

**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(S):

Issue 1: During the 2021-2022 school year, the School District of Philadelphia (SDP) failed to remedy the loss of the free appropriate public education (FAPE) of current and former similarly situated students regarding the COVID-19 crisis.

The Special Education Adviser added the following issues as a result of the complaint investigation:

Issue 2: During the COVID-19 pandemic, as a result of the inability for students to meet in person with an evaluator, SDP failed to meet multiple students' reevaluation and initial evaluation 60-calendar day timelines.

Issue 3: During the COVID-19 pandemic, SDP failed to conduct Individualized Education Program (IEP) team reviews of the students' IEPs periodically, but not less than annually, to determine whether the annual goals for the children are being achieved.

Issue 4: During the COVID-19 pandemic, SDP failed to adhere to requirements for issuing progress reports on the students' IEP goals.

APPLICABLE REGULATORY AUTHORITY:

Issue 1:

34 CFR Individuals with Disabilities Education Act (IDEA) §300.101 FAPE.

(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).

Issue 2:

22 Pa. Code §14.123. Evaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.306 (relating to determination of eligibility), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairments, specific learning disability or traumatic brain injury.

(b) In addition to the requirements incorporated by reference in 34 CFR 300.301 (relating to initial evaluations), the initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60-calendar days after the agency receives written parental consent for evaluation, 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.

(c) Parents may request an evaluation at any time, and the request must be in writing. The school entity shall make the permission to evaluate form readily available for that purpose. If a request is made orally to any professional employee or administrator of the school entity, that individual shall provide a copy of the permission to evaluate form to the parents within 10-calendar days of the oral request.

(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.

22 Pa. Code §14.124. Reevaluation.

(a) The group of qualified professionals, which reviews the evaluation materials to determine whether the child is a child with a disability under 34 CFR 300.303 (relating to reevaluations), shall include a certified school psychologist when evaluating a child for autism, emotional disturbance, mental retardation, multiple disabilities, other health impairment, specific learning disability and traumatic brain injury.

(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.

(c) Students with disabilities who are identified as mentally retarded shall be reevaluated at least once every 2 years.

(d) Copies of the reevaluation 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.

34 CFR IDEA § 300.301 Initial Evaluations.

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

(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; and...

34 CFR IDEA § 300.303 Reevaluations.

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311 -

- (1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- (2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section -

- (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

Issue 3:

34 CFR IDEA § 300.324 Development, Review, and Revision of IEP.

(a) Development of IEP—

(1) General. In developing each child's IEP, the IEP Team must consider—

- (i) The strengths of the child;
- (ii) The concerns of the parents for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child.

...

(b) Review and revision of IEPs—

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

- (i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
- (ii) Revises the IEP, as appropriate, to address—
 - (A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;
 - (B) The results of any reevaluation conducted under § 300.303;
 - (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
 - (D) The child's anticipated needs; or
 - (E) Other matters.

Issue 4:

34 CFR IDEA §300.320 Definition of IEP.

(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include—

...

(3) A description of—

- (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and
- (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided ...

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.

- Corresponded via email with the Deputy Chief; Acting Executive Director of School Based Services; and the Compliance Manager via email on January 6, 2023; January 13, 2023; January 17-18, 2023; January 20, 2023; 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 Acting Executive Director of School Based Services on January 11, 2023.

- Corresponded via email with the Acting Executive Director of School Based Services on January 13, 2023, and February 27-28, 2023.

- Completed student file reviews on-site with multiple Special Education Advisers on February 6-8, 2023.

- Surveyed the following SDP personnel during the period between February 13-24, 2023:
 - 13 Directors of Special Education.
 - 0 Principals/Building Administrators.
 - 107 School Psychologists.
 - 254 Case Managers, Related Service Providers, and Special Education Instructors.

- Corresponded via email with the following individuals on March 2-3, 2023:
 - Bonita J. McCabe, Child Advocacy Director, The Arc of Philadelphia.
 - Trish Kinkle, Former Program Director/Educational Decision Maker (EDM), Current Volunteer, Court Appointed Special Advocates for Children (CASA) Philadelphia.
 - Ashley Bryant, EDM Program Manager & Training Specialist, CASA Philadelphia.
 - Mary Drake, Program Supervisor, Philadelphia Family Voices.
 - Michelle Sanchez, Lead Autism Spectrum Disorder (ASD) Navigator, Philadelphia Family Voices.
 - Diane Perry, Family Resource Specialist, Parent Education and Advocacy Leadership (PEAL) Center.
 - Frederica Addison, Parent.
 - Ursuala Porter, Parent.
 - Donna Beth Lopez, Bilingual Parent Advisor, Hispanos Unidos para Niños Excepcionales (HUNE), Inc.
 - Morgan Black-Smith, Staff Attorney, Support Center for Child Advocates.

- Interviewed the Acting Executive Director of School Based Services via Microsoft Teams on March 6, 2023. Heidi Hertzog, Special Counsel, observed the interview.

- Interviewed the following individuals via telephone on March 7, 2023:
 - Morgan Black-Smith, Staff Attorney, Support Center for Child Advocates.
 - Bonita J. McCabe, Child Advocacy Director, The Arc of Philadelphia.
 - Diane Perry, Family Resource Specialist, PEAL Center.
 - Trish Kinkle, Former Program Director/EDM, Current Volunteer, CASA Philadelphia.

- Donna Beth Lopez, Bilingual Parent Advisor, HUNE, Inc.
- Frederica Addison, Parent.
- Ursula Porter, Parent.

Efforts were made to contact all individuals on the interview list.

- Reviewed the following numbered documents:

Rec.	Document	Date	Source
1.	Continuity of Education Plan	March 25, 2020	SDP
2.	Digital Learning School Opening Plan	2020-2021	SDP
3.	Creating Special Education Individualized Digital/Hybrid Learning Plans	August 2020	SDP
4.	Special Education Individualized Digital/Hybrid Learning Plan	August 2020	SDP
5.	Special Education Digital/Hybrid Learning Plan Template	August 2020	SDP
6.	Creating Digital/Hybrid Learning Plans – Parent Resource	August 2020	SDP
7.	Recovery Services Overview Chart	Spring 2021	SDP
8.	Collecting Additional Information for Summer Programming Purposes Memo	April 28, 2021	SDP
9.	Parent Letter for Summer Recovery Services	April/May 2021	SDP
10.	Extended School Year (ESY) and Recovery Services Attendance	Summer 2021	SDP
11.	Welcome to Recovery Services 2021 Instructor and Staff Letter	Summer 2021	SDP
12.	Recovery Services Instructor and Staff Overview	July 1, 2021 – August 6, 2021	SDP
13.	Office of Academic Support (OAS) School Opening Communications	August 2021	SDP
14.	Email: Acting Executive Director of School Based Services and Deputy Chief	August 31, 2021	SDP
15.	Parent Letter for Return to In-Person Learning and COVID-19 Compensatory Services (CCS) Process	Fall 2021	SDP
16.	Internal Overview and Purposes Rough Draft CCS	Fall 2021	SDP
17.	CCS Overview and Purpose	Fall 2021	SDP
18.	CCS Determination Manual	Fall 2021	SDP
19.	Documenting CCS Meetings Checklist	Fall 2021	SDP
20.	CCS Determination Stepper	Fall 2021	SDP
21.	CCS Student Qualification Data Form	Fall 2021	SDP
22.	CCS Determination of Eligible Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)	Fall 2021	SDP
23.	CCS Determination of Non-Eligible NOREP/PWN	Fall 2021	SDP
24.	CCS Plan Presentation	Fall 2021	SDP
25.	Special Education Compliance Monitor (SPECM) Training	September 22, 2021	SDP
26.	CCS Determination Support Survey and Results	September 24, 2021 – October 20, 2021	SDP
27.	School Board Actions to Approve Vendors	October 28, 2021	SDP
28.	School Board Actions to Approve Vendors	December 9, 2021	SDP

Rec.	Document	Date	Source
29.	Email: OOS to Directors of Special Education, Case Managers, Special Education Instructors, and Related Service Providers -Message to Special Education Instructors Regarding CCS	February 19, 2022	SDP
30.	CCS Special Education Instructor Trainings	February 22, 2022; February 24, 2022; March 1, 2022; March 3, 2022; and March 7, 2022	SDP
31.	OSS CCS Meeting	March 22, 2022	SDP
32.	Procedures for CCS Data Involving Speech Vacancies	April 2022	SDP
33.	Calculation of CCS Minutes for Speech Vacancies	April 2022	SDP
34.	Request for Proposals (RFP) CCS Services	Spring 2022	SDP
35.	CCS Data Collection Form	Spring 2022	SDP
36.	Complaint Form	Received: December 19, 2022	Complainant
37.	CCS Documentation File Review Summary	February 6-8, 2023	BSE
38.	Evaluation/Reevaluation Timeline File Review	February 6-8, 2023	BSE
39.	Annual IEP Timeline and Measurable Goal File Review Summary	February 6-8, 2023	BSE
40.	Progress Reporting File Review Summary	February 6-8, 2023	BSE
41.	NOREP/PWN File Review Summary	February 6-8, 2023	BSE
42.	Implementation of IEPs During COVID-19 Pandemic Administration Survey	February 13-22, 2023	BSE
43.	Implementation of IEPs During COVID-19 Pandemic Case Manager, Instructor, and Related Service Provider Survey	February 13-22, 2023	BSE
44.	IDEA Evaluations and Reevaluations School Psychologist Survey	February 13-22, 2023	BSE
45.	SDP Special Education Data Report	June 2021	BSE
46.	SDP Special Education Data Report	June 2022	BSE
47.	SDP School Calendar	2020-2021 school year	SDP website
48.	SDP School Calendar	2021-2022 school year	SDP website
49.	SDP School Calendar	2022-2023 school year	SDP website
50.	Parent Information for Overview of CCS	Undated	SDP
51.	Parent Letter Template for CCS	Undated	SDP
52.	Parent Letter Template for CCS Compensatory Education Agreements	Undated	SDP

INTRODUCTION:

The Special Education Data Report for School Year 2020-2021 dated June 2021 indicates 21,011 students receive special education services. The local educational agency's (LEA's) special education population is 16.5 percent of the total student population. In addition, the Special Education Data Report for School Year 2021-2022 dated June 2022 indicates 20,658 students receive special education services. The LEA's special education population is 17.6 percent of the total student population.

FINDINGS:

1. 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 on Special Education Supports:

“... 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 teachers 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 teacher-created activities that align to the guiding principles.”

2. SDP issued a 2020-2021 Digital School Opening Plan to the school administration, which includes:

“The 2020-2021 Digital Learning School Opening Plan is a document and framework that school administration, staff and community can collaboratively develop across the areas of Daily Digital School Operations and Academics/Social Emotional needs. This work will provide a frame for setting up the conditions for staff and student success in a digital learning environment while still adhering to the Advancing Education Safety plan.

“The plan is clearly a work in progress, noting that there are many areas considered within the plan that remain in discussion. There are specific logistical systems, processes and procedures that can be developed in advance of school opening. We thank all the school leaders for their hard work and effort in advance of the development of this new plan. ...”

“Section I: School Opening Plan Specific Systems, Processes, and Procedures ...”

“Section II: Academic/Instructional/Social Emotional Program Plan ...”

This 2020-2021 Digital School Opening Plan was to be completed by each principal and submitted no later than August 21, 2020.

3. At the beginning of the 2020-2021 school year, an in-service training was provided via Zoom that involved the creation of special education individualized digital/hybrid learning plans.
4. The Special Education Individualized Digital/Hybrid Learning Plan contains:

“Guiding Principles

- The School District of Philadelphia 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. Teachers are providing ongoing live instruction, feedback, and encouragement for students.
- Digital resources are provided for teachers to utilize while making accommodations to support all the students they serve. Due to the individualized nature of students' Individual Education Plans (IEPs), special education teachers and related service providers will need to access the resources that are most appropriate to meet the needs of their students.
- Special Education Teachers and related service providers must keep documentation in the EasyIEP System that reflects the services that are being provided to students with IEPs.
- Collaboration and support for parents/guardians is essential to providing IEP services in the digital/hybrid model. Parents/guardians must have input as members of the IEP team.

“Process: The Special Education Digital/Hybrid Learning Plan form must be completed for each student who has an IEP. The student’s current IEP will remain in place and be implemented on-site; this plan reflects the implementation of a learning plan in a digital or hybrid setting. Before completing the Special Education Digital/Hybrid Learning Plan, the responsible school staff should:

- Send an invitation (a paper copy should be created in EasyIEP and can be mailed, emailed or texted to families) to the family scheduling an IEP team meeting or an IEP Amendment meeting to discuss the Special Education Digital/Hybrid Learning Plan. Telephone calls and any attempted contacts to schedule the meeting should be documented in the contact log EasyIEP contact log.
- Refer to the student’s regular IEP to consider the student’s current recommendations and areas of need.
- Consult with each of the student’s related service providers to reflect appropriate tele-therapy/related services that may be provided.
- Hold a virtual IEP team meeting and discuss:
 - Special education and related services that will be provided in the digital/hybrid models.
 - Related Services:
 - If the student will be receiving related services through tele-therapy, the IEP team should discuss the provision of related services, and the family should be informed within the first 20 school days of the school year.
 - Parents have the right to refuse for their child to participate in services delivered through tele-therapy. If parents exercise that right to refuse certain services, document their refusal in the Plan.

- The completed Special Education Digital/Hybrid Learning Plan should be:
 - Provided to the family electronically post IEP meeting
 - Finalized and uploaded to the EasyIEP system

“Implementation Guidance for Developing the Individualized Digital/Hybrid Learning Plan

“Services and expectations will be based on:

- the individualized needs of the students
- the academic levels of the students
- the independence/functional level of the students (stamina, attention span)
- the level of support that the students receive
- the make-up of a teacher’s or related service provider’s caseload and class size
- collaboration with students and families

“Given the diverse range of learners that are supported within special education programs, the variability of individualized needs and independence levels of students must be taken into account when determining students’ recommended workload. Teachers should look to create a weekly schedule reflective of the needs, functional, developmental, academic, and independence levels of their students, which may feature a variety of whole group, small group, and individual sessions.

“Teams should consider instructional and assessment access tools (Zoom, Google Meets, Emails, etc.) in creating this plan. Also consider the technology accessibility features that are commonly available to students in the Digital setting (text to speech, translation, etc.).

“Teams should create individualized schedules for both the digital and hybrid settings based upon this plan and the student’s school-level schedule, so that families are aware and understand when and where their student’s learning will take place.

“Parent/Guardian Contacts must be documented in EasyIEP in the Contact Log”

5. The Special Education Individualized Digital/Hybrid Learning Plan template includes these components:

“Date Developed: _____ IEP Case Manager Name: _____

“Student Information

“Student Name: _____ Student ID #: ____ Date of Birth: ____ Grade Level: ____

“School: _____ Student Email Address: _____

“Parent/Guardian Name: _____

“Home Address: _____

“City: _____ State: ____ Zip: ____

“Phone: ____ Parent/Guardian Email Address: _____

“Primary Disability Classification: ____ Secondary Disability Classification: ____

“Tertiary Disability Classification: ____ Support Type (Check all Applicable): ____

“*Minutes of support provided in the Hybrid and Digital settings should be comparable to the minutes provided on-site; however, IEP teams should discuss the amount of screen time that is appropriate for the student.

“ ___ Minutes per Week On-Site (taken from the current IEP) inside the General Education Setting

“ ___ Minutes per Week On-Site (taken from the current IEP) outside the General Education Setting

“ ___ Minutes per Week Hybrid inside the General Education Setting

“ ___ Minutes per Week Hybrid outside the General Education Setting

“ ___ Minutes per Week Digital inside the General Education Setting

“ ___ Minutes per Week Digital outside the General Education Setting

“Student Needs

“Is the student a multilingual learner?

“What is the primary language spoken in the home? ___ Does the family require an interpreter:

“Does this student use Assistive Technology? If yes, specify: _____

“Is the assistive technology at home?

“Does the student require additional classroom tools, curricular materials, software, or supplies to supplement learning at home (e.g., enlarged text, ruled pages, graphic organizers)?

“If yes, specify:

“Is the student Blind or Visually Impaired: Is the student Deaf or Hard of Hearing:

“If yes to either of the above, please include specific supports below to address accessibility.

“Parental and Staff input for the Digital/Hybrid Learning Plan: Complete this section to note parental and staff input regarding this plan.
Communication Plan: Please note who the IEP Case Manager should communicate with (family, caregivers, general education teachers, etc.) regarding the implementation of this plan and the best method of communication, as well as the frequency of communication.
Contact Person 1: Best Method of Communication (phone, email, text): Contact Information (phone number or email): Frequency of Communication (daily, weekly): Contact Person 2: Best Method of Communication (phone, email, text): Contact Information (phone number or email): Frequency of Communication (daily, weekly):

“IEP GOALS

“Complete the following chart and the areas applicable to the student’s current IEP Goals:

“IEP Goal Area & Specific IEP Goal #		
Level of Current Performance: This section should reflect current level of performance from data collected within the first 20 days of the school year related to the students’ needs.		
Recommended Strategies, Interventions, Services or Supports		
Digital Special Education and Related Services Alternative Method of Delivery (AMD): How will we support and/or service the student during Digital Learning?		
Staff Responsible for Delivery of Service or Support in the Digital Setting		
Hybrid Special Education and Related Services Alternative Method Delivery (AMD): How will we support and/or service the student during Hybrid Learning?		
Staff Responsible for Delivery of Service or Support in the Hybrid Setting		
Progress Monitoring Mechanism and Frequency for both Digital and Hybrid Settings		

“RELATED SERVICES

“Complete the following chart and the areas applicable to the student’s related services, if any:

“Related Service needed in the Digital Setting		
Staff Responsible for Delivery of Service in the Digital Setting		
Individual or Group?		
How and when will the Related Service be provided in the Digital Setting?		
Staff Responsible for Delivery of Service in the Hybrid Setting		
Individual or Group?		
How and when will the Related Service be provided in the Hybrid Setting?		

*If a mask exception is being requested, please attach the document, if available.

“ACCOMMODATIONS/MODIFICATIONS

“Complete the following chart and the areas applicable to the student’s current accommodations and modifications, if any:

“Accommodation or Modification needed in the Digital Setting		
Staff Responsible for Delivery of Accommodation or Modification in the Digital Setting to access the LRE [Lease Restrictive Environment]		
How and when will the Accommodation or Modification be provided?		
Accommodation or Modification needed in the Hybrid Setting to access the LRE		
Staff Responsible for Delivery of Accommodation or Modification in the Hybrid Setting		
How and when will the Accommodation or Modification be provided?”		

6. The parent resource, Creating Digital/Hybrid Learning Plans, includes the process for developing this learning plan and the components outlined in the aforementioned plan. During the interviews on March 6, 2023, OSS personnel indicated that this resource was available and uploaded to the Office of Family and Community Engagement website.
7. The Collecting Additional Information for Summer Programming Purposes memo dated April 28, 2021, provides information to the directors of special education, school leaders, SPECMs, and special education instructors involving ESY, Recovery Services, Transportation Services, and a form to indicate interest in program options and transportation needs. Deadline for completion was 5:00 p.m. on Friday, May 7, 2021.
8. SDP also provided a Recovery Services Overview Chart which includes instructional programs available for recovery services for students. The chart contains grades of program availability, instructional programs, instructional focuses, activities and resources, related services, training, next steps, and due date. The Recovery Services recommendations were to be completed by the special education instructors by 5:00 p.m. on Friday, May 28, 2021.
9. The Recovery Services Letter dated April/May 2021 was sent to parents/guardians. The letter incorporates:

“Your child has been found eligible for Extended School Year (ESY) services by their IEP team. This summer the School District of Philadelphia is offering eligible students the choice of attending ESY either in-person or digitally. The ESY program will be offered in the mornings from 8:30am-1:00pm on Mondays, Tuesdays, and Wednesdays from Monday, June 28th through Wednesday, August 4th.

“If you choose in-person ESY instruction, an additional summer learning opportunity is available for your student. This summer, Recovery Services are being offered in-person on Thursday and Friday mornings from 8:30am-1:00pm beginning Thursday, July 1st through Friday, August 6th. These Recovery Services will focus on the skills that were lost or

stalled due to the covid pandemic-related school closures. Participation in Recovery Services is completely optional and intended to supplement your child's ESY entitlement to address any recent learning loss. If your child is eligible for transportation for ESY, they will also be able to receive transportation to and from Recovery Services.

"Please notify your child's Special Education Case Manager and/or the school's Special Education Compliance Manager (SPECM) by completing and returning this form if your student will be attending in person ESY instruction and would like to also enroll in Recovery Services by Friday, May 7th.

" ___ YES

My student will be attending in-person ESY instruction AND Summer Recovery Services.

" ___ NO

My student will NOT be attending Summer Recovery Services.

(i.e., not participating in ESY, attending digital ESY, or attending in-person ESY but declining Recovery Services) ..."

10. The Welcome to Recovery Services 2021 letter dated Summer 2021, sent to the instructors and staff, includes information needed for communication (Google Classroom), class list/assignments, video link providing guidance for COVID-19 Recovery Services, and other information.

11. Recovery Services were provided from July 1, 2021, through August 6, 2021. The Recovery Services Instructor and Staff Overview document explains: "Recovery Services are not part of a student's ESY/FAPE programming. This is an optional in-person program that offers additional learning time to help prepare students to return to classroom learning and to jump start the recovery of any loss of critical skills.

"Please utilize this document to provide instructional support and planning for recovery services. The purpose of this support is to provide students with an opportunity to receive additional reading and math instruction to address skill loss and deepen their understanding of skills and concepts in order to increase academic achievement and progress. ..."

12. During the complaint investigation interview on March 6, 2023, OSS personnel indicated that only ESY-eligible students were able to access the Recovery Services programming for the Summer of 2021 time period.

13. OAS School Opening Communications of August 2021 provided internal information in the following areas: Purpose; Beliefs; Priorities; Guiding Questions; Stakeholders; and other information, including Key Communication Tools Owned by OAS: OAS Table of Contents; Teacher Information Board; SPECM Meetings; Philadelphia Coalition of Special Education Advocates; Special Education Instructional Framework Webinars; Special Education Digital Google Site; OSS Task Force Meeting; Postsecondary Readiness Student Advisory; and PreK Family Assignment Letter.

14. The SPECM Training dated September 22, 2021, provided information regarding CCS:

- What are COVID Compensatory Services (CCS)?
- How will the district determine if a student is eligible for CCS?
- What is the timeline for determining services?..."

The training included but was not limited to student scenarios, CCS formula, and the consideration of parental input.

15. The CCS Determination Manual table of contents includes Overview and Purpose; Information to be Gathered and Considered by IEP Team When Making CCS Determinations; Checklist Documenting Covid Compensatory Meeting; CCS Eligibility Determination Stepper; CCS Determination of Eligibility and Services Flow Chart; Covid Compensatory Services Plan; and COVID Compensatory Determination Data Sheet (linked in document).

16. Additionally, the CCS Determination Manual incorporates:

“CCS Determination Flowchart – Following Recoupment Period	
Student demonstrates a need for recoupment services.	
Provide up to a minimum of 6 weeks to 3 months of reteach/recoupment services.	
Has student returned to 3/2020 baseline?	
NO Offer CCS services	YES DO NOT offer CCS
<ul style="list-style-type: none"> -Schedule IEP meeting -Review Data -Develop CCS Plan -Provide Eligibility NOREP & letter 	<ul style="list-style-type: none"> -Schedule IEP meeting -Review Data -Provide Ineligibility NOREP & letter
Implement CCS Plan”	

17. As per the CCS Determination Manual, the CCS Services Plan includes:

“Date Developed: _____ IEP Case Manager Name: _____

“Student Information

“Student Name: _____ Student ID #: _____ Date of Birth: _____

“Grade Level: _____

“School: _____

“Parent/Guardian Name: _____

“Home Address: _____

“City: _____ State: _____ Zip: _____

“Phone: _____ Parent/Guardian Email Address: _____

“Primary Disability Classification: ____ Secondary Disability Classification: ____

“Tertiary Disability Classification: ____ Support Type: ____

“Parental Input

“Related Services Input

“Teacher Input

“Input from other Sources

“RELATED SERVICES

“Complete the following chart and the areas applicable to the student’s related services, if any:

“Related Service Needed	Staff Responsible for Delivery of Service	Delivery Model	When will the Related Service be provided	Number of CCS hours

“SPECIALIZED INSTRUCTION

“Complete the following chart and the areas applicable to the student’s specialized instructional needs.

“Areas of Specialized Instruction	Staff Responsible for Delivery of Service	Delivery Model	When will the Related Service be provided	Number of CCS hours

“*This plan should be created only if a student qualifies for CCS.”

18. A School Board of Education Action Item dated October 28, 2021, proposed the following action: “The Administration recommends that the Board of Education authorize The School District of Philadelphia, through the Superintendent or his designee, to execute and perform a contract, subject to funding, as follows: With ...” 26 entities recommended to provide after-school enrichment and tutoring services in schools from November 1, 2021, through September 30, 2022.
19. A School Board of Education Action Item dated December 9, 2021, proposed the following action: “The Administration recommends that the Board of Education authorize The School District of Philadelphia, through the Superintendent or his designee, to execute and perform a contract, subject to funding, as follows: With” This was proposed to provide CCS to approximately 40 percent of the special education population.

20. An email dated February 19, 2022, from OSS to directors of special education, case managers, special education instructors, and related service providers explains, “The Office of Specialized Services will be offering training for special education teachers focused on the determination and documentation of COVID Compensatory Services (CCS) for special education students. The training will review the latest mandates and guidance in special education resulting from the COVID mandated school closure. In addition, it will provide information and guidance on how to analyze baseline and recoupment data to determine CCS eligibility and guidance on developing individual CCS Plans for these students. The Determining CCS Services professional development dates are below. In addition, OSS will offer virtual training on select Tuesdays and Thursdays throughout February and March. They will be held after school from 4:30 pm-6:30 pm. Please note that specific training dates have a targeted audience focused on specific grade levels.”

Zoom links were provided for the following dates: February 22, 2022 (K-5 teachers); February 24, 2023 (6-8 teachers); March 1, 2022 (9-12 teachers); March 3, 2022 (K-5 teachers); and March 7, 2022 (Make-up session).

21. A CCS Determination Stepper document which was included in the CCS trainings for the special education instructors in February 2022 and March 2022 includes: baseline, recoupment period, and CCS determination information.

The CCS determination formula includes three steps:

- | “Step 1: | Step 2: | Step 3: |
|--|--|--|
| <ul style="list-style-type: none"> • Take a minimum of 3 data points during the recoupment period | <ul style="list-style-type: none"> • Take an average of the 3 or more data points collected during the recoupment period (This is current 2021/2022 SY [school year] data). | <ul style="list-style-type: none"> • Divide the 2021/2022 recoupment data with the Pre-Covid progress monitoring data (This is the student’s current rate of progress)” |

The CCS Determination Chart includes:

- “• $\geq 75\%$ = NO CCS
- 75% or less, the IEP team will determine the amount and type of CCS.”

The Stepper also indicates that an IEP team meeting is required. In addition, a CCS Plan needs developed at an IEP meeting, issuance of a CCS eligible NOREP/PWN, and provision of a CCS eligible letter. For students that did not regress and have made progress between “March 2020-Present” are not eligible. In these cases, an issuance of an ineligible NOREP/PWN and the provision of an ineligible CCS letter needs to occur.

22. The OSS provided a Calculation of CCS Minutes for Speech Vacancies document indicated, “In lieu of using the CCS Formula, schools that did not have an SLP, and therefore, we’re unable to determine baseline performance and/or offer recoupment services in order to calculate the amount of CCS minutes a student will require for remediation should follow the procedure set forth below:

“A Standard CCS minutes offering should be presented to the family using the following guideline to determine the CCS level of service:

- “1) Identify the level of speech therapy service the student was receiving during the 2019-2020 School Year
- 2) Identify the amount of Speech Service minutes from the 2019-2020 IEP
- 3) Take the minutes of service per month x 10 months (school year), convert the total minutes into hours = CCS offering

“For example, John’s 2019-2020 IEP indicates that he received 90 minutes of speech therapy per month.

“Multiple the 90 minutes x 10 = 900 minutes of speech services/year (900/60 = 15) or 15 hours of CCS/year”

- 23. A CCS Student Qualification Data Form survey was provided by OSS personnel and the survey was to be completed by each special education instructor for their assigned students. The CCS Student Qualification Data Form indicated, “The purpose of the form is to record the student data that was used to qualify them for Covid Compensatory Services. Complete a form for each student you qualify. Students who qualify for CCS recouped less than 75% of the target goal during the Recoupment Period.”
- 24. The BSE developed two separate surveys regarding the COVID-19 pandemic. Both surveys contained questions regarding the provision of special education services during the COVID-19 pandemic as well as the remedy of the loss of FAPE. One survey was distributed to all SDP special education instructors and related services providers, another survey was distributed to all building administrators, special education administrators, and case managers. The surveys, used in lieu of face-to-face interviews, received responses from at least 257 special education instructors and related service providers, and 13 LEA representatives (building administrators, special education administrators, and case managers.)

Responses to survey questions related to remedy for loss of FAPE during the COVID-19 pandemic were:

Questions	Responses					
	*Summaries of most common responses are included for open-ended survey questions.					
	Special Education Instructors and Related Service Providers			LEA Representatives (Directors of Special Education; Principals did not participate.)		
	Yes	No	N/A	Yes	No	N/A
Did the LEA provide information regarding CCS to school personnel?	254 (95%)	13 (5%)	0	12 (92%)	1 (8%)	0
If yes to above, how was the CCS information provided?	“The info was provided through the LN6 [Learning Network 6] weekly updates, the monthly SPECM meetings and the Network Weekly Updates. This info was then provided to school personnel through Special Education meetings and via email. Information was provided through virtual meetings, emails, and documents ...”			“Information provided to school teams at SPECM meeting, Email, District PD [Professional Development], emails communication, network trainings, and 1:1 support, In zoom and google meets plus meetings after we got back in school ...”		

Did the LEA provide information regarding CCS to families of students with disabilities?	235 (91%)	22 (9%)	0	9 (69%)	4 (31%)	0
If yes to above, how was the information provided?	“Through IEP meetings, indicated in NOREPs, Emails were sent home to families that included the documents, phone calls we made and hard copies were sent home in school bags. IEP meetings were to be scheduled and signatures obtained for EASY files., Information was then passed on from school teams to SPECMs, which then passed on to families ...”			“Via school teams, I am not sure., Letters, email, and IEP meetings, I think it was a letter, Letters were sent out to parents and NOREP's were issued and signed by parents indicating the owed services ...”		
Were procedures established with regard to the CCS process for your LEA?	244 (93%)	17 (7%)	0	10 (77%)	3 (23%)	0
During the 2021-2022 school year, did IEP teams discuss whether students with IEPs were eligible for CCS?	256 (96%)	10 (4%)	0	The remaining questions were not part of the LEA Representative survey.		
Did IEP teams consider multiple factors and sources of data in determining students' eligibility for CCS?	251 (95%)	12 (5%)	0			
Did IEP teams consider students' loss of skills and/or behaviors and/or lack of progress due to SDP's inability to provide FAPE due to COVID-19 in determining students' eligibility for CCS?	258 (98%)	6 (2%)	0			
Did IEP teams consider whether students were able to recoup the lost skills and/or behaviors and/or make meaningful progress during the period in which students received services in determining students' eligibility for CCS?	261 (98%)	4 (2%)	0			

25. During February 2023, the BSE conducted a file review involving multiple facets of FAPE during the COVID-19 pandemic which included the review of annual IEP timelines, measurable annual goals, progress reporting, and evaluation timelines.

26. The results of the random sampling file review of 25 special education students included a review of IEPs for the 2020-2021 and 2021-2022 school years, which indicated the following data regarding annual IEP meeting timelines:
- 16 out of 25 files reviewed, or 64 percent of the files reviewed, indicate that the IEP teams reviewed the students' IEPs periodically, but not less than annually, to determine whether the annual goals for the children are being achieved.
27. The results of the random sampling file review of 25 special education students included a review of the IEP measurable annual goals for the 2020-2021 school year, which indicates the following data regarding this area:
- 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate measurable annual goals were present.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate a description of how student progress toward meeting goals will be measured was present.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate a description of when periodic reports on progress reporting on annual goals was present on the reviewed IEPs.
 - 21 of 25 files reviewed, or 84 percent of the files reviewed, indicate documentation of progress reporting on annual goals.
28. In addition, the results of the random sampling file review of 25 special education students included a review of the IEP measurable annual goals for the 2021-2022 school year, which indicated the following data regarding this area:
- 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate measurable annual goals were present.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate a description of how student progress toward meeting goals will be measured was present.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate a description of when periodic reports on progress reporting on annual goals was present on the reviewed IEPs.
 - 19 of 25 files reviewed, or 76 percent of the files reviewed, indicate documentation of progress reporting on annual goals.
29. Finally, the results of the random sampling file review of 25 special education students included a review of the IEP measurable annual goals for the 2020-2021 and 2021-2022 school years, which indicated additional data:
- 3 of 25 files reviewed, or 12 percent of the files reviewed, indicate that the measurable annual goals were identical from year to year on the reviewed IEPs.
 - 2 of 25 files reviewed, or 8 percent of the files reviewed, indicate that baseline data was not present in some or all the measurable annual goals on the reviewed IEPs.

30. The results of the random sampling file review of 25 special education students included a review of progress reporting from the 2020-2021 and 2021-2022 school years, which indicated:

- 20 of 25 files, or 80 percent of the files reviewed, indicate that IEP progress reports were present in the students' files.
- 16 of 25 files reviewed, or 64 percent of the files reviewed, indicate that some type of progress (moderate, inconsistent, etc.) was being made by the identified students.
- 3 of 25 files reviewed, or 12 percent of the files reviewed, did not indicate progress reporting due to the following: student attendance.
- 6 of 25 files reviewed, or 24 percent of the files reviewed, indicate that IEP progress reports were incomplete or not present in the students' files.

31. Responses to survey questions related to issuing progress reports during the 2020-2021 and 2021-2022 school years were:

Questions	Responses		
	Special Education Instructors		
	Yes	No	N/A
Is the progress on annual goals recorded and reported to the parents based on objective and measurable data?	262 (98%)	4 (2%)	0

32. Responses to survey questions related to student progress and the review and revision of IEPs during remote learning during the 2020-2021 school year were:

Questions	Responses					
	Special Education Instructors and Related Service Providers			LEA Representatives (Directors of Special Education; Principals did not participate.)		
	Yes	No	N/A	Yes	No	N/A
If students are not making progress, do the IEP teams convene to review data or reevaluations completed?	247 (93%)	18 (7%)	0	9 (75%)	3 (25%)	0
If students are not making progress, have the students been reevaluated and/or have their IEPs been reviewed?	199 (75%)	6 (2%)	61 (23%)	This question was not part of the LEA Representative survey.		

33. The results of the random sampling file review of 25 special education students involving the review of adhering to the requirements for issuing the parents/guardians a NOREP/PWN for the educational placement of the students for the 2021-2022 school year indicates:

- 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate that NOREPs/PWNS were present in the students' files.
- 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate a date the LEA sent current NOREPs/PWNS.

- 19 of 25 files reviewed, or 76 percent of the files reviewed, indicate a date the LEA received signed NOREPs/PWNs. If the parents/guardians did not sign the NOREPs/PWNs, documentation of reasonable efforts to obtain consent was indicated on each NOREP/PWN or attached to each NOREP/PWN.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate that a type of action taken was present on the reviewed NOREPs/PWNs.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate that a description of the action proposed or refused was present on the reviewed NOREPs/PWNs.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate that an explanation of why the LEA proposed or refused to take the action was present on the reviewed NOREPs/PWNs.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate that a description of each evaluation procedure, assessment, records, or report used as the basis for the proposed action was present on the reviewed NOREPs/PWNs.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate that an educational placement recommended (including amount and type) was present on the reviewed NOREPs/PWNs.
 - 20 of 25 files reviewed, or 80 percent of the files reviewed, indicate that a signature of a school district superintendent or charter school chief executive officer was present on the reviewed NOREPs/PWNs.
 - 18 of 25 files reviewed, or 72 percent of the files reviewed, indicate that a parent/guardian signature or documentation of reasonable efforts to obtain consent was present on the reviewed NOREPs/PWNs.
 - 17 of 25 files reviewed, or 68 percent of the files reviewed, indicate that a parent/guardian selected a consent option on the reviewed NOREPs/PWNs. If the parents/guardians did not sign and select a consent option on the NOREPs/PWNs, documentation of reasonable efforts to obtain consent was indicated on each NOREP/PWN or attached to each NOREP/PWN.
 - 25 of 25 files reviewed, or 100 percent of the files reviewed, indicate that the NOREPs/PWNs reflect the educational placements indicated on the students' IEPs.
34. The results of the random sampling file review of 25 special education students included a review of initial evaluation and reevaluation 60-calendar day timelines and biennial/triennial timelines for the 2020-2021 and 2021-2022 school years, which indicated the following overall summary:
- 18 of 25 files reviewed, or 72 percent of the files reviewed, indicate that the evaluations were not completed within the 60-day evaluation timeline or the biennial/triennial timeline.
35. The BSE developed an additional survey regarding the COVID-19 pandemic. The survey contained questions regarding the evaluation process during the COVID-19 pandemic as well as the remedy of the loss of FAPE. This survey was distributed to all SDP school psychologists.

The survey, used in lieu of face-to-face interviews, received responses from at least 107 school psychologists.

36. Responses to survey questions related to evaluations and reevaluations during remote learning during the 2020-2021 school year were:

Questions	Responses		
	*Summaries of most common responses are included for open-ended survey questions.		
	School Psychologists		
	Yes	No	N/A
Does SDP have procedures in place for an oral or written request for an initial evaluation or reevaluation?	101 (94%)	6 (6%)	0
Were you provided guidelines with regards to evaluating students during the 2020-2021 school year?	96 (90%)	11 (10%)	0
Please explain response above	"We were provided with a stepper as to procedures for completing evaluations and also appropriate language to use within the reports., There were guidelines, but they were confusing., The guidelines were very delayed but we did get some kind of document noting how to proceed ..."		
Did SDP have testing centers or other designated areas for evaluating students during the 2020-2021 school year?	98 (93%)	7 (7%)	0
Did any parents/guardians approach you with a request for an evaluation in consideration of special education services during the 2020-2021 school year?	32 (30%)	75 (70%)	0
If yes to above, please describe what occurred	"A parent requested an evaluation verbally through the school counselor., Parents reached out to teachers, who reached out to me., I talked to them about how testing would be postponed because we were virtual., Only previously signed PTE's [Permission to Evaluate] or PTRE's [Permission to Reevaluate] were being completed by me during this time ..."		
Did any SDP faculty or other personnel approach you with a request for an evaluation in consideration of special education services during the 2020-2021 school year?	56 (52%)	51 (48%)	0
If yes to above, please describe what occurred.	"They were put on the MTSS [Multi-Tiered System of Supports] list., Teachers voiced concerns about children academic progress., The MTSS team at my school compiled information that included the previous school year's information therefore it helped identify a need for testing..."		

37. Responses to survey questions related to child find during remote learning during the 2020-2021 school year were:

Questions	Responses					
	Special Education Instructors and Related Service Providers			LEA Representatives (Directors of Special Education; Principals did not participate.)		
	Yes	No	N/A	Yes	No	N/A
If students have academic and behavioral concerns, are the students involved in a child find process/program like MTSS or Response to Intervention (RTI)?	199 (75%)	6 (2%)	61 (23%)	10 (91%)	1 (9%)	0
During remote instruction, were you involved in the MTSS or RTI process (meetings, providing data, etc.)?	114 (44%)	147 (56%)	0	This question was not part of the LEA Representative survey.		

38. The results of the random sampling file review of 25 special education students included IEPs, Digital Learning Plans, CCS Data Collection Worksheets, and NOREPs/PWNs for the 2020-2021 and 2021-2022 school years, which reveals:

- 12 of 25 files reviewed, or 48 percent of the files reviewed, indicates that a Digital Learning Plan was developed for the student during the remote instruction school year of 2020-2021.
- 12 of 25 files reviewed, or 48 percent of the files reviewed, indicates that a CCS Data Collection Worksheet was completed to make a determination to consider remedying the loss of FAPE.
 - 7 of 25 files reviewed, or 28 percent of the files reviewed, indicates that the student was recommended to receive CCS.
 - 5 of 25 files reviewed, or 20 percent of the files reviewed, indicates that the student was not recommended to receive CCS.
 - SDP considered CCS to remedy the loss of FAPE for 7 of the students, but there was no evidence of an offering of CCS to the families.

The CCS Data Collection Worksheets demonstrated that each student's individual needs with respect to learning loss were considered by comparing the IEP progress report closest to the March 2020 shutdown with data collected on the first two weeks of baseline data and then three subsequent occasions to make a determination if regression occurred.

- 0 of 25 files reviewed, or 0 percent of the files reviewed, indicates that CCS Eligible or Non-Eligible NOREPs/PWNs provided program information or dates.
- 0 of 25 files reviewed, or 0 percent of the files reviewed, indicates that a CCS Plan was present.

39. Responses to survey questions related to remedy for loss of FAPE during the 2020-2021 school year were:

Questions	Responses Special Education Instructors and Related Service Providers		
	Yes	No	N/A
If students were eligible for CCS, did the IEP teams consider students' individual learning loss in determining the type and amount of CCS for students and how CCS would be provided to students?	169 (64%)	9 (3%)	87 (33%)

40. Responses to survey questions related to provision of FAPE during remote learning during the 2020-2021 school year were:

Questions	Responses *Summaries of most common responses are included for open-ended survey questions.					
	Special Education Instructors and Related Service Providers			LEA Representatives (Directors of Special Education; Principals did not participate.)		
	Yes	No	N/A	Yes	No	N/A
Did SDP provide guidance with regard to the delivery of special education services to ensure that the IEPs were implemented during the 2020-2021 school year?	228 (86%)	38 (14%)	0	12 (92%)	1 (8%)	0
Did SDP provide special education and related services to students during the 2020-2021 school year?	252 (96%)	11 (4%)	0	13 (100%)	0	0
If yes to above, how were the services provided to students?	"Virtually and in person once we returned partially in March of 2021., tele therapy and in person therapy, ..."			The remaining questions were not part of the LEA Representative survey.		
Were you required to document (daily log or other form of documentation) your delivery of special education services to the special education students?	180 (69%)	82 (31%)	0			

41. The OSS personnel interview on March 6, 2023, yielded that SDP has not offered any CCS services within the school district due to staffing issues and the inability to contract an entity to provide these services. It was explained that NOREPs/PWNS were offered to students requiring compensatory services to remedy of the loss of FAPE.

42. On March 7, 2023, telephone interviews were conducted with a bilingual parent advisor, advocates, parents, staff attorneys, and other supervisors within the city of Philadelphia. The following information was reported:

- At a coalition meeting, individuals were told that CCS NOREPs/PWNs would be sent to parents from the OSS Administration Office and copies sent to the schools. It was reported that the parents that these individuals worked with did not receive NOREPs/PWNs.
- Concerns with non-compliance with the evaluation timelines.
- Concerns with refusing to evaluate students when parental requests are being made to SDP personnel.
- Concerns involving the transition of early intervention students to school-age programs.
- No contacts with parents regarding the consideration of remedying FAPE during the COVID-19 pandemic.
- Progress reporting concerns were expressed.
- Concerns regarding speech therapy and transportation.

CONCLUSIONS:

Issue 1:

SDP is unable to demonstrate compliance with the regulation cited above. As a result of a random sampling of 25 special education students, SDP failed to remedy the loss of FAPE from the 2020-2021 school year for 100 percent of the students in the sample. With regards to considering the remedy for the loss of FAPE for special education students, SDP has met this condition of 12 of 25 or 48 percent of the files indicated that CCS Data Collection Worksheets were completed; however, SDP did not provide evidence that an offer to remedy the loss of FAPE based on determinations was ever followed through with the families of the students. In addition, no documentation was found that any offerings were made via a NOREP/PWN for 25 out of 25 or 100 percent of the files. Even though the remedy of the loss of FAPE was considered in some cases, documentation to indicate whether the student received the remedy of the loss of FAPE was not present in 25 out of 25 files reviewed or 100 percent of the files reviewed.

Subsequently, a CCS process was developed and provided to the SDP special education department, but no evidence has been provided to confirm that the CSS process has been implemented and inclusive to all stakeholders with any type of fidelity to remedy the loss of FAPE during the COVID-19 pandemic.

Issue 2:

SDP is unable to demonstrate compliance with the regulations cited above. Based on the findings from the random file review, the SDP did not complete evaluations within 60-day evaluation timeline or the biennial/triennial timeline for 18 of 25 files reviewed or 72 percent of the files reviewed. This remains to be a systemic issue within SDP.

Issue 3:

SDP is unable to demonstrate compliance with the regulations cited above. With regards to the review of the students' IEPs periodically, but not less than annually, SDP has met this condition of 16 out of 25

files reviewed or 64 percent of the files. Additionally, no determination or update occurred to indicate whether the annual goals for the students are being achieved, as per § 300.324, for 3 out of 25 files reviewed or 12 percent of the files reviewed. The measurable annual goals were identical from year to year. Finally, based on best practices, baseline data was not present in 2 of 25 files reviewed or 8 percent of the files reviewed. Issue 4:

SDP is unable to demonstrate compliance with the regulation cited above. As a result of a random sampling of 25 special education students, SDP failed to report progress in its entirety on 6 out of 25 files or 24 percent of the student file reviews.

In addition, there is no evidence that the SDP provided copies of IEP progress reports to the parents/guardians of the students.

CLOSURE/CORRECTIVE ACTION:

Issue 1:

The Superintendent or the Designee shall provide training to relevant personnel on the requirements related to the provision of FAPE.

The Superintendent or the Designee shall provide training to relevant personnel on the requirements for related services, supplementary aids and services, and when IEPs must be in effect.

Based on the United States Department of Education (USDE) Guidance dated March 12, 2020, LEAs, in consultation with IEP teams, must make an individualized determination on how much compensatory services may be needed as a result of the extended school closure and provide evidence of any compensatory services determinations that were made. To expand upon USDE's guidance, the Pennsylvania Department of Education (PDE) issued its CCS guidance, which was updated on June 15, 2021, that SDP may refer to as a resource in making compensatory services determinations.

The SDP will need to convene IEP meetings for all special education students enrolled at SDP during the mandated school closure time and throughout the 2020-2021 school year time period and provide evidence of the compensatory services determinations that were made.

The Superintendent or Designee shall reconvene the IEP teams, including the parents/guardians, as soon as possible to review the students' progress and make a proposed determination of compensatory services.

Issue 2:

The Superintendent or the Designee shall provide trainings to relevant staff and issue a follow-up memorandum/email to all relevant staff from the SDP to verify that the SDP is in compliance with the regulation cited above, ensuring that the SDP adheres to the initial or reevaluation timeline within 60-calendar days and by presenting a copy of the Evaluation Report/Reevaluation Report (ER/RR) to the parents/guardians no later than 60-calendar days after the agency receives written parental consent for an evaluation/reevaluation, 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. Finally, the trainings and follow-up memorandum/email to all relevant staff shall include the adherence to the biennial/triennial timeline.

The Superintendent or the Designee shall refine the current system or obtain a universal system to log the document dates at least weekly, if not daily, that are included in the evaluation process for each student within SDP. Additionally, SDP shall provide a training on this universal system to ensure fidelity of implementation across the District.

Based on the random file review, the BSE has provided a confidential list of the 18 students identified in this issue whose evaluations and/or reevaluations have not been completed within the required 60-calendar day or biennial/triennial timeline. All students who have had an initial evaluation or reevaluation out of compliance with the 60-calendar day timeline are owed compensatory education from the time that an IEP should have been implemented (30-calendar days from the ER/RR due date + 10 school days for IEP implementation) to the date that an IEP was actually implemented. For the identified students that have had a reevaluation completed and recommendations were made for additional services, as a result of a reevaluation, are owed compensatory education from the time that an IEP should have been implemented (30-calendar days from the ER/RR due date + 10 school days for IEP implementation) to the date that an IEP was actually implemented.

The amount of compensatory education services to be provided will be the number of hours of special education and related service support required per day, as indicated on the students' current IEPs.

The calculation for compensatory education services excludes student absences, holidays, and school closings. The compensatory education shall be in addition to, and shall not supplant special education services, that should appropriately be provided to the students through the students' IEPs to assure a meaningful educational process. The exact nature, delivery schedule, and logistics of the compensatory education are to be determined by the teams based on the students' needs.

Verification of this corrective action is to be a copy of the plan for compensatory education. The SDP will submit copies of the compensatory education agreements and a copy of the compensatory education NOREPs/PWNs to this office by September 29, 2023.

Issue 3:

The Superintendent or the Designee shall provide the training to relevant personnel on the requirements related to the review of students' IEPs periodically, but not less than annually, to determine whether the annual measurable goals for the children are being achieved.

The Superintendent or the Designee shall reconvene an IEP team meeting for each student identified in the Confidential Student List which specified a non-determination or update of the annual measurable goals to indicate whether the annual measurable goals for the student are being achieved.

Issue 4:

The Superintendent or the Designee shall provide the training to relevant personnel on the requirements for progress reporting with regards to the collection of data, development, completion, and issuance of progress reports.

DISCUSSION:

To ensure that SDP is implementing the strategies learned in the required trainings and corrective action, BSE will be conducting a file review specifically regarding evaluation/reevaluation 60-day and biennial/triennial timelines, annual IEP review timelines, and progress reporting for each quarter of the 2023-2024 school year.

In addition, the NOREPs/PWNs were 100 percent compliant with regards to the matching recommended educational placement that was recommended in the students' IEPs in Section VII, Educational Placement, but there were significant issues involving the date of receipt, LEA signature, parent/guardian consent, and parent/guardian signatures. NOREPs/PWNs will also be the focus of the systemic file review.

Finally, in order to ensure the consideration and offering to remedy the loss of FAPE during the COVID-19 pandemic, BSE will conduct an additional student file review during each quarter of the 2023-2024 school year.

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.

- Copies of training agenda(s) and sign-in sheets/electronic attendance records of the participation of relevant personnel in training on the requirements related to the provision of FAPE.
- Copies of training agenda(s) and sign-in sheets/electronic attendance records of the participation of relevant personnel in training on the requirements for related services, supplementary aids and services, and when IEPs must be in effect.
- Provide a list of the special education students that were enrolled in SDP during the mandated school closure period from March 16, 2020, through the end of the 2020-2021 school year.
- A summary of each student's consideration and determinations being made to remedy FAPE during the COVID-19 pandemic.
- Copies of training agenda(s) and sign-in sheets/electronic attendance records of the participation of relevant personnel in training on adherence to the requirements for initial evaluations and reevaluations to be completed and by presenting a copy of the ER/RR to parents/guardians no later than 60-calendar days of the received PWN for Initial Evaluation and Request for Consent Form/PWN for Reevaluation and Request for Consent Form and the supplementary adherence to the biennial and triennial timelines.
- Copies of the follow-up memorandum/email provided to all relevant personnel on adherence to the requirements for initial evaluations and reevaluations to be completed and by presenting a copy of the ER/RR to parents/guardians no later than 60-calendar days of the received PWN for Initial Evaluation and Request for Consent Form/PWN for Reevaluation and Request for Consent Form and the supplementary adherence to the biennial and triennial timelines.
- A summary of the refined current system or obtained universal system to log the evaluation document dates at least weekly, if not daily, that are included in the evaluation process for each student within SDP. Additionally, SDP shall provide a training on this universal system to ensure fidelity of implementation across the District.
- Copies of training agenda(s) and sign-in sheets/electronic attendance records of the participation of relevant personnel in training on the universal system to ensure fidelity of implementation of logging evaluation documents to ensure adherence to the evaluation timelines.
- Copies of training agenda(s) and sign-in sheets/electronic attendance records of the participation of relevant personnel in training on the requirements related to the review of the students' IEPs periodically, but not less than annually, to determine whether the annual goals for the children are being achieved.

- Copies of the documents generated as a result of scheduling the IEP team meetings that reflect the IEP teams' consideration of updating the annual measurable goals to indicate whether the annual measurable goals for the students are being achieved.
- Copies of training agenda(s) and sign-in sheets/electronic attendance records of the participation of relevant personnel in training on the requirements for progress reporting, including the understanding, development, and issuance of progress reports.
- Copies of the plans for compensatory education and copies of the compensatory education NOREPs/PWNs that are issued to the parents/guardians with regards to the non-compliance of the evaluation and annual IEP timelines. SDP may use the attached compensatory education plan format.

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
 Form – Compensatory Education Plan Format
 Basic Education Circular – Special Education Compliance
 USDE Guidance dated March 12, 2020
 Guidance and Answers to FAQs on CCS
 Confidential Student List – Evaluation and Annual IEP Timelines (SDP only)

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
 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 1: September 29, 2023
Issue 2: September 29, 2023
Issue 3: September 29, 2023
Issue 4: September 29, 2023

Other Issues:

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

Signature _____ Date _____

COMPENSATORY EDUCATION PLAN FORMAT

Individualized Education Program (IEP) Team Meeting Date: _____

Student Name: _____ DOB: _____ Age: _____

School: School District of Philadelphia (SDP) Grade: _____

The SDP met with the parent/guardian to determine compensatory education for the student for the following reasons:

Source: Complaint Investigation Report of March 17, 2023

The evaluation and/or reevaluation has not been completed within the required 60-calendar day or biennial/triennial timeline. The student's evaluation/reevaluation timeline is out of compliance with the 60-calendar day timeline and is owed compensatory education from the time that an IEP should have been implemented (30-calendar days from the Evaluation Report/Reevaluation Report (ER/RR) due date + 10 school days for IEP implementation) to the date that an IEP was actually implemented. If the student has been identified to have had a reevaluation completed and recommendations were made for additional services, as a result of a reevaluation, the student is 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 was actually implemented.

The amount of compensatory education services to be provided will be the number of hours of special education and related service support required per day, as indicated on the student's current IEP.

The calculation for compensatory education services excludes student absences, holidays, and school closings. The compensatory education shall be in addition to, and shall not supplant special education services, that should appropriately be provided to the student through the student's IEP to assure a meaningful educational process. The exact nature, delivery schedule, and logistics of the compensatory education are to be determined by the team based on the student's needs.

Verification of this corrective action is to be a copy of the plan for compensatory education. The SDP will submit copies of the compensatory education agreements and a copy of the compensatory education Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN) to this office by September 29, 2023.

The SDP and the parent/guardian have agreed to the following compensatory education for the student:

Compensatory Education Services/ Programs	Total Hours	Projected Beginning Date	Projected Ending Date

Other Terms and Conditions determined by the SDP and parent/guardian:

MEETING ATTENDEE SIGNATURES

NAME (typed or printed)	POSITION (typed or printed)	SIGNATURE
_____	Parent/Guardian	_____
_____	Parent/Guardian	_____
_____	Student	_____
_____	Local Educational Agency Representative	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

At the completion of this meeting, the SDP must issue a NOREP/PWN to provide the Parent/Guardian with an opportunity to approve or disapprove the compensatory education plan.

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



March 21, 2020

Supplemental Fact Sheet

Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities

We recognize that educational institutions are straining to address the challenges of this national emergency. We also know that educators and parents are striving to provide a sense of normalcy while seeking ways to ensure that all students have access to meaningful educational opportunities even under these difficult circumstances. No one wants to have learning coming to a halt across America due to the COVID-19 outbreak, and the U.S. Department of Education (Department) does not want to stand in the way of good faith efforts to educate students on-line.

The Department stands ready to offer guidance, technical assistance, and information on any available flexibility, within the confines of the law, to ensure that all students, including students with disabilities, continue receiving excellent education during this difficult time. The Department's Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) have previously issued non-regulatory guidance addressing these issues.*

At the outset, OCR and OSERS must address a serious misunderstanding that has recently circulated within the educational community. As school districts nationwide take necessary steps to protect the health and safety of their students, many are moving to virtual or online education (distance instruction). Some educators, however, have been reluctant to provide any distance instruction because they believe that federal disability law presents insurmountable barriers to remote education. This is simply not true. We remind schools they should not opt to close or decline to provide distance instruction, at the expense of students, to address matters pertaining to services for students with disabilities. Rather, school systems must make local decisions that take into consideration the health, safety, and well-being of all their students and staff.

To be clear: ensuring compliance with the Individuals with Disabilities Education Act (IDEA),[†] Section 504 of the Rehabilitation Act (Section 504), and Title II of the Americans with Disabilities Act should not prevent any school from offering educational programs through distance instruction.

School districts must provide a free and appropriate public education (FAPE) consistent with the need to protect the health and safety of students with disabilities and those individuals providing education, specialized instruction, and related services to these students. In this unique and ever-changing environment, OCR and OSERS recognize that these exceptional circumstances may affect how all educational and related services and supports are provided, and the Department will offer flexibility where possible. However, school districts must remember that the provision of

* See [Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students](#) (March 16, 2020); [OCR Short Webinar on Online Education and Website Accessibility Webinar \(Length: 00:07:08\)](#) (March 16, 2020); [Questions and Answers on Providing Services to Children with Disabilities During the COVID-19 Outbreak](#) (March 12, 2020); [Fact Sheet: Impact of COVID-19 on Assessments and Accountability under the Elementary and Secondary Education Act](#) (March 12, 2020); and [Letter to Education Leaders on Preventing and Addressing potential discrimination associated with COVID-19](#)

[†] References to IDEA in this document include both Part B and Part C.



FAPE may include, as appropriate, special education and related services provided through distance instruction provided virtually, online, or telephonically.

The Department understands that, during this national emergency, schools may not be able to provide all services in the same manner they are typically provided. While some schools might choose to safely, and in accordance with state law, provide certain IEP services to some students in-person, it may be unfeasible or unsafe for some institutions, during current emergency school closures, to provide hands-on physical therapy, occupational therapy, or tactile sign language educational services. Many disability-related modifications and services may be effectively provided online. These may include, for instance, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.

It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities. The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency. As mentioned above, FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students. Where, due to the global pandemic and resulting closures of schools, there has been an inevitable delay in providing services – or even making decisions about how to provide services - IEP teams (as noted in the March 12, 2020 [guidance](#)) must make an individualized determination whether and to what extent compensatory services may be needed when schools resume normal operations.

Finally, although federal law requires distance instruction to be accessible to students with disabilities, it does not mandate specific methodologies. Where technology itself imposes a barrier to access or where educational materials simply are not available in an accessible format, educators may still meet their legal obligations by providing children with disabilities equally effective alternate access to the curriculum or services provided to other students. For example, if a teacher who has a blind student in her class is working from home and cannot distribute a document accessible to that student, she can distribute to the rest of the class an inaccessible document and, if appropriate for the student, read the document over the phone to the blind student or provide the blind student with an audio recording of a reading of the document aloud.

The Department encourages parents, educators, and administrators to collaborate creatively to continue to meet the needs of students with disabilities. Consider practices such as distance instruction, teletherapy and tele-intervention, meetings held on digital platforms, online options for data tracking, and documentation. In addition, there are low-tech strategies that can provide for an exchange of curriculum-based resources, instructional packets, projects, and written assignments.

The Department understands that, during this declared national emergency, there may be additional questions about meeting the requirements of federal civil rights law; where we can offer flexibility, we will. OSERS has provided the attached list with information on those IDEA timeframes that may be extended.

OSERS' technical assistance centers are ready to address your questions regarding the IDEA and best practices and alternate models for providing special education and related services, including through distance instruction. For questions pertaining to Part C of IDEA, states should contact the Early Childhood Technical Assistance Center



UNITED STATES DEPARTMENT OF EDUCATION

*Office for Civil Rights
Office of Special Education and Rehabilitative Services*

(ECTA) at ectacenter.org. For Part B of IDEA, states should contact the National Center for Systemic Improvement (NCSI) at ncsi.wested.org.

If you have questions for OCR, want additional information or technical assistance, or believe that a school is violating federal civil rights law, you may reach out through email at OCRWebAccessTA@ed.gov, call your regional office (<https://ocrcas.ed.gov/contact-ocr>), or visit the website of the Department of Education's OCR at www.ed.gov/ocr. You may contact OCR at (800) 421-3481 (TDD: 800-877-8339), at ocr@ed.gov, or contact OCR's Outreach, Prevention, Education and Non-discrimination (OPEN) Center at OPEN@ed.gov. You may also fill out a complaint form online at www.ed.gov/ocr/complaintintro.html.

Additional information specific to the COVID-19 pandemic may be found online at <https://www.ed.gov/coronavirus>.



IDEA Timelines

As a general principle, during this unprecedented national emergency, public agencies are encouraged to work with parents to reach mutually agreeable extensions of time, as appropriate.

Part B of IDEA

State Complaints

Absent agreement by the parties, a state may be able to extend the 60-day timeline for complaint resolution if exceptional circumstances exist with respect to a particular complaint. 34 C.F.R. § 300.152(b)(1). Although the Department has previously advised that unavailability of staff is not an exceptional circumstance that would warrant an extension of the 60-day complaint resolution timeline, the COVID-19 pandemic could be deemed an exceptional circumstance if a large number of SEA staff are unavailable or absent for an extended period of time.

Due Process Hearings

When a parent files a due process complaint, the LEA must convene a resolution meeting within 15 days of receiving notice of the parent's complaint, unless the parties agree in writing to waive the meeting or to use mediation. 34 C.F.R. § 300.510(a). While the IDEA specifically mentions circumstances in which the 30-day resolution period can be adjusted in 34 C.F.R. § 300.510(c), it does not prevent the parties from mutually agreeing to extend the timeline because of unavoidable delays caused by the COVID-19 pandemic.

Additionally, although a hearing decision must be issued and mailed to the parties 45 days after the expiration of the 30-day resolution period or an adjusted resolution period, a hearing officer may grant a specific extension of time at the request of either party to the hearing. 34 C.F.R. § 300.515(a) and (c).

Individualized Education Programs (IEPs)

If a child has been found eligible to receive services under the IDEA, the IEP Team must meet and develop an initial IEP within 30 days of a determination that the child needs special education and related services. 34 C.F.R. § 300.323(c)(1).

IEPs also must be reviewed annually. 34 C.F.R. §300.324(b)(1). However, parents and an IEP Team may agree to conduct IEP meetings through alternate means, including videoconferencing or conference telephone calls. 34 C.F.R. §300.328. Again, we encourage school teams and parents to work collaboratively and creatively to meet IEP timeline requirements.

Most importantly, in making changes to a child's IEP after the annual IEP Team meeting, because of the COVID-19 pandemic, the parent of a child with a disability and the public agency may agree to not convene an IEP Team meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child's current IEP. 34 C.F.R. §300.324(a)(4)(i).

Initial Eligibility Determination

An initial evaluation must be conducted within 60 days of receiving parental consent under IDEA, or within the state-established timeline within which the evaluation must be conducted. 34 C.F.R. § 300.301(c). Once the evaluation is



completed, IDEA does not contain an explicit timeline for making the eligibility determination but does require that the IEP be developed in accordance with 34 C.F.R. §§ 300.320-300.324 (34 C.F.R. § 300.306(c)(2)).

Reevaluations

A reevaluation of each child with a disability must be conducted at least every three years, unless the parents and the public agency agree that a reevaluation is unnecessary 34 C.F.R. § 300.303(b)(2). However, when appropriate, any reevaluation may be conducted through a review of existing evaluation data, and this review may occur without a meeting and without obtaining parental consent, unless it is determined that additional assessments are needed. 34 C.F.R. §300.305(a).

Part C of IDEA

State Complaints

Under 303.433(b)(1)(i), the lead agency's state Complaint procedures permit an extension of the 60 day timeline for a written decision if "exceptional circumstances exist with respect to a particular complaint" or the parent or organization and the agency or early intervention services (EIS) provider agree to extend the time for engaging in mediation.

Due Process Hearings

A state may choose to adopt Part B procedures for Due Process resolution under 34 C.F.R. §§303.440 – 303.449 or Part C procedures under 34 C.F.R. §§303.435 – 303.438. Conditions for extending the applicable timelines are similar under both sets of procedures.

Under 34 C.F.R. §303.447(c), the hearing or review officer may grant specific extensions of the Due Process timeline at the request of either party. Under 34 C.F.R. §303.447(d), each hearing and each review involving oral argument must be conducted at a time and place that is reasonably convenient to the parents and child involved.

Section 303.437 (a) and (c) provides similar language regarding scheduling a hearing at a time and place convenient to the parents and hearing officers granting extensions at the request of either party.

Initial eligibility/Individual Family Service Plan (IFSP)

Under 34 C.F.R. §303.310, the initial evaluation and assessments of child and family, as well as the initial IFSP meeting, must be completed within 45 days of the lead agency receiving the referral. However, under 34 C.F.R. §303.310(a), the 45-day timeline does not apply if the family is unavailable due to "exceptional family circumstances that are documented" in the child's early intervention (EI) records.

The Department has previously provided guidance to states indicating that weather or natural disasters may constitute "exceptional family circumstances." The COVID-19 pandemic could be considered an "exceptional family circumstance."

Guidance and Answers to FAQs on COVID-19 Compensatory Services

This page was updated on June 15, 2021. Updates are marked with an asterisk ().*

What are COVID-19 Compensatory Services?

In this guidance document, the term "COVID-19 Compensatory Services (CCS)" refers to services as determined by an IEP team needed to remedy a student's skill and/or behavior loss and/or lack of progress that resulted from an LEA's inability to provide Free Appropriate Public Education (FAPE) while using alternative instructional models due to the COVID-19 pandemic. CCS should be considered only after the student receives services as set forth in their IEP for a period of time ("recoupment period"). This will give the student an opportunity to recoup the lost skills or behavior or to make progress to the level(s) determined appropriate prior to the extended school closure.

What is the process to determine if a student eligible under the Individuals with Disabilities Education Act (IDEA) needs CCS?

As soon as appropriate, but no later than the first two weeks of resuming normal operations, the LEA should:

- Gather baseline data on each student's current educational levels; and
- Compare above baseline data to 2019-20 school year pre-COVID 19 progress monitoring data for each student to determine if there is a regression in skills and/or behavior patterns and/or a lack of progress.

As soon as appropriate, but no later than the end of the third month of school resuming normal operations, the IEP team should review the progress of any student who regressed while LEAs were using alternative instruction due to the COVID-19 pandemic and who received services since the start of the school year using multiple data sources. With this data, the IEP team should determine whether, and to what extent, the student recouped the lost skills

and/or behaviors and/or has made meaningful progress. If a student is continuing to evidence a loss of skills and/or behaviors and/or failing to make progress due to the LEA's inability to provide FAPE while LEAs were using alternative learning models due to the COVID-19 pandemic, then the IEP team should determine whether and to what extent the student needs CCS.

What factors and sources of data should an IEP team consider when determining if a student needs CCS?

The IEP team should consider the following factors and sources of data collected while LEAs were using alternative instructional models due to the COVID-19 pandemic and during any period in which a student receives services:

- Levels of academic and functional performance, including levels of performance on all IEP goals prior to the mandatory school closures as compared to the student's current level of performance as measured from the baseline data collection.
- Information and observations from teachers, related services providers, parents, caregivers, and other family members.
- The student's ability to access remote learning opportunities and special education services while LEAs were using alternative learning models due to the COVID-19 Pandemic.
- The student's engagement in the learning process while the LEAs were using alternative learning models due to the COVID-19 pandemic.
- The amount of skill and/or behavior loss and/or lack of progress the student experienced while the LEAs were using alternative learning models due to the COVID-19 pandemic.
- Historical data regarding the student's ability to recoup lost skills and/or behavior.
- Services provided while the LEAs were using alternative learning models due to the COVID-19 pandemic.
- Data collected through progress monitoring and progress reports.
- Results from informal and/or formal assessments.

How should an IEP team calculate CCS?

The IEP team should calculate CCS on an individualized basis. The IEP team should consider the student's loss of skills and/or behaviors and/or lack of progress due to an LEA's inability to provide FAPE while LEAs were using alternative learning models due to the COVID-19 pandemic, as well as whether the student was able to recoup the lost skills and/or behaviors and/or to make meaningful progress during any period in which the student received services. If there is any remaining loss in skills and/or behaviors

and/or lack of progress after the recoupment period, but no later than the first three months following school resuming normal operations, the IEP team should determine whether and to what extent the student needs CCS. If the student needs CCS, the IEP team should determine the type and amount of CCS and how CCS will be delivered. CCS should not supplant the student's current IEP, and the IEP team should refrain from altering the least restrictive environment if CCS are offered during the school day.

***Are Local Education Agencies (LEAs) required to provide transportation to and from COVID Compensatory Services (CCS) for students with disabilities?**

Since CCS is not part of FAPE, transportation to and from CCS is only required if it is agreed upon by the student's LEA and parent. If so, it is the responsibility of the student's LEA. It is recommended that LEAs offer transportation to and from CCS, within reason, to ensure students have access to those services. CCS is the responsibility of the LEA in which the child lost skills or did not make meaningful progress, so any associated transportation is the responsibility of that entity.

***May LEAs use ESSER funds to provide transportation to and from CCS?**

LEAs may use ESSER funds to pay for transportation exclusively for CCS. If transportation is for CCS and FAPE, ESSER funds may not be used.