptional circumstances are present.

INFORMAL CONFERENCE - The parents of a student may request an informal conference with the school district regarding the identification, evaluation, need for related aids, services, and/or accommodations. The informal conference is between the parents and the school district. An informal conference must be convened within 10 school days of the request.

FORMAL DUE PROCESS HEARING - If a formal hearing is required, it will be held before an impartial hearing officer and shall be governed by 22 Pa. Code §14.162.

PENDING JUDICIAL APPEALS - If an appeal of an administrative due process proceeding is filed within 90 days in State or Federal court, the decision of the due process hearing officer will be stayed pending the completion of the judicial proceedings unless the parents and school district agree otherwise.

CONFIDENTIALITY - All personally identifiable information regarding a protected handicapped student is confidential and can be released only by parental consent. Parents and their representatives are able to access the educational records of the student.

Forms

Annual Notice of Evaluation Procedures and Services as a Protected Handicapped Student - This form informs parents of the evaluation procedures, services and protections available to Protected Handicapped Students.

Notice to Parents - Notice to parents from the school district for initiating an evaluation or services or terminating services.

Procedural Safeguards - This form lists the procedures and safeguards that parents should be presented at the initial evaluation of a student.

Service Agreement - This form outlines the necessary components of a service agreement between the school district and the protected handicapped student's parents.

Federal Statutes

Section 504 of the Rehabilitation Act of 1973, 29 USC Sec. 794

American with Disabilities (ADA) Amendments Act of 2008, Pub. Law 110-325

SOURCES OF INFORMATION:

This Special Education Adviser, Sherri L. Campbell:

- Reviewed the complaint letter sent by the Complainant and received by the Bureau of Special Education (BSE) on December 19, 2022.
- Corresponded via email with the Complainants on December 23, 2022, and January 4, 2023.
- Corresponded via telephone with the Complainants on January 4, 2023.
- Corresponded via email with the following individuals on January 6, 2023:
 - Dr. Tony B. Watlington Sr., Superintendent.
 - Sonya Berry, Office of Specialized Services (OSS) Deputy Chief (Deputy Chief).
 - Kim Harris, OSS Director of Operations.
 - Tracy-Marie Moody, OSS Acting Executive Director of School Based Services (Acting Executive Director of School Based Services).
 - Twain D. McLeod, OSS Compliance Manager (Compliance Manager).
 - Bedina Williams, OSS Data Analyst.
 - Meghan Smith, Director of 504 and Counseling (Director)
- Corresponded via email with the Deputy Chief; Acting Executive Director of School Based Services; Compliance Manager; and Director via email on January 6, 2023; January 13, 2023; January 17-18, 2023; January 20, 2021; January 22-23, 2023; January 27, 2023; January 30, 2023; February 8, 2023; February 13, 2023; February 26-28, 2023; and March 1-2, 2023.
- Corresponded via telephone with the Director on January 11, 2023.
- Corresponded via email with the Director on January 13, 2023; February 27-28, 2023; March 2, 2023.
- Completed student file reviews on-site with multiple Special Education Advisers on February 6-8, 2023.

- Surveyed SDP personnel during the period between February 13-24, 2023:
- Interviewed, via telephone, Director on March 2, 2023.
- Reviewed the following numbered documents:

Rec.	Title	Date	Source
1.	Policy: Nondiscrimination – Qualified Students With Disabilities, Code 103.1	Revised: November 16, 2017	SDP
2.	Continuity of Education Plan	March 25, 2020	SDP
3.	Reopening Discussion School Counselors PowerPoint	Beginning 2020-2021 school year	SDP
4.	Reopening Guidelines and Support for School Counselors	Beginning 2020-2021 school year	SDP
5.	504 Plans: Process Guidelines for Virtual Learning	Beginning 2020-2021 school year	SDP
6.	Suggested 504 Accommodations for Virtual Learning	Beginning 2020-2021 school year	SDP
7.	Complaint Form	Received: December 19, 2022	Complainant
8.	Student File Review Summary	February 6-8, 2023	BSE
9.	SDP Administration and Other Personnel Survey Summaries	February 13-24, 2023	BSE
10.	SDP School Calendar	2020-2021 school year	SDP website
11.	SDP School Calendar	2021-2022 school year	SDP website
12.	SDP School Calendar	2022-2023 school year	SDP website
13.	504 Service Planning Website	2022-2023	SDP Website
14.	504 Child Find	2022-2023	SDP Website
15.	Chapter 15: Section 504 Policy and Procedures	Undated	SDP
16.	Procedure: 504 Accommodation Guide	Undated	SDP
17.	Section 504 Process Review and Implementation Guidelines PowerPoint Presentation	Undated	SDP

FINDINGS:

1. The Policy: *Nondiscrimination-Qualified Students with Disabilities/Protected Handicapped Students* updated November 16, 2017, includes:

“Authority

... The district shall provide to each qualified student with a disability/protected handicapped student enrolled in the district, without cost to the student or parent/guardian, a free and appropriate public education (FAPE). This includes provision of education and related aids, services, or accommodations which are

needed to afford each qualified student with a disability/protected handicapped student equal opportunity to participate in and obtain the benefits from educational programs and extracurricular activities without discrimination, to the same extent as each student without a disability, consistent with federal and state laws and regulations...

Definitions

Qualified student with a disability/protected handicapped student - a student who has a physical or mental disability which substantially limits or prohibits participation in or access to an aspect of the district's educational programs, nonacademic services or extracurricular activities.

Section 504/ Chapter 15 Team- a group of individuals who are knowledgeable about the student, the meaning of the evaluation data and the placement options for the student. This could include, as appropriate, documentation or input from classroom instructors, administrators or designees, counselors, psychologists, school nurses, related service providers, outside care providers and the student's parents/guardians.

Section 504 Service Agreement (Service Agreement/504 Plan) - an individualized plan for a qualified student with a disability/protected handicapped student which sets forth the specific related aids, services, or accommodations needed by the student, which shall be implemented in school, in transit to and from school, and in all programs and procedures, so that the student has equal access to the benefits of the school's educational programs, nonacademic services, and extracurricular activities...

Delegation of Responsibilities...

In addition, each school within the district shall have a Section 504/Chapter 15 Administrator and case manager...

Identification and Evaluation

The district shall conduct an annual child find campaign to locate and identify every district student with a disability thought to be eligible for Section 504 services and protections. The district may combine this search with the district's IDEA child find efforts, in order to not duplicate efforts.

If a parent/guardian or the district has reason to believe that a student should be identified as a qualified student with a disability/protected handicapped student, should no longer be identified as a qualified student with a disability/protected handicapped student, or requires a change in or modification of the student's current Service Agreement, the parent/guardian or the district shall provide the other party with written notice.

The district's notices to the parents/guardians shall be in the parents'/guardians' native language or mode of communication.

The district shall establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need related services because of a disability.

The district shall specifically identify the procedures and types of tests used to evaluate a student and provide the parent/guardian the opportunity to give or withhold consent to the proposed evaluation(s) in writing.

The district shall establish procedures for evaluation and placement that assure tests and other evaluation materials:

1. Have been validated and are administered by trained personnel.
2. Are tailored to assess educational need and are not based solely on IQ scores.
3. Reflect aptitude or achievement or anything else the tests purport to measure and do not reflect the student's impaired sensory, manual, or speaking skills (except where those skills are what is being measured).

Service Agreement

If a student is determined to be a qualified student with a disability/protected handicapped student, the district shall develop a written Service Agreement for the delivery of all appropriate aids, services, or accommodations necessary to provide the student with FAPE.

The Service Agreement shall be in writing and signed by the principal or designee and one (1) parent/guardian. Oral agreements may not be relied upon.

The Service Agreement shall set forth the date the services shall begin; the date the services shall be discontinued; when appropriate, the procedure to be followed in the event of a medical emergency; specific related aids, services, or accommodations the student shall receive, or if an agreement is being modified, the modified services the student shall receive.

The district shall not modify or terminate a student's current Service Agreement without the parent's/guardian's written consent...

Procedural Safeguards

The district shall establish and implement a system of procedural safeguards that includes notice of rights to the parent/guardian of a student suspected of being a qualified student with a disability/protected handicapped student, an opportunity for the parent/guardian to review relevant records, an impartial hearing with an opportunity for participation by the student's parent/guardian, and a review procedure.

A student or parent/guardian filing a claim of discrimination need not exhaust these procedures prior to initiating court action under Section 504...

2. The Procedure: 504 Accommodation Guide undated, incorporates the following topics in the table of contents:
 - "Introduction
 - Who We Are
 - What is Section 504?
 - What is the Difference Between an IEP and a 504?
 - Defining a Disability under Section 504
 - Roles and Responsibilities
 - Parental Rights and Safeguards
 - Waiting a Section 504 Plan
 - Referral for Services

- Consent for Evaluation
 - Evaluation Process
 - Eligibility Determination
 - Service Agreement
 - Annual Reviews
 - Homebound Instruction
 - Suspension and Expulsion
 - Manifestation Determinations
 - Functional Assessments
 - Behavior Planning
 - Sample Accommodations and Resources
 - ADHD/ADD
 - Allergies
 - Anxiety
 -
 - Other Helpful Information
 - Visual Learning Strategies
 - EasyIEP Steppers”
3. SDP published a *Continuity of Education Plan* on March 25, 2020, to provide information regarding Remote Learning during the mandated school closure. The plan included the following information:

“...The Continuity of Education Plan is grounded in five guiding principles.”

1. “Given that the learners and educators are not accustomed to remote learning, this plan is not intended to replace the daily mandated instruction students would be engaged in if school buildings were open. The District is committed to principles of equitable access for all children, and to this end is working to build capacity through technology, training, and supplemental resources for our students with special learning needs in mind. This plan is intended to reinforce prior learning and enrichment activities for students and introduce new learning, when appropriate. Students will receive feedback, encouragement, and guidance for review and enrichment activities. Planned instruction will require progress monitoring and assessment of new learning.”
2. “Digital resources will be provided for teachers to utilize while making accommodations to support all the students they serve. School leadership teams and instructors may also create or utilize their own review and enrichment activities.”
3. “Digital learning structures (Google Classroom) will provide opportunities for children to practice their academic skills. During an inherently stressful time, these structures should not contribute to stress for students, families, educators, and leaders.”
4. “This content should reinforce skills, provide enrichment opportunities, and integrate new content as appropriate. Schools that currently implement a digital learning protocol may continue with reasonable expectations for work completion given the current context. At present, student work will not be graded, but teachers can provide feedback.”
5. “Training will be provided for all staff, if needed, via virtual training sessions and students and families via online tutorials or PSTV to support the use of Google Classroom and other Google tools utilized.”

“The Continuity of Education Plan has four components.”

1. “Chromebook Preparation & Distribution Central office teams are collaborating with our school-based teams to ensure that every student has access to a Chromebook.”

2. "Digital Content Development Academic central office teams will be organized to identify and create digital content and materials throughout the closure period."
3. "Professional Learning & Ongoing Support Virtual training and coaching for every school to support use of technology to engage students in digital review and enrichment activities."
4. "Engaging with Students Teachers engage with students through technology, using District-created activities or instructor-created activities that Last updated March 25, 2020 align to the guiding principles."

4. *The Reopening Discussion-School Counselors PowerPoint Presentation* provided at the beginning of the 2020-2021 school year involved these objectives:

"Objectives:

During this workshop school counselors will:

- Review School District Protocols for reopening of school buildings.
- Review School counselor specific protocols.
- Review how to support students across settings."

Additionally, within the objective of how to support students across setting:

"504 Support

- Identify which students on your caseload will be in-person, virtual or hybrid.
- Review all plans to ensure that accommodations and services are appropriate.
- Communicate with parent/guardian any recommendations or updates.
- Obtain signatures, if possible, if not have the parent send you a written confirmation (via text, email or mail). Obtain signatures when possible.
- Work with the MTSS team to identify any new students who may benefit from 504 support."

5. *Reopening Guidelines and Support for School Counselors* provided at the beginning of the 2020-2021 school year encompassed these items involving 504 service plans:

"...Work with the MTSS team to identify students who may be in need of more intensive supports (504 plan...)

"...5. Review 504 caseloads to identify which settings student will in a. Adjust plans as needed..."

"504 Planning:

The 504 process proceeds as normal during in-person, virtual and hybrid settings.

Continue to implement all appropriate accommodations.

- If a student is identified as potentially needing a 504 plan, follow the standard consent and eligibility process.
- Review existing 504 plans for all students (regardless of when their plan expires) and ensure that accommodations are appropriate for the child's current setting (in-person, virtual or hybrid).
 - IF any changes need to be made, notify the parent/guardian and follow the standard process for updating a plan.
- If you are unable to meet with parents/guardians in-person, continue to offer a virtual meeting as an option.
- If signatures are not able to be obtained in person or electronically, have the

parent send you a written response stating that they agree with the plan (can be sent via email, text, mail).

- Upload that evidence into the student’s file in the EasySystem.
- Once you are able to obtain an in-person signature, please do.”

6. The document entitled, “504 Plans: Process Guidelines for Virtual Learning” stipulates:

If	Then
<p>IF a consent for an Initial Evaluation is received (signed or verbal), but the Initial evaluation process cannot be completed due to lack of data or evidence; an eligibility determination cannot be made.</p> <p>An eligibility determination may not be made if any of the following information is not available:</p> <ul style="list-style-type: none"> ○ Incomplete Instructor/Parent Input Forms ○ No documentation/data supporting evidence that a diagnosis or disability is substantially limiting one or more major life activities. <p>*If the Consent Form was signed by a parent/guardian the form must be uploaded to the “Documents” section in EasyIEP. If not, all forms can be uploaded upon return after signatures have been received.</p> <p>*Continue to make attempts to gather necessary data/documents (if/when possible) to complete the eligibility and plan (Teacher/Parent/Student Input Forms, Proof of Disability, etc.)</p>	<ol style="list-style-type: none"> 1. Complete as much of the “Section 504 Eligibility Determination Report” as possible in EasyIEP. <p>In sections where data is absent/unavailable use the following language:</p> <ul style="list-style-type: none"> • “This data was unavailable at the time of the Districts mandated closure due to COVID-19.” <p>In sections where data is minimal or incomplete use the following language:</p> <ul style="list-style-type: none"> • “Additional required data was unavailable at the time of the District’s mandated closure due to COVID-19. The information will be updated once the data has been received.” <ol style="list-style-type: none"> 2. Create a “DRAFT” Eligibility Report (Create an INITIAL 504) [Hyperlink] 3. Once additional information is obtained, move forward with the 504 process, and remove the language written in the bullets above.
<p>IF the Initial evaluation process is COMPLETE and we can offer an eligibility determination based on information collected...</p>	<ol style="list-style-type: none"> 1. Contact the student’s family and advise them that the student is eligible. 2. Create the Eligibility Report (Create an INITIAL 504) [Hyperlink] 3. Create the 504 Plan 4. Review the 504 plan with the parent. 5. Obtain signatures electronically if possible. 6. If you are unable to obtain signatures electronically, please communicate to the

	<p>parent/guardian that signatures will be obtained when school resumes and any additional or necessary updates will be made at that time. Ask the parent to send you a written communication (email or text message) stating that they agree to the plan. Keep record of that communication and upload to the student's file if possible.</p> <p>7. Implement the 504 plan as fully as possible in all settings (in-person, virtual and hybrid)</p>
<p>IF a student has an existing 504 that is in compliance....</p>	<ol style="list-style-type: none"> 1. Review current accommodations and discuss with parent/guardian which accommodations are able to be provided virtually. 2. Update the plan to include any changes in accommodations or services. 3. Upon return to in-person learning, review the plan with the parent/guardian and make adjustments to the accommodations and services as needed. 4. Obtain electronic signatures if possible. 5. If you are unable to obtain signatures electronically, please communicate to the parent/guardian that signatures will be obtained when school resumes and any additional or necessary updates will be made at that time. Ask the parent to send you a written communication (email or text message) stating that they agree to the plan. Keep record of that communication and upload to the student's file if possible.
<p>IF an existing 504 Plan is out of compliance and requires an annual review to be completed...</p>	<ol style="list-style-type: none"> 1. Follow all of the appropriate steps to update the student's plan in EasyIEP. (How to Update a 504 Plan) [Hyperlink] <ol style="list-style-type: none"> a. Retain current accommodations and add additional accommodations if appropriate. 2. Review the updated plan with the parent.

	<ol style="list-style-type: none"> 3. Obtain signatures electronically if possible. 4. If you are unable to obtain signatures electronically, communicate to the parent/guardian that signatures will be obtained when school resumes and any additional or necessary updates will be made at that time. Ask the parent to send you a written communication (email or text message) stating that they agree to the plan. Keep record of that communication and upload to the student's file if possible. 5. Implement the 504 plan as fully as possible in all settings (in-person, virtual, and hybrid)
IF a Termination of Plan is being requested...	<ol style="list-style-type: none"> 1. Written documentation must be required for immediate termination. (Email, Postal, Text) 2. If documentation is received, move forward with terminating the plan. (How to Terminate a Plan)[Hyperlink] <p>If unable to obtain written documentation of request, inform parent/guardian that the plan will be terminated upon return to school and continue to provide accommodations.</p>
IF a student is GRADUATING from HS school...	<ol style="list-style-type: none"> 1. Follow standard termination procedures. (How to Terminate a Plan) [Hyperlink]"

7. *Suggested 504 Accommodations for Virtual Learning* provided to SDP personnel at the beginning of the 2020-2021 school year, includes:

- "Pre-recorded lessons or videos that students can watch as often as they'd like
- Guided notes
- Provide study guides and outlines
- Written or recorded directions for assignments
- Private redirection
 - Utilize break-out rooms
- Use pictures or graphics to increase understanding
- Share copies of powerpoints or slides
- Provide cues for transitions
- Extended time for assignments
- Extended time on quizzes and tests
- Frequent breaks
- Frequent prompts and checks for understanding

- Teachers can either check-in via private chat or one-on-one after class has ended (between classes).
- Advanced notice of large assignments or tests
- Videos with captioning
- Provide slides ahead of time or outlines of lesson content
- Provide alternative activities or choice
- Provide opportunities for movement”
- Break work into smaller sections
 - Provide separate due dates
 - Check in on progress
- Clear expectations for rules, procedures, policies and routines
 - Provide visuals
- Self-Monitoring Resources: checklists, rubrics, planning guides, etc.”

8. The current 504 Planning website embedded in SDP’s website currently contains:

“About

Section 504 service agreements also known as 504 plans are formal documents that schools develop to give students with disabilities the supports they need. These plans prevent discrimination and protect the rights of students with disabilities in school. Students are covered under the Section 504 of the Rehabilitation Act, which is a civil rights law, that protects individuals from discrimination based on disability. Under this law, individuals with disabilities may not be excluded from or denied the opportunity from certain programs.

In the area of education, a section 504 team determines a students eligibility through the process of evaluation and assessment before developing and implementing a plan to meet the needs of the student.

Students with a 504 Plan, along with parents and school officials, document the aids, services, and accommodations afforded to every student to the maximum extent so that they can be educated alongside non-disabled peers. Some of these accommodations include environmental strategies, organizational strategies, behavioral strategies, presentation strategies, evaluation methods, etc.

For more information about how to obtain a 504 plan for your child please contact the school counselor or nurse.

About

504 Non-Discrimination Notice

Non-Discrimination Notice Updates

The School District of Philadelphia Policy, 103.1 Non-Discrimination-Qualified Students with Disabilities/Protected Handicapped Students. [\[Hyperlink\]](#) Students with Disabilities. Pursuant to that policy, our Administration has created grievance procedures that provide for the prompt resolution of complaints alleging any prohibited actions under the policy.

The policy outlines the district’s commitment to ensuring all individuals have equal access to education in this district regardless of race, color, age, creed, religion, sex, sexual orientation, ancestry, national origin or handicap/disability, gender identity, or

genetic information. The policy also requires the district to provide academic and nonacademic services and programs equally to students with and without disabilities.

Any student, as well as parents and third parties, who believe that they have been subject to conduct that violates this policy may file a complaint following the administrative procedures. [\[Hyperlink\]](#) Please immediately report the incident to the District's

Section 504/Chapter 15 Coordinator listed below.

The complainant is encouraged to use the report form available. [\[Hyperlink\]](#)

Anyone who receives a verbal complaint should refer the student, parent, or third party to the Section 504/Chapter 15 Coordinator and notify the Section 504/Chapter 15 Coordinator in writing as soon as possible..."

9. The SDP's annual notice to district families as described in 22 Pa Code § 15.4 is on the district's website.
10. The *Section 504 Process Review and Implementation Guidelines PowerPoint Presentation* provides an overview of the 504 process and implementation of the 504 service agreement.

The Director explained that this PowerPoint is updated and reviewed at a minimum, at the beginning of each school year. This PowerPoint was initially shared during the 2020-2021 school year.

11. The BSE reviewed the files of 25 randomly selected students who were eligible to receive supports/accommodations via a 504 Service Agreement from 2020-2021 school year through the 2021-2022 school year. The documents reviewed included the 504 Service Agreements and Report Cards.

	Yes	No
The Student's file contains a 504 Service Agreement for the 2020-2021 school year.	25	0
The 504 Service Agreement for the March 2020 – June 2020 time frame contains:		
• Date the Service Agreement Begins	25	0
• Date the Service Agreement Ends	25	0
• Nature of Student's Disability	25	0
• Limited Major Life Activity / Activities	24	1
• Specific Aids, Services, and/or Accommodations	24	1
• Evidence, such as signatures, that the 504 Service Agreement was written and executed by a School Representative and Parent	16	9
• Parent indicated approval of 504 Service Agreement or proof of multiple attempts to contact the parent	16	9
The 2020-2021 report card reflects average or above grades.	22	3
The Student's file contains a 504 Service Agreement for the 2021-2022 school year.	24	1

The 504 Service Agreement for the 2021-2022 school year contains:		
o Date the Service Agreement Begins	24	1
o Date the Service Agreement Ends	24	1
o Nature of Student's Disability	24	1
o Limited Major Life Activity / Activities	23	2
o Specific Aids, Services, and/or Accommodations	23	2
o Evidence, such as signatures, that the 504 Service Agreement was written and executed by a School Representative and Parent	14	11
o Parent indicated approval of 504 Service Agreement	14	11
The 2021-2022 report card reflects average or above grades.	22	3

The file review data, regarding the 504 Service Agreements reflects:

2020-2021 school year:

- 25 of 25 files reviewed or 100 percent of the documents were current during the 2020-2021 school year.
- Multiple instances of missing information within the 504 Service Agreement documents.
 - o 25 of 25 files reviewed or 100 percent of the files reviewed indicates that the Date the Service Agreement Begins is present on the reviewed 504 Service Agreements.
 - o 25 of 25 files reviewed or 100 percent of the files reviewed indicates that the Date the Service Agreement Ends is present on the reviewed 504 Service Agreements.
 - o 25 of 25 files reviewed or 100 percent of the files reviewed indicates that the Nature of Student's Disability is present on the reviewed 504 Service Agreements.
 - o 24 of 25 files reviewed or 96 percent of the files reviewed indicates the Limited Major Life Activity/Activities were present on the reviewed 504 Service Agreements.
 - o 24 of 25 files reviewed or 96 percent of the files reviewed indicates the specific Aids, Services, and/or Accommodations were present on the reviewed 504 Service Agreements.
 - o 16 of 25 files reviewed or 64 percent of the files reviewed indicates the Evidence, such as signatures, that the 504 Service Agreement was written and executed by a School Representative and Parent were present.
 - o 16 of 25 files reviewed or 64 percent of the files reviewed indicates the Parent indicated approval or proof of multiple attempts to contact the parent were present on the reviewed 504 Service Agreements.
- 22 of 25 students or 88 percent of the students had average or above average grades during the 2020-2021 school year.

2021-2022 school year:

- 24 of 25 files reviewed or 96 percent of the documents were current during the 2021-2022 school year.
- Multiple instances of missing information within the 504 Service Agreement documents.

- 24 of 25 files reviewed or 96 percent of the files reviewed indicates that the Date the Service Agreement Begins is present on the reviewed 504 Service Agreements.
- 24 of 25 files reviewed or 96 percent of the files reviewed indicates that the Date the Service Agreement Ends is present on the reviewed 504 Service Agreements.
- 24 of 25 files reviewed or 96 percent of the files reviewed indicates that the Nature of Student’s Disability is present on the reviewed 504 Service Agreements.
- 23 of 25 files reviewed or 92 percent of the files reviewed indicates the Limited Major Life Activity/Activities were present on the reviewed 504 Service Agreements.
- 23 of 25 files reviewed or 92 percent of the files reviewed indicates the specific Aids, Services, and/or Accommodations were present on the reviewed 504 Service Agreements.
- 14 of 25 files reviewed or 56 percent of the files reviewed indicates the Evidence, such as signatures, that the 504 Service Agreement was written and executed by a School Representative and Parent were present.
- 14 of 25 files reviewed or 56 percent of the files reviewed indicates the Parent indicated approval or proof of multiple attempts to contact the parent were present on the reviewed 504 Service Agreements.
- 22 of 25 students or 88 percent of the students had average or above average grades during the 2021-2022 school year.

12. Interview questionnaires were completed by 116 of the instructors, counselors, nurses, and other related service providers who had the 25 randomly selected students on instructor’s roster during the time frame of the 2020-2021 school year and the 25 randomly selected students from the 2021-2022 school year. Please note, not all of the instructors of the 25 selected students provided responses. The instructor responses yielded the following:

	YES	NO	N/A
Was familiar with the target student’s 504 Service Agreement at the time the student was in his/her class	107	9	
Provided the required aid, service, or support to the target student	102	10	
The aid, service, or support was provided differently due to the virtual educational environment	45	45	26
The 504 Service Agreement was revised to reflect the virtual learning environment	40	41	25

The interviews yielded:

- 96% of SDP personnel were familiar with the student’s 504 Service Agreement and provided the required aid, service, or supports.
- Since the SDP instructors reported that the virtual learning environment was not a constant during this time frame, the interview data does not provide any conclusions regarding the effect of a virtual learning environment on the provision of FAPE for those students with 504 Service Agreements.

13. Interview questionnaires regarding participation in Section 504 team meetings and interaction with parents/guardians and SDP staff were completed by 342 SDP staff including building administrators, school counselors, and nurses. The responses yielded the following:

	YES	NO	May have, but don't remember	Other
Participated in Section 504 team meetings during the 2020-2021 school year	86	116	102	37
Parents/guardians of students with 504 Service Agreements contacted me regarding their student's academic or behavioral performance during the 2020-2021 school year	26	220	67	29
Participated in Section 504 team meetings during the 2021-2022 school year	112	108	94	28
Parents/guardians of students with 504 Service Agreements contacted me regarding his/her student's academic or behavioral performance during the 2021-2022 school year	41	194	86	21

The interviews yielded the following:

- Section 504 team meetings did occur during the 2020-2021 and 2021-2022 school years.
- A larger number of the SDP staff interviewed were not contacted by parents/guardians or district staff regarding academic or behavioral concerns regarding students with 504 Service Agreements.

14. Interview questionnaires were completed by 116 of the instructors, counselors, nurses, and other related service providers who had the 25 randomly selected students on instructor's roster during the time frame of the 2020-2021 school year and the 25 randomly selected students from the 2021-2022 school year. Please note, not all of the instructors of the 25 selected students provided responses. The instructor responses yielded the following:

	YES	NO
Training provided regarding implementation of 504 Service Agreements	75	41
Notified when a student with a 504 Service Agreement is on the instructor's roster	114	2
Aware of who is responsible for monitoring the documents and implementation of the 504 Service Agreements	103	3

15. Interview questionnaires regarding the implementation of 504 Service Agreements in the virtual learning environment were completed by 342 SDP staff including building administrators, school counselors, and nurses. The responses yielded the following:

	YES	NO	Don't know	Other
Directive/support was provided to the SDP staff regarding the implementation of 504 Service Agreements in the virtual learning environment.	104	28	170	40
Aids, services, or support were provided differently due to the virtual learning environment	109	17	174	42
The 504 Service Agreement were revised to reflect the virtual learning environment	91	24	178	41

The SDP Director reported to have provided, at the beginning of the 2020-2021 school year, the building level Section 504 coordinators/case managers with directives regarding the implementation of 504 Service Agreements within a virtual learning environment. This was evidenced in the *504 Plans: Process Guidelines for Virtual Learning*.

16. The BSE reviewed the files of 25 randomly selected Section 504/Chapter 15 students with regards to the evaluation process, the file review revealed:

	Yes	No	NA
The Student's file contains evaluation or reevaluation documentation for the 2020-2021 through 2021-2022 school years.	21	4	
Parent/Guardian approved Permission to Evaluate	0	19	6
Evaluation:			
• Multiple Data Sources	16	3	
• Limited Major Life Activity	19	0	
• Recommended Supports, Aids, Services	17	2	
• Placement decision made by group of persons	19	0	
• Evidence, such as signatures, of Eligibility / Evaluation Report meeting participants including parent/guardian	6	13	
• Parent signature / date	6	13	
Reevaluation:			
• Multiple Data Sources	2	4	
• Limited Major Life Activity	2	4	
• Recommended Supports, Aids, Services	2	4	
• Placement decision made by group of persons	2	4	
• Evidence, such as signatures, of Eligibility / Evaluation Report meeting participants including parent/guardian	1	5	
• Parent signature / date	1	5	
Subsequent 504 Service Agreement	25		
Non-Compliance with the Triennial Timelines	10	X	

The data indicates that:

- 4 of 25 files reviewed or 16 percent of the files reviewed indicates student files did not contain a required evaluation/reevaluation.
- 10 of 25 files reviewed or 40 percent of the files reviewed indicates student files were not compliant with the reevaluation timelines.
- 23 of 25 files reviewed or 92 percent of the student files contained documents with errors and/or missing information. The primary errors included no Parent/Guardian approved Permission to Evaluate, no Evidence, such as signatures, of Eligibility/Evaluation Report meeting participants including parent/guardian, and no Parent signature/date.
- 3 of 25 students or 12 percent of the students received below average grades during the time frame of 2020-2021 and 2021-2022 school years.

17. Interview questionnaires regarding the evaluation process and implementation of 504 Service Agreements were completed by 342 SDP personnel including building administrators, school counselors, and social workers. The responses yielded the following:

	Responses
Aware of yearly periodic review of 504 Service Agreement	342
Aware of a timeline for completion of evaluation of 60 days or less	342
Aware of periodic reevaluation review	342

The SDP's *Chapter 15 Section 504 Policy and Procedures* indicates:

- "Section 504 does not provide a specific amount of time for school districts to complete an evaluation. However, under the IDEA an initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation and this is the timeline followed for the 504 process as well..."
- "Eligibility is reviewed every year and an updated 504 plan is created. Every three years, a full review occurs which includes submission of current documentation of a physical or mental impairment (e.g., medical diagnosis). A 504 plan can be adjusted at any time, depending on the needs of the student."

Note: Of the 342 SDP personnel interviewed, many were aware of the need for periodic reevaluation review, but there was a variety of time periods reported including every quarter, annually, every 2 years, every 3 years, and when needed.

18. The interviews of the SDP 504 administrators and interview questionnaires completed by 342 SDP personnel including building administrators, school counselors, and social workers regarding the procedural practices of section 504 evaluations, collectively yielded the following:

- The counselors and nurses are the facilitators of the 504 Service Agreement process.
- The counselors primarily manage the paperwork via the online data system, secure parental/guardian approval, notify appropriate staff of his/her role and responsibilities, monitor the timeline for regulatory compliance, schedule team

meetings, and maintain communication with staff and parents/guardians throughout the process.

CONCLUSIONS:

The SDP is unable to demonstrate compliance with the regulations cited above.

The SDP staff reported to have held Section 504/Chapter 15 team meetings and provided the students with the required aid, accommodations, or supports throughout 2020-2021 and 2021-2022 school years.

However, the student file reviews revealed errors within the documents, and a lack of current Section 504/Chapter 15 documents.

This data indicates the need to review the SDP's Section 504/Chapter 15 procedures and student-specific documents to ensure that all students are receiving the accommodations needed to be able to successfully participate in the general education curriculum.

With regards to evaluations, the SDP staff interviews yielded a lack of consistency regarding the evaluation and reevaluation timelines, 4 out of the 25 student files reviewed did not contain a required evaluation/reevaluation, 10 out of the 25 student files reviewed were not compliant with the triennial timeline, and 23 out of the 25 student files reviewed contained documents with errors and/or missing information.

This data indicates the need to review the SDP's Section 504/Chapter 15 evaluation and reevaluation procedures and student-specific documents to ensure that all students are receiving the accommodations needed to be able to successfully participate in the general education curriculum.

CLOSURE/CORRECTIVE ACTION:

Corrective action is required.

The Superintendent or Designee shall review and revise the district's current Section 504/Chapter 15 procedures. The revised procedures shall reflect compliance with 34 CFR § 104.31 – 104.39 and 22 Pa. Code § 15.1. – 15.11, resulting in prompt and thorough evaluation procedures, timely development and review of regulatory compliant documents, and effective provision of accommodations, supports and aids.

As a result of the COVID-19 pandemic, the USDE provided the *OCR Fact Sheet Coronavirus* dated March 13, 2020 which indicates, "If a student does not receive services after an extended period of time, the student's IEP Team, or appropriate personnel under Section 504, must make an individualized determination whether and to what extent compensatory services are needed consistent with the respective applicable requirements, including to make up for any skills that may have been lost." Additionally, another point of reference for SDP may be the USDE's *Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504* issued February 2022.

The Superintendent or Designee shall provide training to the SDP building administrators and staff regarding the revised Section 504/Chapter 15 procedures.

The Superintendent or Designee shall develop an action plan for submission to the BSE regarding students with 504 Service Agreements who may have not received the required services during the COVID-19 pandemic.

The action plan shall include at a minimum, the use of the student-specific Section 504 teams to determine the need for remedying any loss of FAPE, reevaluation, and revision of the student's current 504 Service Agreement by making compensatory services determinations. Parent/guardian participation shall be incorporated into the action plan. The SDP shall document this process.

The Superintendent or Designee shall review and revise the district's current Section 504/Chapter 15 evaluation and reevaluation procedures. The revised procedures shall reflect compliance with 34 CFR § 104.31 – 104.39 and 22 Pa. Code § 15.1. – 15.11, resulting in prompt and thorough evaluation and reevaluation procedures and timely development and review of regulatory compliant documents.

The Superintendent or Designee shall provide training to the SDP building administrators, school psychologists, school counselors, and nurses regarding the revised Section 504/Chapter 15 evaluation and reevaluation procedures.

DISCUSSION:

Eligibility under Section 504/Chapter 15 includes a broader range of disabilities than that of special education. It is the responsibility of the general education program to develop and implement a plan to meet the needs of the student.

Evaluation always precedes placement under Section 504. The evaluation establishes whether a student is eligible under Section 504 based on a substantially limiting physical or mental impairment of a major life activity.

Section 504, at 34 CFR 104.35 (d), requires districts to establish procedures for periodic reevaluations of eligible students. A reevaluation procedure consistent with the IDEA is one means of meeting the requirement.

Under Section 504, districts are directed to establish a system of procedural safeguards regarding evaluation. 34 CFR 104.35 (b)(1) through 34 CFR 104.35 (b)(3). Compliance with the IDEA's procedural safeguards found at 34 CFR 300.304 (b) through 34 CFR 300.304 (c) is one way to meet this requirement. 34 CFR 104.36.

Section 504 requires that districts "provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 CFR 104.33 (a).

Section 504 defines an appropriate education as the provision of regular or special education and related aids and services that:

- Are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met.

- Are based upon adherence to procedures that satisfy the requirements of 34 CFR 104.34 [educational setting]; 34 CFR 104.35 [evaluation and placement]; and 34 CFR 104.36 [procedural safeguards].

To ensure that SDP is implementing the strategies learned in the required procedures, trainings, and corrective action, BSE will be conducting a file review during the 2023-2024 school year. The file review will specifically address the implementation of the evaluation/reevaluation procedures, timely development and review of regulatory compliant documents, and effective provision of accommodations, supports and aids. Based on these ongoing oversight efforts, the BSE will determine if any further corrective action is warranted.

VERIFICATION OF COMPLETION OF CORRECTIVE ACTION:

The Superintendent or Designee will forward the following documents to this Adviser at the Pennsylvania Department of Education, Bureau of Special Education, 333 Market Street, 7th Floor, Harrisburg, PA 17126-0333, on or before September 29, 2023.

- Copy of the revised Section 504/Chapter 15 procedures shall reflect compliance with 34 CFR § 104.31 – 104.39 and 22 Pa. Code § 15.1. – 15.11, resulting in prompt and thorough evaluation procedures, timely development and review of regulatory compliant documents, and effective provision of accommodations, supports and aids.
- Copies of training agenda(s) and sign-in sheets/electronic attendance records of the participation of the building administrators and staff regarding the revised Section 504/Chapter 15 procedures.
- Copy of an action plan regarding students with 504 Service Agreements who may have not received the required services during the COVID-19 pandemic. The action plan shall include at a minimum, the use of the student-specific Section 504 teams to determine the need for compensatory services, reevaluation, and revision of the student's current 504 Service Agreement. Parent/guardian participation shall be incorporated into the action plan.
- Provide a list of the 504 students that were enrolled in SDP during the mandated school closure period from March 16, 2020, through the end of the 2019-2020 school year.
- A summary of each student's consideration and determinations being made to remedy the loss of FAPE during the COVID-19 pandemic.
- Copy of the revised Section 504/Chapter 15 evaluation and reevaluation procedures. The revised procedures shall reflect compliance with 34 CFR § 104.31 – 104.39 and 22 Pa. Code § 15.1. – 15.11, resulting in prompt and thorough evaluation and reevaluation procedures and timely development and review of regulatory compliant documents.
- Copies of training agenda(s) and sign-in sheets/electronic attendance records of the participation of relevant personnel in training of the revised Section 504/Chapter 15 evaluation and reevaluation procedures. The revised procedures shall reflect compliance with 34 CFR § 104.31 – 104.39 and 22 Pa. Code § 15.1. – 15.11,

resulting in prompt and thorough evaluation and reevaluation procedures and timely development and review of regulatory compliant documents.

Sherri L. Campbell

Sherri L. Campbell
Special Education Adviser
Division of Monitoring and Improvement – East
717-329-2251
shercampbe@pa.gov

NOTICE: In accordance with federal regulations, this report constitutes the PDE'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 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.

An 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
BEC – Special Education Compliance

cc: Dr. Tony B. Watlington Sr., Superintendent
Sonya Berry, Deputy Chief, OSS
Kim Harris, Director of Operations, OSS
Tracy-Marie Moody, Acting Executive Director of School Based Services, OSS
Twain D. McLeod, Compliance Manager, OSS
Bedina Williams, Data Analyst, OSS
Meghan Smith, Director of 504 and Counseling Services
Alyse M. Watson, Chief, Division of Monitoring and Improvement – East
Casey B. Marsh, Special Education Adviser, Division of Monitoring and Improvement – East
Central file

Completion of Corrective Action

Dear Complainant:

This form provides you with the opportunity to notify Bureau of Special Education 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 Bureau of Special Education. This form must be received in the Bureau of Special Education no later than 10-calendar days after the due date of the corrective action. Please address and send this form to:

Attn: Sherri L. Campbell
Corrective Action Verification Form
Bureau of Special Education
Pennsylvania Department of Education
333 Market Street, 7th Floor
Harrisburg, PA 17126

1. Child's name: Multiple Students
2. Name of complainant: Margaret Wakelin, Esquire; Maura McInerney, Esquire; and Rebecca Preuss, Esquire
3. Name of school district/charter school: School District of Philadelphia
4. Date of complaint investigation report (CIR): March 17, 2023
5. Date of corrective action:

Issue: September 29, 2023

Other Issues:

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

Signature _____ Date _____

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

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

CONTACT BUREAU/OFFICE:

Bureau of Special Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Voice 717.783.6134
TTY 717.787.7367