

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

LOCAL EDUCATIONAL AGENCY: School District of Philadelphia

DATE RECEIVED: February 21, 2024

DATE OF REPORT: May 17, 2024

COMPLAINANT: Attorneys

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RE: Multiple Students

SPECIFIC COMPLAINT(S):

- Issue 1: From February 20, 2023, to the present, the School District of Philadelphia (SDP) failed to provide a free appropriate public education (FAPE) to multiple students, who were placed in Pediatric Specialty Care (PSC) in Philadelphia, when SDP failed to implement the students' Individualized Education Plans (IEPs).
- Issue 2: From February 20, 2023, to the present, the SDP denied multiple students, who were placed in PSC, the equal opportunity to participate and obtain the benefits of educational programming within the neighborhood school to the maximum extent.
- Issue 3: From February 20, 2023, to the present, the SDP failed to deliver multiple students' special education services within the least restrictive environment (LRE).
- Issue 4: From February 20, 2023, to the present, the SDP failed to provide IEPs that met the multiple students' unique needs, specifically within the areas of measurable annual goals, to enable the students to be involved in and make progress towards annual goals in the general education curriculum.
- Issue 5: For the multiple students placed in PSC, as a result of IEP goals remaining identical for the 2022-2023 and 2023-2024 school years, the SDP failed to conduct IEP team reviews of multiple students' IEPs periodically, but not less than annually, to determine whether the measurable annual goals for the students are being achieved.
- Issue 6: For the multiple students placed in PSC, from February 20, 2023, through the present, the SDP failed to adhere to requirements for issuing progress reports on the students' IEP goals.
- Issue 7: From February 20, 2023, to the present, when conducting IEP team meetings for the multiple students, the SDP failed to include the required members of the IEP teams.
- Issue 8: From February 20, 2023, through the present, the SDP failed to meet the multiple students' reevaluation timelines.

Issue 9: For the multiple students within the PSC, from February 20, 2023, through the present, the SDP did not fulfill and delayed its child find obligation when it did not evaluate the multiple students thought to have disabilities when the students presented with fragile health needs and respond to the parents' requests for an evaluation within a reasonable amount of time.

APPLICABLE REGULATORY AUTHORITY:

Issues 1 and 7:

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

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

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34 CFR IDEA § 300.39 Special education.

- (a) General.
 - (1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—
 - (i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
 - (ii) Instruction in physical education.
 - (2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section—
 - (i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;
 - (ii) Travel training; and
 - (iii) Vocational education.
- (b) Individual special education terms defined. The terms in this definition are defined as follows:
 - (1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.
 - (2) Physical education means—
 - (i) The development of—
 - (A) Physical and motor fitness;
 - (B) Fundamental motor skills and patterns; and
 - (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and
 - (ii) Includes special physical education, adapted physical education, movement education, and motor development.

- (3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
 - (i) To address the unique needs of the child that result from the child's disability; and
 - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

34 CFR IDEA § 300.323 When IEPs must be in effect.

(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in § 300.320.

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- (d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that—
 - (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
 - (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—
 - (i) His or her specific responsibilities related to implementing the child's IEP; and
 - (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

Issue 2:

22 Pa. Code § 15.3. General.

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

Issue 3:

22 Pa. Code § 14.145 Least Restrictive Environment Requirements.

Students with disabilities shall be educated in the least restrictive environment. Each school entity shall ensure that:

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- (5) School entities shall be required to provide access to a full continuum of placement options.

34 CFR IDEA § 300.42 Supplementary aids and services.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

34 CFR IDEA § 300.114 LRE requirements.

(a) General.

- (1) Except as provided in §300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§300.115 through 300.120.
- (2) Each public agency must ensure that—
 - (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
 - (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such

that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 CFR IDEA § 300.115 Continuum of alternative placements.

- (a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.
- (b) The continuum required in paragraph (a) of this section must—
 - (1) Include the alternative placements listed in the definition of special education under §300.39 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
 - (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

34 CFR IDEA § 300.116 Placements.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that—

- (a) The placement decision—
 - (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - (2) Is made in conformity with the Least Restrictive Environment (LRE) provisions of this subpart, including §§300.114 through 300.118;
- (b) The child's placement—
 - (1) Is determined at least annually;
 - (2) Is based on the child's IEP; and
 - (3) Is as close as possible to the child's home;
- (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

Issues 4 and 5:

34 CFR IDEA § 300.320 Definition of Individualized Education Program.

- (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—
 - (2)
 - (i) A statement of measurable annual goals, including academic and functional goals designed to—
 - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - (B) Meet each of the child's other educational needs that result from the child's disability;
 - (ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives.

34 CFR IDEA § 300.324 Development, review, and revision of IEP.

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- (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 ...

Issue 6:

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.

Issue 7:

34 CFR IDEA § 300.321 IEP Team.

(a) General. The public agency must ensure that the IEP Team for each child with a disability includes -

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who -
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

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Issue 8:

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 9:

34 CFR IDEA § 300.111 Child Find.

(a) General.

(1) The State must have in effect policies and procedures to ensure that -

- (i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and
- (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

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(c) Other children in child find. Child find also must include -

- (1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and
- (2) Highly mobile children, including migrant children.

(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

22 Pa. Code § 14.121. Child find.

- (a) In addition to the requirements incorporated by reference in 34 CFR 300.111 (relating to child find), each school district shall adopt and use a public outreach awareness system to locate and identify children thought to be eligible for special education within the school district's jurisdiction.
- (b) Each school district shall conduct awareness activities to inform the public of its early intervention and special education services and programs and the manner in which to request services and programs. Written information shall be published in the school district handbook and school district web site. The public awareness effort must include information regarding potential signs of developmental delays and other risk factors that could indicate disabilities.
- (c) Each school district shall provide annual public notification, published or announced in newspapers, electronic media and other media, with circulation adequate to notify parents throughout the school district of child identification activities and of the procedures followed to ensure confidentiality of information pertaining to students with disabilities or eligible young children in accordance with this chapter.
- (d) Intermediate units are responsible for child find activities necessary to provide equitable services consistent with 34 CFR 300.130—300.144, regarding children with disabilities enrolled by their parents in private schools.

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.

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 ...

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 February 21, 2024.
- Corresponded with the Complainant(s) via email on March 11, 2024, and March 22, 2024.
- Interviewed Rebecca Preuss, Esquire, and Margaret Wakelin, Esquire, via Microsoft Teams on March 12, 2024. [REDACTED], participated in the interview.
- Corresponded via email with the following individuals on March 14, 2024:
 - [REDACTED]
- Corresponded via email with Chief; Deputy; Compliance Manager; Director of Outside Placements; [REDACTED].
- Corresponded via email with the LN 6 Director and [REDACTED].
- Corresponded via email with the LN 6 Director; [REDACTED], LN 1 Director of Special Education (LN 1 Director); Director of Complex Needs; Rachel Malloy-Good, Transition Support Case Manager; LN 6 Case Manager; and Special Education Advisers on April 3, 2024.
- Corresponded via email with Division Chief and LN 1 Director on April 3, 2024.

- Corresponded via email with the LN 1 Director on April 3, 2024, and April 11, 2024.
- Corresponded via email with the LN 6 Director; Director of Complex Needs; Transition Support Case Manager; LN 6 Case Manager; and Special Education Advisers on April 4, 2024.
- Interviewed the following individuals via Microsoft Teams conference on April 4, 2024:
 - Director of Outside Placements.
 - LN 6 Director.
 - Director of Complex Needs.
 - Transition Support Case Manager.
 - LN 6 Case Manager.
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

- Corresponded via email with the LN 6 Director; Director of Complex Needs; Transition Support Case Manager; and LN 6 Case Manager on April 4, 2024.
- Corresponded via email with the LN 6 Case Manager on April 4, 2024.
- Corresponded via email with the LN 1 Director; Director of Complex Needs; and David Parfitt, LN 1 Special Education Case Manager, on April 9, 2024.
- Interviewed the following individuals at the PSC facility on April 10, 2024:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- Interviewed the following individuals via Microsoft Teams conference on April 12, 2024:
 - LN 1 Director.
 - Director of Complex Needs.
 - Transition Support Case Manager.
- Reviewed the following numbered documents:

Ref.	Document	Date	Source
1.	SDP School Board Policy (SBP) 200 Enrollment of Students	Adopted: December 15, 2016	SDP
2.	SDP SBP 113.3 Screening and Evaluations for Students with Disabilities	Adopted: August 24, 2011 Revised: April 21, 2021	SDP
3.	SDP Special Education Data Report	June 2022	SDP
4.	SDP Special Education Data Report	June 2023	SDP
5.	Communication and Instruction Logs	September 2023 – April 2024	SDP

6.	Complaint Form	Received: February 21, 2024	Complainant
7.	PSC School Process Policy	Last Modified: March 6, 2024	PSC
8.	File Review Data Summary	April 9, 2024	BSE
9.	Individual Student Information Summary	April 9, 2024	BSE
10.	SDP ICH Instructor Schedule for PSC On-Site	2023-2024 School Year	PSC
11.	SDP ICH Student List	2022-2023 School Year	BSE
12.	SDP ICH Student List	2023-2024 School Year	BSE
13.	Student Admissions List	2023-2024 School Year	SDP
14.	Student Attendance	2022-2023 School Year; 2023-2024 School Year	SDP
15.	Student Enrollment Information	2023-2024 School Year	SDP
16.	Student Report Card	2022-2023 School Year; 2023-2024 School Year	SDP
17.	Student Sections VI, VII, and VII of Current IEPs	2023-2024 School Year	SDP
18.	SDP School Calendar	2022-2023 School Year; 2023-2024 School Year	SDP Website
19.	Annual Public Notice	Undated	SDP Website
20.	Intermediate Unit (IU) 26 Child Find Process	Undated	SDP Website

INTRODUCTION:

The Special Education Data Report for School Year 2022-2023 dated June 2023 indicates the SDP services 21,393 students with disabilities eligible under IDEA. The local educational agency’s (LEA’s) special education population is 18.3 percent of the total student population. In addition, the Special Education Data Report for School Year 2021-2022 dated June 2022 indicates the SDP services 20,658 students with disabilities eligible under IDEA. The LEA’s special education population is 17.6 percent of the total student population.

The PSC is a residential care facility for medically fragile children, which provides a home-like environment within the LN 6 of the SDP. The PSC residential care facility has the capacity of housing 50 children ages birth to 21 years old.

FINDINGS:

Issues 1-3:

1. The BSE conducted a random sampling review of files for 10 students with disabilities eligible under IDEA who are residing in PSC. The random sampling review of files, on April 9, 2024, revealed the following regarding the students’ following information: admission, attendance, enrollment, related services, types of multiple disabilities support (MDS) services, educational placement, progress reporting, and report cards:

Student A	
PSC Admission Date	February 2016
SDP Enrollment Dates	2021 through the present at Thomas Mifflin School (TMS)
Current Attendance	14 unexcused absences, over 100 extended placement absences
Current Grade	8 th grade

Related Services	Occupational Therapy (OT) – Individual - 150 minutes/IEP term, Physical Therapy (PT) – Individual - 90 minutes/IEP term, and Vision – Individual - 150 minute/IEP term
Related Service Logs	No evidence of the provision of the related services or schedule of related services
Type of MDS Services	Itinerant - MDS, ICH 1 hour of instruction per week
PennData Information	384/399 minutes in the regular education environment which equates to 15 minutes per day for a total of 75 minutes per week or 1.25 hours per week of instruction
Progress Reporting	Incomplete – missing 2022-2023 school year information
Current Report Card	Music 5 - No Grade (NG), Interpersonal Communication Skills - C (70-79), Domestic Maintenance - NG, Modified Literacy 8 - NG, Modified Math - NG, Personal Maintenance - C (70-79), Recreation/Leisure - NG, and Functional Academics - C (70-79)
Other Information	Student A is scheduled to be provided instruction by an SDP instructor at the PSC facility from 9 a.m. to 10 a.m. on Mondays. The IEP dated May 31, 2023, includes: “[Student A] can tolerate sitting up in [Student A’s] tilt-in-space wheelchair for up to 3 hours daily as reported by Pediatric Care Facility nursing staff.”

Student B	
PSC Admission Date	May 2020
SDP Enrollment Dates	2022 through the present at TMS
Current Attendance	18 unexcused absences
Current Grade	2 nd grade
Related Services	No related services
Related Service Logs	No related services
Type of MDS Services	No special education services
PennData Information	No special education services
Progress Reporting	No progress reporting
Current Report Card	Visual Arts 2 - NG, Music 2 - NG, Interpersonal Communication Skills - NG, Domestic Maintenance - NG, Modified Literacy 2 - NG, Modified Math - NG, Personal Maintenance - NG, Recreation/Leisure - NG, and Functional Academics - NG
Other Information	Student B has not and is not being provided any education since admission. An initial IEP dated April 16, 2024, was just completed by SDP.

Student C	
PSC Admission Date	2017
SDP Enrollment Dates	2021 through the present at TMS
Current Attendance	18 excused absences, 38 unexcused absences, various extended placement absences, and various urgent reasons (nurse and transportation issues)
Current Grade	2 nd grade
Related Services	OT – Individual - 20 minutes/month, PT – Individual - 60 minutes/month, Vision – Individual - 20 minute/month, and Special Transportation
Related Service Logs	No evidence of the provision of the related services or schedule of related services.
Type of MDS Services	Supplemental - MDS
PennData Information	90/399 minutes in the regular education environment per school day
Progress Reporting	Incomplete – missing 2023-2024 1 st Quarter Progress Reports

Current Report Card	Social Studies Enrichment - A, Physical Education 2 - A, Visual Arts 2 - A, Music 2 - A, Interpersonal Communication Skills - B, Domestic Maintenance - NG, Modified Literacy 2 - A, Modified Math - A, Personal Maintenance - NG, Recreation/Leisure - B, and Functional Academics – B
Other Information	Student C is scheduled to attend TMS, as reported at the PSC interviews, as long as a nurse and transportation are available.

Student D	
PSC Admission Date	March 2017
SDP Enrollment Dates	2022 through the present at TMS
Current Attendance	3 excused absences, 78 unexcused absences, various extended placement absences, and an urgent reason absence
Current Grade	1 st grade
Related Services	OT – Individual - 60 minutes/month, PT – Individual - 60 minutes/month, Speech and Language Therapy (SLT) – Individual - 60 minutes/month, Hearing – Individual - 90 minutes a month, Vision – Individual - 60 minutes/month, and Special Transportation
Related Service Logs	No evidence of the provision of the related services or schedule of related services
Type of MDS Services	Full-Time - MDS
PennData Information	77/399 minutes in the regular education environment per school day
Progress Reporting	N/A: IEP completed on April 2, 2024
Current Report Card	Music 1 - NG, Interpersonal Communication Skills - NG, Domestic Maintenance - NG, Modified Literacy 1 - NG, Modified Math - NG, Personal Maintenance - NG, Recreation/Leisure - NG, and Functional Academics - NG
Other Information	Student D is not attending TMS. The Student had Early Intervention (EI) services prior to enrollment within SDP. The Student did not receive any services from February 2023 through the present. SDP is working on getting the Student admitted to Overbrook School of the Blind.

Student E	
PSC Admission Date	February 2016
SDP Enrollment Dates	2021 through the present at TMS
Current Attendance	4 excused absences, 9 unexcused absences, various extended placement absences (transportation issues), and some urgent reason absences (Doctor appointments)
Current Grade	3 rd grade
Related Services	OT – Individual - 20 minutes/month, PT – Individual - 60 minutes/month, and Curb-to-Curb Transportation
Related Service Logs	No evidence of the provision of the related services or schedule of related services
Type of MDS Services	Supplemental - MDS
PennData Information	109/399 minutes in the regular education environment per school day
Progress Reporting	Yes, progress reports available
Current Report Card	Social Studies Enrichment - A, Physical Education 3 - A, Music 3 - A, Interpersonal Communication Skills - B, Domestic Maintenance - A, Modified Literacy 3 - A, Modified Math - A, Personal Maintenance - B, Recreation/Leisure - B, and Functional Academics - B
Other Information	Student E is scheduled to attend TMS.

Student F	
PSC Admission Date	July 2014
SDP Enrollment Dates	2014 through the present at Widener Memorial School
Current Attendance	An absence is listed for each day of the 2022-2023 and 2023-2024 school year stating: "Homebound or Home Instruction"
Current Grade	12 th grade
Related Services	Vision – Individual - 20 minutes/month, and PT – Individual - 150 minutes/IEP term
Related Service Logs	PT logs were available and reviewed
Type of MDS Services	Itinerant - MDS, ICH 3 hours of instruction per week
PennData Information	362/399 minutes in the regular education environment which equates to 37 minutes per day for a total of 185 minutes per week or 3.08 hours per week of instruction
Progress Reporting	No progress reports
Current Report Card	Functional Academics - Term 3 - C (70), Term 4 - C (70); Interpersonal Communication Skills - Term 3 - C (70), Term 4 - C (70); Introduction to Art - Term 2 - 100 (A), Term 4 - 100 (A); Physical Education - Term 2 - 100 (A), Term 3 - 90 (B), Term 4 - 95 (A); Transition Skills - Term 3 - C (70), Term - 4 70 (C)
Other Information	Student F is scheduled to be provided instruction by an SDP instructor at the PSC facility on Mondays from 1:00 p.m. to 2:00 p.m., and on Wednesdays and Thursdays from 10:00 a.m. to 11:00 a.m.

Student G	
PSC Admission Date	June 2019
SDP Enrollment Dates	2023-2024 school year
Attendance	14 unexcused absences and various extended placement absences
Current Grade	Kindergarten
Related Services	OT – Individual - 90 minutes/month, PT – Individual - 90 minutes/month, SLT – Individual - 90 minutes/month, 1:1 - 1999 minutes/week, and Special Transportation
Related Service Logs	No evidence of the provision of the related services or schedule of related services
Type of MDS Services	Supplemental - MDS
PennData Information	101/399 minutes in the regular education environment per school day
Progress Reporting	No progress reports
Current Report Card	Social Studies Enrichment - A, Visual Arts K - O, Interpersonal Communication Skills - B, Domestic Maintenance - NG, Modified Literacy 1 - A, Modified Math - A, Personal Maintenance - NG, Recreation/Leisure - B, and Functional Academics - A
Other Information	Student G is scheduled to attend TMS. The IEP dated February 2, 2024, indicates that Student G needs a nurse to attend school.

Student H	
PSC Admission Date	May 2017
SDP Enrollment Dates	2022 through the present
Attendance	48 excused absences, 13 unexcused absences, and 1 tardy
Current Grade	1 st grade
Related Services	No related services

Related Service Logs	No related services
Type of MDS Services	No special education services
PennData Information	No special education services
Progress Reporting	N/A: IEP is in the process of being completed
Current Report Card	Visual Arts 1 - A, Music 1 - A, Reading 1 - F, Writing 1 - F, Oral Communications - C, Social Studies 1 - C, Social Studies Enrichment - A, Mathematics 1 - F, Science 1 - C, Physical Education 1 - A
Other Information	Student H is scheduled to attend TMS. Student H also had EI services prior to enrolling in SDP.

Student I	
PSC Admission Date	2014
SDP Enrollment Dates	2019 through the present at TMS
Current Attendance	18 unexcused absences and various extended placement absences
Current Grade	4 th grade
Related Services	SLT – Individual - 30 minutes/IEP term
Related Service Logs	No evidence of the provision of the related services or schedule of related services
Type of MDS Services	Itinerant - MDS, ICH 1 hour of instruction per week
PennData Information	387/399 minutes in the regular education environment which equates to 12 minutes per day for a total of 60 minutes per week or 1 hour per week of instruction
Progress Reporting	No progress reports for 2022-2023 school year
Current Report Card	Visual Arts 4 - A, Music 4 - NG, Interpersonal Communication Skills - NG, Domestic Maintenance - NG, Modified Literacy 4 - NG, Modified Math - NG, Personal Maintenance - NG, Recreation/Leisure - NG, Functional Academics - NG
Other Information	Student I is scheduled to be provided instruction by an SDP instructor at the PSC facility on Mondays from 2:00 p.m. to 3:00 p.m.

Student J	
PSC Admission Date	2014
SDP Enrollment Dates	2019 through the present
Attendance	18 unexcused absences, 35 unexcused absences, and various urgent reason absences (lack of transportation)
Current Grade	4 th grade
Related Services	OT – Individual - 20 minutes/month, PT – Individual - 30 minutes/month, Vision – Individual - 25 minutes/month, and Special Transportation
Related Service Logs	No evidence of the provision of the related services or schedule of related services
Type of MDS Services	Supplemental - MDS
PennData Information	106/399 minutes in the regular education environment per school day
Progress Reporting	No progress reports
Current Report Card	Social Studies Enrichment - A, Physical Education 4 - A, Visual Arts 4 - A, Music 4 - A, Interpersonal Communication Skills - B, Domestic Maintenance - A, Modified Literacy 4 - A, Modified Math - A, Personal Maintenance - A, Recreation/Leisure - B, and Functional Academics - A.
Other Information	Student J is scheduled to attend TMS. The IEP dated February 27, 2024, indicates that a nurse is needed for Student J.

2. The SDP publicizes the Annual Public Notice on the SDP website, which indicates procedures involving the referral of children for screening and evaluations. The IU 26 Child Find Process is also posted on the website. In addition, SDP has a policy, SDP SBP 113.3 Screening and Evaluations for Students with Disabilities, adopted August 24, 2011, and revised April 21, 2021, outlining mandatory regulatory procedures involving procedures for the identification of students who may require special education services and programs and parent/guardian requests.
3. The SDP SBP Enrollment of Students adopted December 15, 2016, includes, "The district shall normally enroll a school age, eligible student by the next business day, but no later than five (5) business days after application."
4. The random sampling of files revealed the following enrollment information:

Student Enrollment Information				
Student	PSC Admission	SDP Enrollment	Documentation of the Provision of Both Related and Special Education Services being FULLY implemented in 2022-2023	Documentation of the Provision of Both Related and Special Education Services being FULLY implemented in 2023-2024
Student A	February 2016	2021-2022	No	No
Student B	May 2020	2022-2023	Regular Education	Regular Education
Student C	2017	2021-2022	No	No
Student D	March 2017	2022-2023	No	No
Student E	February 2016	2021-2022	No	No
Student F	July 2014	2014-2015	No	No
Student G	June 2019	2023-2024	No	No
Student H	May 2017	2022-2023	Regular Education	Regular Education
Student I	2014	2019-2023	No	No
Student J	2014	2019-2020	No	No

5. The random sampling review of files revealed ICH instruction information for three of the identified students as follows:

Communication and Instruction Logs for the ICH Students	
Student A	<ul style="list-style-type: none"> • February 2023 - June 2023: No documentation of ICH hours. • September 2023: 1 session of instruction. • October 2023: 3 sessions of instruction. • November 2023: 4 sessions of instruction. • December 2023: 0 sessions of instruction. • January 2024: 3 sessions of instruction. • February 2024: 3 sessions of instruction. • March 2024: 2 sessions of instruction. • April 2024: 1 session of instruction.
Student F	<ul style="list-style-type: none"> • February 2023 - June 2023: No documentation of ICH hours. • September 2023: 0 sessions of instruction (hospitalized 2 days). • October 2023: 5 sessions of instruction (hospitalized 8 days). • November 2023: 8 sessions of instruction (hospitalized 2 days).

	<ul style="list-style-type: none"> December 2023: 0 sessions of instruction (hospitalized 2 days). January 2024: 8 sessions of instruction. February 2024: 9 sessions of instruction (hospitalized or appointments 3 days). March 2024: 4 sessions of instruction (appointment 1 day). April 2024: 4 sessions of instruction.
Student I	<ul style="list-style-type: none"> February 2023 - June 2023: No documentation of ICH hours. September 2023: 0 sessions of instruction. October 2023: 4 sessions of instruction (hospitalized 1 day). November 2023: 3 sessions of instruction. December 2023: 0 sessions of instruction. January 2024: 4 sessions of instruction. February 2024: 3 sessions of instruction (hospitalized 3 days). March 2024: 3 sessions of instruction (appointment 1 day). April 2024: 2 sessions of instruction.

6. As a part of the random sampling file review, this Adviser and another BSE Adviser reviewed an assortment of specially designed instruction (SDI) that was specified in the students' IEPs for the time period of February 20, 2023, through the present. The SDI was unique to each student's file that was reviewed.

7. A random sampling review of files for 10 of the PSC special education students was conducted on April 9, 2024. The results of the file review reveal:
 - Regarding the Special Education/Related Services/Supplementary Aids and Services/Program Modifications, the data reveals:
 - 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate if related services are included in the IEP, the location, frequency, projected beginning date, and anticipated duration of services are present.
 - 2 of 10 files reviewed, or 20 percent of the files reviewed, did not have an IEP developed at the time of the year. (The Students had evaluations completed recently.)
 - With regards to the types of related services, the data indicates that the students were to receive a variety of services including OT, PT, SLT, hearing, vision, transportation, and 1:1 support.
 - No documentation exists for the provision of Extended School Year (ESY) services for ESY 2023 for the following: Student A, Student C, Student E, Student F, Student H, Student I, and Student J.

8. A random sampling review of files for 10 special education students residing at PSC was conducted on April 9, 2024. The results of the file review indicate:
 - The review of Notice of Recommended Educational Placements/Prior Written Notices (NOREPs/PWNs) that were issued to the parents/guardians to provide them with the opportunity to approve or disapprove the recommended program and placement following IEP team meetings indicate:

- 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate that NOREPs/PWNs were present in the students' files.
- 2 of 10 files reviewed, or 20 percent of the files reviewed, indicate that the students are currently in the process of the development of an IEP; so, NOREPs/PWNs were not present in the students' files.
- 7 of 10 files reviewed, or 70 percent of the files reviewed, indicate a date the LEA sent current NOREPs/PWNs.
- 3 of 10 files reviewed, or 30 percent of the files reviewed, indicate a date the LEA received signed NOREPs/PWNs.
- 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate that a type of action taken was present on the reviewed NOREPs/PWNs.
- 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate that a description of the action proposed or refused was present on the reviewed NOREPs/PWNs.
- 4 of 10 files reviewed, or 40 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.
- 5 of 10 files reviewed, or 50 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.
- 7 of 10 files reviewed, or 70 percent of the files reviewed, indicate that a description of other factor(s) relevant to LEA's proposal or refusal was present on the reviewed NOREPs/PWNs.
- 7 of 10 files reviewed, or 70 percent of the files reviewed, indicate that an educational placement recommended (including amount and type) was present on the reviewed NOREPs/PWNs.
- 7 of 10 files reviewed, or 70 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.
- 4 of 10 files reviewed, or 40 percent of the files reviewed, indicate that a parent signature or documentation of reasonable efforts to obtain consent was present on the reviewed NOREPs/PWNs.
- 4 of 10 files reviewed, or 40 percent of the files reviewed, indicate that a parent/guardian selected a consent option on the reviewed NOREPs/PWNs.
- 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate that the NOREPs/PWNs reflect the educational placements indicated on the students' IEPs.

9. Other pertinent information, resulting from the random sampling file review indicate the following information related to the issued NOREPs/PWNs:

- 3 of 10 files reviewed, or 30 percent of the files reviewed, indicate that the students' educational placements are itinerant MDS support; however, the student is designated to be ICH.
10. During the SDP interviews on April 4, 2024, the SDP personnel explained that students at PSC did not have an ICH instructor assigned to them. Additionally, the SDP personnel explained that a particular student was not identified by SDP in the Pennsylvania Department of Education's (PDE's) system as a Student receiving ICH. It was also explained that the student was just recently reported to PDE regarding the ICH services.
 11. During the PSC interviews, conducted on-site, on April 10, 2024, the PSC personnel explained the facility has been maintaining approximately 20 residents over the past year, but the facility has the capacity of maintaining more students. The PSC personnel explained that at least three students are not receiving any type of educational services at this time. With regards to enrollment, PSC has had a number of barriers, including the TMS Special Education Compliance Monitor requiring the students to be present for the enrollment process. The most difficulty with enrollment occurs when the students are transitioning from EI to school-age services. PSC personnel explained that another barrier for educational services are when the students are placed on certain levels with regards to COVID-19. If a student is in a red level, they are unable to be provided services. If students are in a yellow level, they are able to be provided educational services, but SDP personnel are refusing to provide instruction when students are placed in this level. A positive that the PSC personnel provided is that SDP finally has an ICH Instructor Schedule set up for the 2023-2024 school year.
 12. During the SDP interviews on April 12, 2024, the SDP personnel explained that the students at the PSC facility did not receive any special education support services during the 2022-2023 school year, due to not having an instructor assigned to this particular area of ICH.

Issues 4-6:

1. The random sampling review of files indicated the following data regarding annual IEP meeting timelines:
 - 3 out of 10 files reviewed, or 30 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.
 - 5 out of 10 files reviewed, or 50 percent of the files reviewed, indicate that the IEP teams did not review the students' IEPs periodically, but not less than annually, to determine whether the annual goals for the children are being achieved.
 - 2 out of 10 files reviewed, or 20 percent of the files reviewed, indicate that students were in the process of completing school-age IEPs at the time of the student file review.
2. Next, the random sampling review of files indicated the following regarding IEP measurable annual goals for the 2022-2023 and 2023-2024 school years:
 - 0 of 10 files reviewed, or 0 percent of the files reviewed, indicate that the measurable annual goals were identical from year to year on the reviewed IEPs.
 - 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate measurable annual goals within the students' 2023-2024 IEPs.
 - 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate that the measurable

annual goals include a description of how student progress toward meeting goals will be measured within the students' 2023-2024 IEPs.

- 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate that the measurable annual goals include a description of when periodic reports on progress will be provided to the parents within the students' 2023-2024 IEPs.
- 4 of 10 files reviewed, or 40 percent of the files reviewed, indicate that the measurable annual goals include some type of documentation of progress reporting within the students' 2023-2024 IEPs.
- 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate that the measurable annual goals include short term objectives within the students' 2023-2024 IEPs.
- 8 of 10 files reviewed, or 80 percent of the files reviewed, indicate that baseline data was present in some or all the measurable annual goals on the reviewed IEPs. Baseline data may be present, but not "up-to-date".
- 2 of 10 files reviewed, or 20 percent of the files reviewed, indicate that the students' school-age IEPs were in the process of being developed.

3. The random sampling review of files revealed:

- Concerning the progress reporting, the data reveals:
 - 1 of 10 files reviewed, or 10 percent of the files reviewed, include documentation of progress reporting.
 - 3 of 10 files reviewed, or 30 percent of the files reviewed, indicate documentation of progress reporting; however, the progress reports were incomplete.
 - 3 of 10 files reviewed, or 30 percent of the files reviewed, indicate no documentation of progress reporting.
 - 3 of 10 files reviewed, or 30 percent of the files reviewed, did not indicate progress reporting due to the following: students are in the process of the development of an IEP or the IEP was recently developed.

Issue 7:

1. The random sampling review of files indicated the following data regarding the required members attending the most recent IEP team meetings:

- 9 of 10 files reviewed, or 90 percent of the files reviewed, indicate that an Invitation to Attend an IEP Team Meeting or Other Meeting (Invitation) was present.
- 5 of 10 files reviewed, or 50 percent of the files reviewed, indicate that all required members of the IEP team attended the most recent IEP team meeting.
- 5 of 10 files reviewed, or 50 percent of the files reviewed, indicate that the parents (or documented efforts to have them attend) attended the most recent IEP team meeting.

- 2 of 10 files reviewed, or 20 percent of the files reviewed, indicate that the students (or documentation of Invitation if transition services were being planned) attended the most recent IEP team meeting.
- 6 of 10 files reviewed, or 60 percent of the files reviewed, indicate that the general education instructor (or documented parent and LEA agreement to participate in another manner or excused) attended the most recent IEP team meeting.
- 6 of 10 files reviewed, or 60 percent of the files reviewed, indicate that the special education instructor (or documented parent and LEA agreement to participate in another manner or excused) attended the most recent IEP team meeting.
- 7 of 10 files reviewed, or 70 percent of the files reviewed, indicate that the LEA representative (or documented parent and LEA agreement to participate in another manner or excused) attended the most recent IEP team meeting.
- 1 of 10 files reviewed, or 10 percent of the files reviewed, indicate that the community agency representative (if appropriate for transition planning or documentation they were invited) attended the most recent IEP team meeting.

Issue 8:

1. The results of the random sampling file review of 10 special education students included a review of initial evaluation and reevaluation 60-calendar day timelines and biennial/triennial timelines for the 2022-2023 and 2023-2024 school years, which indicated the following overall summary:
 - 3 of 10 files reviewed, or 30 percent of the files reviewed, indicate that the evaluations were not completed within the 60-day evaluation timeline or the biennial/triennial timeline.
 - 4 of 10 files reviewed, or 40 percent of the files reviewed, indicate that the evaluations were completed within the 60-day evaluation timeline or the biennial/triennial timeline.
 - 2 of 10 files reviewed, or 20 percent of the files reviewed, indicate that the students were in the process of being evaluated.

Issue 9:

1. The SDP publicizes the Annual Public Notice on the SDP website, which indicates procedures involving the referral of children for screening and evaluations. In addition, SDP has a policy, SBP 113.3 Screening and Evaluations for Students with Disabilities, adopted August 24, 2011, and revised April 21, 2021, outlining mandatory regulatory procedures involving procedures for the identification of students who may require special education services and programs and parent/guardian requests.
2. The SDP SBP Enrollment of Students adopted December 15, 2016, includes, "The district shall normally enroll a school age, eligible student by the next business day, but no later than five (5) business days after application."
3. The PSC School Policy dated March 6, 2024, includes new procedures, upon student admission to PSC, to ensure school enrollment and active participation in appropriate educational services. The referral process includes EI, early childhood, and school-age processes. Additionally, items include the IEP Process, School Contacts Spreadsheet, and Daily Communication.

4. The random sampling review of files revealed the following:

Student	PSC Admission	SDP Enrollment	Documentation of the Provision of Both Related and Special Education Services being FULLY implemented in 2022-2023	Documentation of the Provision of Both Related and Special Education Services being FULLY implemented in 2023-2024
Student A	February 2016	2021-2022	No	No
Student B	May 2020	2022-2023	Regular Education	Regular Education
Student C	2017	2021-2022	No	No
Student D	March 2017	2022-2023	No	No
Student E	February 2016	2021-2022	No	No
Student F	July 2014	2014-2015	No	No
Student G	June 2019	2023-2024	No	No
Student H	May 2017	2022-2023	Regular Education	Regular Education
Student I	2014	2019-2023	No	No
Student J	2014	2019-2020	No	No

5. The results of the random sampling file review of 10 special education students included a review of initial evaluation and reevaluation 60-calendar day timelines and biennial/triennial timelines for the 2022-2023 and 2023-2024 school years, which indicated the following overall summary:

- 3 of 10 files reviewed, or 30 percent of the files reviewed, indicate that initial evaluations were not conducted when the SDP's child find obligation was triggered (i.e., upon enrollment into the SDP, the students presented with fragile health need), which resulted in no provision or delayed special education services for students.

CONCLUSIONS:

Issue 1:

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

As evidenced by the review of the Attendance and Enrollment for the 2022-2023 and 2023-2024 school years; Communication and Instruction Log dated September 2023 through April 2024; Student Progress Reports for the 2022-2023 school year, ESY 2023, and 2023-2024 school year; Student Report Cards for the 2022-2023 and 2023-2024 school years; and EI information available, the students' IEPs were not implemented fully, or at all in some cases. Some students' IEPs also discussed the need for a private duty nurse, to attend the neighborhood school. The IEP teams did not address the lack of nursing, and as a result, some students were denied the provision of FAPE. The students are eligible for compensatory education to remedy the educational loss.

Issue 2:

SDP is unable to demonstrate compliance regarding and 22 Pa. Code § 15.3.

The SDP failed to provide the necessary supports, specifically nursing services, transportation, and other special education services, to aid the students in attending the neighborhood school.

Issue 3:

SDP is unable to demonstrate compliance with regards to the LRE.

ICH was specified in multiple IEPs. However, the corresponding NOREPs/PWNs did not contain a description of other options that the IEP teams considered and the reasons why those options were rejected in accordance with 34 CFR 300.503(b)(6). As such, there is no evidence that the IEP teams discussed LRE/attempted to educate the students in the LRE.

The IEP teams did not make efforts to meet as IEP teams to determine the need for intensive interagency coordination to problem solve barriers to provide special education services within the LRE.

In some instances, the IEP teams issued NOREPs/PWNs designating the educational placement for the students as itinerant MDS; however, the students were receiving ICH special education services which are the most restrictive on the LRE continuum.

Issue 4:

SDP is unable to demonstrate compliance specifically concerning 34 CFR IDEA § 300.320.

Due to the lack of reported progress and data on various measurable annual goals, from the students' IEPs for the 2022-2023 and 2023-2024 school years, there is a failure to demonstrate that the measurable annual goals were designed to enable the students to be involved in and make progress in the general education curriculum.

Issue 5:

SDP is unable to demonstrate compliance concerning 34 CFR IDEA § 300.324(b)(1)(i).

Based on the random student file review, with regards to the review of the students' IEPs periodically, but not less than annually, SDP has met this requirement for 3 out of 10 files reviewed or 30 percent of the files. Additionally, the measurable annual goals were similar, but not identical.

Issue 6:

SDP is unable to demonstrate compliance with 34 CFR IDEA §300.320 (a)(3).

Based on the random student file review, with regards to adherence to the issuance of progress reports, SDP has met this requirement for 1 of 10 files reviewed, or 10 percent of the files reviewed, which includes documentation of all aspects of the progress reporting. Additionally, 3 of 10 files reviewed, or 30 percent of the files reviewed, indicate documentation of progress reporting; however, the progress reports were incomplete. 30 percent of the progress reports did not provide evidence or data regarding the students' involvement and progress in the general education curriculum. Each IEP of the students contained a description of how the students' progress will be measured and when the progress reports will be provided, but SDP did not demonstrate how data was obtained and when it was provided to the parents/guardians.

Issue 7:

SDP is unable to demonstrate compliance regarding participation of required members of an IEP team meeting, as per 34 CFR IDEA § 300.321.

Based on the random student file review, 5 out of 10, or 50 percent, of the IEPs indicated that not all required IEP team members participated in the most recent IEP team meeting. Further, the student files

did not contain any documentation to excuse their IEP team attendance in accordance with 34 CFR § 300.321.

Issue 8:

SDP is unable to demonstrate compliance with the adherence to the reevaluation timelines, as per 34 CFR IDEA § 300.303.

The random student file review revealed 3 out of 10, or 30 percent, of the files demonstrated non-compliance with the biennial timelines.

Issue 9:

SDP is unable to demonstrate compliance with the adherence to the child find, specifically regarding 34 CFR IDEA § 300.111 and 22 Pa. Code § 14.121.

Even though SDP has a public outreach awareness system to locate and identify students who were eligible for special education services within their jurisdiction, the random student file review revealed that there was a significant delay in the identification of these students upon the SDP's child find responsibility being triggered (i.e., upon enrollment into the SDP, the students presented with fragile health needs).

CLOSURE/CORRECTIVE ACTION:

Issues 1 and 9:

The Superintendent or Designee is directed to provide the documentation of the compensatory education determinations for each student.

The students are eligible for compensatory education services to remedy the educational loss for a lack of nursing services which directly affected the provision of MDS services; no provision or lack of MDS services during the 2022-2023 and 2023-2024 school years; ESY 2023; related services during the 2022-2023 and 2023-2024 school years; and its failure to implement its child find policies/procedures.

The Superintendent or Designee is directed to convene an IEP team meeting for the purpose of developing a plan for compensatory education to remedy educational loss, and to issue a NOREP/PWN to the Parent to approve or disapprove of the compensatory education agreement.

The calculation for compensatory education services excludes holidays and school closings. The compensatory education shall be in addition to and shall not supplant special education services that should appropriately be provided by the SDP 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 at the meeting, based on student need.

Should the Parent and the SDP be unable to come to an agreement, the SDP will submit a written request for assistance from the BSE by the close of business on **August 16, 2024**, to include a list of the proposals for compensatory education from each party and signed by both parties. This request is to be sent to Alyse M. Watson, Chief, Division of Monitoring and Improvement – East, Pennsylvania Department of Education, Bureau of Special Education, 607 South Drive, 5th Floor – East Wing, Harrisburg, PA 17120.

The Superintendent or the Designee shall provide training to relevant personnel on the requirements related to the provision of FAPE and issue a follow-up memorandum/email to all relevant staff.

Issue 2:

The Superintendent or Designee is required to establish a procedure to ensure that students are afforded equal opportunity to participate and obtain benefits of educational programming, as per 22 Pa. Code §15.3. Additionally, a training must occur with all relevant staff, specifically those staff who service students residing at the PSC facility. A follow-up memorandum/email must occur which entails these procedures.

Issue 3:

The Superintendent or Designee is required to establish a procedure for special education students that are experiencing a severe medical condition or mobility impairment and are unable to leave home to attend school, which is outlined in the ICH BEC, including reporting ICH determinations. Additionally, a training must occur with all relevant staff, specifically those staff within the catchment area or the PSC facility. A follow-up memorandum/email must occur which entails these procedures.

The Superintendent or Designee is required to establish a procedure for special education students that are in need of intensive interagency coordination, as specified in the Intensive Interagency Coordination BEC. Additionally, a training must occur with all relevant staff, specifically those staff within the catchment area or the PSC facility. A follow-up memorandum/email must occur which entails these procedures.

The Superintendent or designee is required to provide training to all relevant staff regarding the following LRE regulations: 22 Pa. Code §14.145; 34 CFR IDEA §300.114; 34 CFR IDEA §300.115; and 34 CFR IDEA §300.116 Placements. A follow-up memorandum/email must occur which entails these procedures.

Issue 4:

The Superintendent or Designee shall provide a training to relevant personnel on the requirements related to the development of measurable annual goal requirements, as per 34 CFR § 300.320 (a)(3), and issue a follow-up memorandum/email to relevant staff to involved in the development of measurable annual goals.

Issue 5:

The Superintendent or the Designee shall provide training to relevant personnel on the requirements related to the review of students' IEPs periodically, but not less than annually, to determine whether annual measurable goals are being achieved, and issue a follow-up memorandum/email to all relevant staff to ensure compliance with the regulation cited above.

Issue 6:

The Superintendent or Designee shall provide training to all relevant personnel on the requirements for progress reporting, regarding the collection of data along with the development and issuance of progress reports, and issue a follow-up memorandum/email to all relevant staff to ensure compliance with 34 CFR § 300.320(a)(3).

Issue 7:

The Superintendent or Designee shall develop, or review and revise, procedures on the IEP Team and parent participation requirements, as per 34 CFR § 300.321(a); train relevant staff; and issue a follow-up memorandum/email to all relevant staff to ensure compliance with the regulation cited above.

Issue 8:

The Superintendent or the Designee shall provide training to all relevant personnel and issue a follow-up memorandum/email to all relevant staff to ensure compliance with the regulation cited above. Specifically, the training and follow-up memo/email must address (1) evaluations being completed and reports provided to parents/guardians no later than 60 days after receiving parent consent, 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, and (2) biennial/triennial timelines.

Issue 9:

The Superintendent or Designee shall develop, or review and revise, child find requirements, as per 34 CFR IDEA § 300.111 and 22 Pa. Code § 14.121; train relevant staff; and issue a follow-up memorandum/email to all relevant staff to ensure compliance.

The Superintendent or Designee shall initiate the child find process for all students who have not yet been identified at PSC.

Any students who were not identified as a student with a disability and eligible for special education services and any students who were not identified as a student with a disability and eligible for special education services in a timely manner should be considered for compensatory education services to remedy the educational loss for SDP's failure to implement its child find policies/procedures.

The Superintendent or Designee is directed to convene an IEP team meeting for the purpose of developing a plan for compensatory education to remedy educational loss, and to issue a NOREP/PWN to the Parent to approve or disapprove of the compensatory education agreement.

The calculation for compensatory education services excludes holidays and school closings. The compensatory education shall be in addition to and shall not supplant special education services that should appropriately be provided by the SDP 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 at the meeting, based on student need.

Should the Parent and the SDP be unable to come to an agreement, the SDP will submit a written request for assistance from the BSE by the close of business on **August 16, 2024**, to include a list of the proposals for compensatory education from each party and signed by both parties. This request is to be sent to Alyse M. Watson, Chief, Division of Monitoring and Improvement – East, Pennsylvania Department of Education, Bureau of Special Education, 607 South Drive, 5th Floor – East Wing, Harrisburg, PA 17120.

DISCUSSION:

To ensure that SDP is implementing the strategies learned in the required trainings and corrective action, BSE will be conducting a student file review of students residing in PSC and other similar facilities within the SDP. BSE will review the following IEP components: annual IEP review timelines, required IEP member participation, measurable annual goals, related services, progress reporting, and NOREPs/PWNs for the first two quarters of the 2024-2025 school year. In addition, BSE will review IEP implementation and reporting requirements related to ICH and Intensive Interagency Coordination. Based on these ongoing oversight efforts, BSE will determine if any further corrective action is warranted.

VERIFICATION OF COMPLETION OF CORRECTIVE ACTION:

As verification of completion, the Superintendent or Designee will forward the following documents to Sherri L. Campbell, Pennsylvania Department of Education, Bureau of Special Education, 607 South Drive, 5th Floor – East Wing, Harrisburg, PA 17120, shercampbe@pa.gov, on or before **August 16, 2024**:

- Copies of the memorandum/email, training agenda(s) provided to the relevant personnel, and sign-in sheets/electronic attendance verification pertaining to the trainings involving:
 - The requirements for the provision of FAPE as it relates to students receiving ICH.
 - The procedure for special education students that are experiencing a severe medical condition or mobility impairment and are unable to leave home to attend school.
 - The provision of special education and related services for special education students that are experiencing a severe medical condition or mobility impairment and are unable to leave home to attend school, including the reporting of ICH services.
- Copies of the memorandum/email, training agenda(s) provided to the relevant personnel, and sign-in sheets/electronic attendance verification pertaining to those who attended the training(s) in the procedure for special education students that are in need of intensive interagency coordination.
- Copies of the memorandum/email, training agenda(s) provided to the relevant personnel, and sign-in sheets/electronic attendance verification pertaining to those who attended the training(s) regarding the following LRE regulations: 22 Pa. Code §14.145; 34 CFR IDEA §300.114; 34 CFR IDEA §300.115; and 34 CFR IDEA §300.116 Placements.
- Copies of the memorandum/email, training agenda(s) provided to the relevant personnel, and sign-in sheets/electronic attendance verification pertaining to those who attended the training(s) related to the development of measurable annual goal requirements, as per 34 CFR § 300.320 (a)(3).
- Copies of the memorandum/email, 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 memorandum/email, training agenda(s), and sign-in sheets/electronic attendance records of the participation of all relevant personnel in training on the requirements for progress reporting, including the collection of data, understanding, development, completion, and issuance of progress reports.
- Copies of the memorandum/email, training agenda(s), and sign-in sheets/electronic attendance records of the participation provided to all relevant personnel on adherence to the requirement of the IEP Team and parent participation requirements, as per 34 CFR § 300.321(a).
- Copies of the memorandum/email, training agenda(s), and sign-in sheets/electronic attendance records of the participation of all relevant personnel in training on the child find requirements, as per 34 CFR IDEA § 300.111 and 22 Pa. Code § 14.121.

- Copies of the determinations, the plans for compensatory education, and copies of the compensatory education NOREPs/PWNS which have been issued to the parents for the 2022-2023 school year through the present:
 - To remedy SDP's failure to implement IEPs.
 - To remedy SDP's failure to conduct timely evaluations and develop and implement IEPs.
 - To remedy SDP's failure to initiate the child find process for the students who have not yet been identified at PSC.

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 10-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 – Compensatory Education Plan Format
 Form – Completion of Corrective Action
 BEC – Special Education Compliance

cc: [Redacted]

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 May 17, 2024

The Student is eligible for compensatory education services to remedy the educational loss for a lack of nursing services which directly affected the provision of multiple disabilities support (MDS) services; no provision or lack of MDS services during the 2022-2023 and 2023-2024 school years; Extended School Year 2023; related services during the 2022-2023 and 2023-2024 school years; and its failure to implement its child find policies/procedures.

The Superintendent or Designee is directed to convene an IEP meeting for the purpose of developing a plan for compensatory education to remedy educational loss, and to issue a Notice of Educational Placement/Prior Written Notice (NOREP/PWN) to the Parent to approve or disapprove of the compensatory education agreement.

The calculation for compensatory education services excludes holidays and school closings. The compensatory education shall be in addition to and shall not supplant special education services that should appropriately be provided by the SDP 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 at the meeting, based on student need.

Should the Parent and the SDP be unable to come to an agreement, the SDP will submit a written request for assistance from the Bureau of Special Education by the close of business on **August 16, 2024**, to include a list of the proposals for compensatory education from each party and signed by both parties. This request is to be sent to Alyse M. Watson, Chief, Division of Monitoring and Improvement – East, Pennsylvania Department of Education, Bureau of Special Education, 607 South Drive, 5th Floor – East Wing, Harrisburg, PA 17120.

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.

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
607 South Drive, 5th Floor
Harrisburg, PA 17120

1. Child's name: Multiple Students
2. Name of complainant: Rebecca Preuss, Esquire; Maura McInerney, Esquire; and Margaret Wakelin, Esquire
3. Name of school district/charter school: School District of Philadelphia
4. Date of complaint investigation report (CIR): May 17, 2024
5. Date of corrective action:

Issue 1: August 16, 2024
Issue 2: August 16, 2024
Issue 3: August 16, 2024
Issue 4: August 16, 2024
Issue 5: August 16, 2024
Issue 6: August 16, 2024
Issue 7: August 16, 2024
Issue 8: August 16, 2024
Issue 9: August 16, 2024

Other Issues:

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

Signature _____ Date _____

Special Education Compliance

22 Pa. Code §14.102. (a)(4)

22 Pa. Code §711.4

Date of Issue: Sept. 1, 1997 (formerly 22 Pa. Code §14.8)

Date of Review: Nov., 30, 2009, June, 2002 (revised), Oct. 27, 2011 (Revised)

Purpose

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

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

LEA or MAWA Holder Compliance with Special Education Statutes and Regulation

The PDE recognizes that the creation of quality programming and successful outcomes for students with disabilities requires more than technical compliance with procedural rules. The PDE believes, however, that legal compliance is the base on which high quality programs are built. Conflict between parents and LEAs, MAWA holders, or other public agencies over unresolved compliance issues diverts energy from other educational tasks that deserve our attention. Similarly, the need to provide compensatory education, to reimburse parent expenses, and to pay attorney's fees at the end of a long conflict divert resources from direct educational services. In an

attempt to avoid these diversions of resources, the PDE promotes and ensures compliance with special education statutes and regulations through its coordinated program of plan review, complaint management, monitoring, technical assistance and funding decisions.

When compliance issues arise, they are almost always resolved amicably and without undue delay. Thus, the main task for the PDE is to address compliance issues clearly and promptly, to take action to ensure compliance and to enforce the one-year correction timeline.

PDE Response

Noncompliance Issues

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

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

PDE's General Procedures for Addressing Noncompliance

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

- Within 10 calendar days after the due date for completing corrective action, the Special Education Advisor will contact the LEA, MAWA holder, or other public agency to determine the status of any incomplete corrective action and forward a summary to BSE's Division Chief.
- The Division Chief will contact the Superintendent, Chief Executive Officer or Executive Director to determine the actions needed to implement the required corrective action and assign a due date for reaching

compliance.

- Continued noncompliance will result in a recommendation to the Bureau Director to schedule a meeting in the PDE which the Superintendent, Chief Executive Officer, or Executive Director will be required to attend to address the noncompliance and, if necessary, the enforcement mechanisms that will be utilized to obtain compliance.
- Within 10 calendar days of this meeting, the PDE will issue a letter summarizing the results of the meeting (i. e., either confirming the LEA's, MAWA holder's, or other public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the PDE has decided is appropriate for the noncompliance).

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

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

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

- Ten calendar days prior to the due date of corrective action, BSE will send a letter to the LEA, MAWA holder, or other public agency reminding them of the deadline.
- Within five calendar days after the due date for corrective action, the Special Education Advisor will contact the complainant (by telephone and in writing) and the LEA, MAWA holder, or public agency to verify completion of the corrective action and to obtain written assurance and documentation from the LEA, MAWA holder, or public agency. This documentation will be described in a letter to the complainant and the

complainant will be provided with information about how to contact BSE if the complainant believes the corrective action has not been implemented.

- Within 10 calendar days after the due date of corrective action, the Division Chief will contact the Superintendent, Chief Executive Officer, or Executive Director of the LEA, MAWA holder, or other public agency in writing to determine the actions needed to implement the required corrective action and assign a due date for finalizing corrective action. Proposals made by the LEA, MAWA holder, or other public agency related to compliance with corrective action mandated by a CIR will be shared with the complainant.

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

- Within 10 calendar days of this meeting, the PDE will issue a letter summarizing the results of the meeting (i. e., either confirming the LEA's, MAWA holder's, or other public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the PDE intends to impose). The PDE will send a copy of the letter to the complainant.
- If compliance is not obtained within 30 calendar days of the deadline for the corrective action specified in the CIR, the PDE will take enforcement action.

PDE Resolution if Noncompliance Continues and Enforcement Actions

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

- a local special education plan or annual report may be disapproved and, in the case of a charter school, the chartering entity will be notified of the noncompliance;
- consistent with state and federal law, the disbursement of funds, including basic education funding, may be deferred pending resolution of the issue, and, in the case of a charter school, the PDE may direct the chartering entity to take appropriate action;

- action consistent with state and federal law may be taken to reduce the amount of funds paid to the LEA, MAWA holder, or other public agency to offset the amount of money needed to provide an education to a particular child or children if an LEA, MAWA holder, or other public agency is unwilling or unable to provide services;
- the PDE may seek court action against the LEA, MAWA holder, or other public agency to obtain an order requiring it to take specific actions consistent with state and federal law;
- the PDE may join in legal action initiated by parents; or
- The PDE may take action affecting the commission of the superintendent or other commissioned officer responsible for administering the educational program.

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

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

None of these steps is desirable, and none should be necessary if each LEA, MAWA holder, or other public agency is familiar with and attentive to the laws governing special education and complies with corrective action within set time periods. It is PDE's goal that consultation between the PDE and LEAs, MAWA holders, or other public agencies will avoid the need to take any of the compliance and enforcement actions described above. It is the obligation and the policy of the PDE however, to use these compliance and enforcement measures whenever necessary to ensure that the rights of Pennsylvania's children with disabilities are met in accordance with the state's obligations.

Direct Services to Students Pending Enforcement Procedures

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

References

Purdon's Statutes

24 P.S. Section §13-1357

24 P.S. Section §13-1372

24 P.S. Section §17-1729-A(a)(5)

24 P.S. Section 17-1728-A(b)

24 P.S. Section 17-1732-A(c)(1)-(2)

24 P.S. Section §25-2552

State Board of Education Regulations

[22 Pa. Code Chapter 14](#)

[22 Pa. Code Chapter 711](#)

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

Bureau/Office Contact

Bureau of Special Education

Pennsylvania Department of Education

Forum Building

607 South Drive

Harrisburg, PA 17120

Phone: 717-783-6134