

## **Special Education Compliance**

### **22 Pa. Code §14.102. (a)(4)**

### **22 Pa. Code §711.4**

**DATE OF ISSUE:** Sept. 1, 1997 (formerly 22 Pa. Code §14.8)

**DATE OF REVIEW:** Nov., 30, 2009

June, 2002 (revised)

Oct. 27, 2011 (Revised)

### **PURPOSE**

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

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

### **LEA or MAWA Holder Compliance with Special Education Statutes and Regulation**

The PDE recognizes that the creation of quality programming and successful outcomes for students with disabilities requires more than technical compliance with procedural rules. The PDE believes, however, that legal compliance is the base on which high quality programs are built. Conflict between parents and LEAs, MAWA holders, or other public agencies over unresolved compliance issues diverts energy from other educational tasks that deserve our attention. Similarly, the need to provide compensatory education, to reimburse parent expenses, and to pay attorney's fees at the end of a long conflict divert resources from direct educational services. In an attempt to avoid these diversions of resources, the PDE promotes and ensures compliance with special education statutes and regulations through its coordinated program of plan review, complaint management, monitoring, technical assistance and funding decisions.

When compliance issues arise, they are almost always resolved amicably and without undue

delay. Thus, the main task for the PDE is to address compliance issues clearly and promptly, to take action to ensure compliance and to enforce the one-year correction timeline.

## **PDE RESPONSE**

### **Noncompliance Issues**

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

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

### **PDE's General Procedures for Addressing Noncompliance**

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

- Within 10 calendar days after the due date for completing corrective action, the Special Education Advisor will contact the LEA, MAWA holder, or other public agency to determine the status of any incomplete corrective action and forward a summary to BSE's Division Chief.
- The Division Chief will contact the Superintendent, Chief Executive Officer or Executive Director to determine the actions needed to implement the required corrective action and assign a due date for reaching compliance.
- Continued noncompliance will result in a recommendation to the Bureau Director to schedule a meeting in the PDE which the Superintendent, Chief Executive Officer, or Executive Director will be required to attend to address the noncompliance and, if necessary, the enforcement mechanisms that will be utilized to obtain compliance.
- Within 10 calendar days of this meeting, the PDE will issue a letter summarizing the results of the meeting (i. e., either confirming the LEA's, MAWA holder's, or other public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the PDE has decided is appropriate for the noncompliance).

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

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

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

- Ten calendar days prior to the due date of corrective action, BSE will send a letter to the LEA, MAWA holder, or other public agency reminding them of the deadline.
- Within five calendar days after the due date for corrective action, the Special Education Advisor will contact the complainant (by telephone and in writing) and the LEA, MAWA holder, or public agency to verify completion of the corrective action and to obtain written assurance and documentation from the LEA, MAWA holder, or public agency. This documentation will be described in a letter to the complainant and the complainant will be provided with information about how to contact BSE if the complainant believes the corrective action has not been implemented.
- Within 10 calendar days after the due date of corrective action, the Division Chief will contact the Superintendent, Chief Executive Officer, or Executive Director of the LEA, MAWA holder, or other public agency in writing to determine the actions needed to implement the required corrective action and assign a due date for finalizing corrective action. Proposals made by the LEA, MAWA holder, or other public agency related to compliance with corrective action mandated by a CIR will be shared with the complainant.

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

- Within 10 calendar days of this meeting, the PDE will issue a letter summarizing the results of the meeting (i. e., either confirming the LEA's, MAWA holder's, or other

public agency's agreement to expeditiously complete the corrective action and explaining the penalty for failing to adhere to the agreement or, in the absence of an agreement, setting forth the enforcement remedy the PDE intends to impose). The PDE will send a copy of the letter to the complainant.

- If compliance is not obtained within 30 calendar days of the deadline for the corrective action specified in the CIR, the PDE will take enforcement action.

### **PDE Resolution if Noncompliance Continues and Enforcement Actions**

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

- a local special education plan or annual report may be disapproved and, in the case of a charter school, the chartering entity will be notified of the noncompliance;
- consistent with state and federal law, the disbursement of funds, including basic education funding, may be deferred pending resolution of the issue, and, in the case of a charter school, the PDE may direct the chartering entity to take appropriate action;
- action consistent with state and federal law may be taken to reduce the amount of funds paid to the LEA, MAWA holder, or other public agency to offset the amount of money needed to provide an education to a particular child or children if an LEA, MAWA holder, or other public agency is unwilling or unable to provide services;
- the PDE may seek court action against the LEA, MAWA holder, or other public agency to obtain an order requiring it to take specific actions consistent with state and federal law;
- the PDE may join in legal action initiated by parents; or
- The PDE may take action affecting the commission of the superintendent or other commissioned officer responsible for administering the educational program.

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

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

None of these steps is desirable, and none should be necessary if each LEA, MAWA holder, or other public agency is familiar with and attentive to the laws governing special education and complies with corrective action within set time periods. It is PDE's goal that consultation between the PDE and LEAs, MAWA holders, or other public agencies will avoid the need to

take any of the compliance and enforcement actions described above. It is the obligation and the policy of the PDE however, to use these compliance and enforcement measures whenever necessary to ensure that the rights of Pennsylvania's children with disabilities are met in accordance with the state's obligations.

### **Direct Services to Students Pending Enforcement Procedures**

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

### **REFERENCES:**

#### **Purdon's Statutes**

24 P.S. Section §13-1357  
24 P.S. Section §13-1372  
24 P.S. Section §17-1729-A(a)(5)  
24 P.S. Section 17-1728-A(b)  
24 P.S. Section 17-1732-A(c)(1)-(2)  
24 P.S. Section §25-2552

#### **State Board of Education Regulations**

22 Pa. Code Chapter 14  
<http://www.pacode.com/secure/data/022/chapter14/chap14toc.html>

22 Pa. Code Chapter 711  
<http://www.pacode.com/secure/data/022/chapter711/chap711toc.html>

#### **Federal Statute**

20 U.S.C. Section 1412  
20 U.S.C. Section 1416  
20 U.S.C. Section 1232d

#### **Federal Regulation**

34 CFR Part 300

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