

Pennsylvania Department of Education  
Bureau of Special Education  
Division of Compliance Monitoring and Planning  
333 Market Street, 7<sup>th</sup> Floor  
Harrisburg, PA 17126

**RE: *Complaint on Behalf of XXXX, XXXX, XXXX, and Similarly Situated Children Regarding the failure to conduct timely evaluations and ensure smooth transitions to school-age programs in the School District of Philadelphia.***

## **I. Introduction**

The Education Law Center files this Complaint as an organization<sup>1</sup> and on behalf of individual students, XXXX, XXXX, and XXXX, as well as all similarly situated children who receive early intervention services through Elwyn SEEDS and subsequently transition to kindergarten or first grade in the School District of Philadelphia. These children have been denied procedural and substantive rights set forth in the Individuals with Disabilities Education Act, [20 U.S.C. § 1414 (2004) (“IDEA”)] and its implementing regulations under 34 C.F.R. § 300 as well as Chapter 14 of the Pennsylvania Code. Such violations deprive these children of an appropriate and smooth transition to their school age program, deprive children of timely and appropriate evaluations, and prohibit the timely implementation of special education services. We request that the Bureau of Special Education (“BSE”) investigate this matter, and issue corrective action as needed to remedy the violations described herein. As part of that investigation we request BSE interview the following persons:

<b>Name</b>	<b>Occupation/Title</b>	<b>Phone Number and Email</b>
XXXX	XXXX	XXXX
XXXX	XXXX	XXXX
XXXX	XXXX	XXXX
XXXX	XXXX	
XXXX	XXXX	
XXXX	XXXX	
XXXX	XXXX	

<sup>1</sup> 34 C.F.R. § 300.153(a) (“An organization or individual may file a signed written complaint under the procedures described in §§ 300.151 through 300.152.”).

## **II. Factual Background**

XXXX

XXXX is a four-year-old boy residing at XXXX, born on XXXX. XXXX has a diagnosis of autism spectrum disorder and currently receives early intervention services through Elwyn. XXXX, XXXX's mother, attended a "transition meeting" in January, 2017 with representatives from Elwyn and the School District of Philadelphia ("District") to begin the process of XXXX's transition to kindergarten. Ms. XXXX, as well as XXXX and the rest of his family speak Mandarin as their primary language and required an interpreter at the meeting. In that meeting, it was determined that that XXXX has developed communication skills in both Mandarin and English and would require an evaluation that could take both languages into account. Upon information and belief, Ms. XXXX signed a Permission to Reevaluate ("PTRE") and gave it to the District on January 13, 2017. In the transition meeting, the District represented that a Mandarin-speaking speech language pathologist ("SLP") would help conduct XXXX's evaluation. However, upon information and belief, the only assessments conducted for XXXX have been exclusively in English. To date, Ms. XXXX is unsure what assessments have taken place and has not been contacted to provide information for XXXX's evaluation. Most importantly, Ms. XXXX has still not received an evaluation report despite giving a signed PTRE to the District almost seven months ago on January 13, 2017. In fact, Ms. XXXX has only heard from a District representative via two phone calls to schedule appointments that the District failed to keep. She has tried to reach out to the District but could not speak to anyone because the District's phone system is automated and has no options for Chinese-speaking families. As a result, Ms. XXXX has no information on the status of XXXX's evaluation, eligibility, or any potential IEP team meetings despite the fact that kindergarten begins in one month.

XXXX

XXXX is a five-year-old boy residing at XXXX, born on XXXX. XXXX has been diagnosed with autism spectrum disorder and currently receives early intervention services from Elwyn in a highly specialized and structured preschool program. XXXX has faced similar challenges as XXXX in obtaining a timely and appropriate evaluation from the District. XXXX XXXX, XXXX's mother, attended a "transition meeting" in January, 2017 with representatives from Elwyn and the District to continue the process of XXXX's transition to kindergarten. Ms. XXXX, as well as XXXX and the rest of the family speak Mandarin as their primary language and required an interpreter at the meeting. XXXX's current Elwyn IEP reflects his limited English proficiency and that Mandarin is his primary language. As a result, the District agreed to conduct an evaluation that would accurately measure XXXX's current level of performance in Mandarin and English. Ms. XXXX signed a PTRE and gave it to the District on January 10, 2017. A copy of the signed PTRE is attached as Exhibit A. However, upon information and belief, XXXX's assessments have been delayed and Ms. XXXX has not been contacted to provide information for his evaluation. Ms. XXXX has also heard that the Mandarin-speaking evaluator was injured and is concerned that any assessments that have been conducted have been



exclusively in English. Most importantly, Ms. XXXX has still not received an evaluation report despite providing the District a signed PTRE on January 10, 2017. In fact, Ms. XXXX has not been contacted by any representatives of the District since the transition meeting. As a result, Ms. XXXX similarly has no information on the status of XXXX's evaluation, eligibility, or any potential IEP team meetings despite the fact that the first day of kindergarten is quickly approaching.

#### **XXXX**

XXXX is a five-year-old girl residing at XXXX, born on XXXX. XXXX has a diagnosis of autism spectrum disorder and a delay in speech development and currently receives early intervention services from Elwyn in a mainstream preschool class. Upon information and belief, XXXX, XXXX's mother, attended a transition meeting on January 24, 2017 where she discussed XXXX's reevaluation with XXXX and XXXX. At the meeting, Ms. XXXX signed and gave a copy of a PTRE to the District. She then received a call from XXXX, a psychologist working for the District on March 24, 2017, at the 60-day deadline. On the call, Ms. XXXX informed Ms. XXXX that the District's copy of the signed PTRE had been lost and requested Ms. XXXX sign a new copy. Ms. XXXX, however, had retained a copy of the original PTRE and sent that copy to the District. A Reevaluation Report was not provided to XXXX's parents until the week of June 5, 2017, over four months after they had provided the District with consent for XXXX's reevaluation. At an IEP meeting held on June 13, 2017, the District proposed a program for XXXX, which dramatically reduced her services and placed her into a supplemental autistic support classroom. When Ms. XXXX asked for the reasoning behind the placement offered, representatives for the District stated they could not offer more services or a less restrictive placement due to current caseload and budgetary constraints. At that point, Ms. XXXX rejected the NOREP and requested mediation. On August 2, 2017, the District held an informal meeting with Ms. XXXX where the District discussed the possibility of placing XXXX at a different school with more resources but did not present a NOREP nor did the District provide clarity on whether it would participate in mediation. As a result of the delays in her reevaluation and clear deficiencies in the program offered by the District, XXXX still does not have a finalized IEP for kindergarten.

#### ***Similarly Situated Children***

Upon information and belief, a significant number of children who are currently receiving early intervention services through Elwyn and who are transitioning to kindergarten or first grade in the District are not receiving evaluations within 60 calendar days of their parents' submission of a signed PTRE to the District. As a result, evaluation reports and IEP team meetings are delayed, rushed, or not held at all prior to the first day of school, and parents are denied the opportunity, if necessary, to request or obtain an independent evaluation or initiate dispute mechanisms prior to the beginning of school.

### III. Legal Analysis

The IDEA and its implementing regulations under 34 C.F.R. § 300, Chapter 14 of the Pennsylvania Code, as well as guidance issued by the Office of Child Development and Early Learning (“OCDEL”) stipulate strict transition timelines and reevaluation requirements to ensure the provision of a free, appropriate, public education to all children with disabilities. Federal regulations promulgated under 20 U.S.C. § 1414(c) require that as part of any reevaluation, a child’s IEP Team and other qualified professionals must review existing evaluation data including: evaluations and information provided by parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers. On the basis of such review, and input from the child’s parents, the IEP Team must identify what additional data, if any, is needed to determine whether the child continues to have a disability, the educational needs of the child; the present levels of academic achievement and related developmental needs; and whether additions or modifications to special education and related services are needed. *See* 34 C.F.R. § 300.305 – *Additional requirements for evaluations and reevaluations*. A public agency must evaluate a child with a disability in accordance with 34 C.F.R. §§300.304 through 300.311 before determining that the child is no longer a child with a disability. 34 C.F.R. § 300.305 (e)(1). In the process of conducting reevaluations, the District must take into account information provided by a child’s parent and must ensure that such reevaluation is “provided and administered in the child’s native language . . . to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is clearly or not feasible to provide or administer.” 34 C.F.R. § 300.304 (b)(1); (c)(1)(ii).<sup>2</sup>

The time limit for completing re-evaluations is set forth in state law. Specifically, under 22 Pa. Code § 14.124 reevaluations must be completed within 60 calendar days of parental consent (excluding summer months) and parents must receive a copy of their child’s Reevaluation Report at least 10 school days prior to the meeting of the IEP team. An IEP meeting must be held within 30 calendar days of the date of a completed Reevaluation Report for a new IEP and NOREP to be issued to parents. OCDEL-EI-09 #19, (October 20, 2009). In addition, federal law mandates that IEPs must be in place for all eligible children by the beginning of each school year. 34 C.F.R. § 300.323(a).<sup>3</sup>

For XXXX, XXXX, XXXX, and all similarly situated children, the District has failed to complete a reevaluation within the 60-calendar day limit set forth in Chapter 14. Additionally, evaluations for XXXX and XXXX were conducted without a bi-lingual evaluator, and therefore

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<sup>2</sup> This regulation also provides that each public agency must ensure that assessments and other evaluation materials used to assess a child “[a]re selected and administered so as not to be discriminatory on a racial or cultural basis.” 34 C.F.R. § 300.304 (c)(1)(i).

<sup>3</sup> This regulation states: “At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320. 34 C.F.R. § 300.323(a).



the District has violated federal requirements to provide a native language evaluation which will yield the most accurate information. Mandarin is the second most common language spoken in the District (second only to Spanish) and is the native language of sizeable population of District students.<sup>4</sup> It is clearly within the District's capacity to be able to provide native language evaluations for Mandarin-speaking children which have been provided for other Mandarin-speaking students.

As a result, the District has denied XXXX, XXXX, XXXX, and other similarly situated children their right under state law to a timely reevaluation. In addition, the District has deprived XXXX and XXXX, and others of a bi-lingual evaluation and deprived their parents of the opportunity to provide valuable information in the evaluation process as required by federal law. See 34 C.F.R. §§ 300.304(b)(1) and 300.305(a)(1)(i) and (a)(2).

#### **IV. Proposed Remedy**

In light of the foregoing, we respectfully request that OCDEL undertake the following actions:

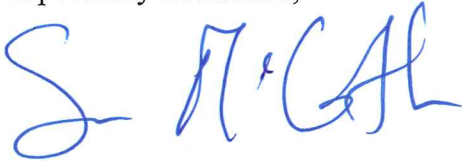
1. Conduct an investigation of the allegations contained herein pertaining to named complainants XXXX, XXXX, and XXXX.
2. Direct the District to identify similarly situated students transitioning from Elwyn to kindergarten or first grade this school year whose evaluation and development of a school-age IEP were delayed by the District's failure to conduct a timely reevaluation.
3. Direct the District to issue Reevaluation Reports and schedule IEP meetings for XXXX and XXXX and all others similarly situated prior to the first day of school.
4. Direct the District to provide compensatory education services for XXXX, XXXX, and any similarly situated child if at the end of the 2017-2018 school year the delayed evaluation process has resulted in the denial of special education and related services constituting a deprivation of a free, appropriate public education.
5. Issue corrective action requiring the District to develop a new procedure or protocol to ensure compliance with the 60-calendar day timeline for issuing a copy of a child's Reevaluation Report to parents of all similarly situated children transitioning from Elwyn to kindergarten or first grade including the issuance of Reevaluation Reports, scheduling of IEP meetings, issuance of NOREPs, and the implementation of the child's IEP within 10 days or the first day of school, whichever is sooner.
6. Ensure ongoing compliance with mandated evaluation timelines by monitoring the District regarding transitions from preschool early intervention to kindergarten or first grade for a three-year period beginning this 2017-2018 school year.

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<sup>4</sup> See e.g., Greg Windle, *Consortium helps educators examine ESOL programs*, available at <http://thenotebook.org/uploads/files/971513113584216268-english-learners-data-spread.pdf>.

We appreciate the Department's prompt attention to this matter. The parents identified in this Complaint have granted permission to release confidential information and verified the allegations contained herein.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "S. McGrath". The signature is fluid and cursive, with the first name "S." and the last name "McGrath" clearly distinguishable.

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