

**NEW JERSEY DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION PROGRAMS  
COMPLAINT FORM**

\*Date: 3/20/2017

To: **Director  
Office of Special Education Programs  
NJ Department of Education  
P.O. Box 500  
Trenton, NJ 08625-0500**

**The Office of Special Education Programs will NOT accept a request for mediation, a due process hearing, emergent relief, a complaint investigation, or enforcement of a mediation agreement or due process hearing decision through electronic mail or other electronic submission. All requests must be mailed or faxed to the OSEP to be accepted and processed.**

\*Relationship to Student(s): (Check One)

Parent/Guardian    Attorney    Advocate    Other: \_\_\_\_\_

Name: Education Law Center

Address: 60 Park Place, Suite 300, Newark, NJ 07102

(In the case of a homeless child please provide available contact information)

Phone: (973) 624 -1815, ext. 20   Fax: (973) 624-7339

Email address: [eathos@edlawcenter.org](mailto:eathos@edlawcenter.org)

Provide the name of the student or specify the group of students affected by the alleged violation(s):

Special education students attending schools in the Paterson Public Schools ("PPS") district who, due to staffing shortages among special education teachers, child study team members, and aides, are not being provided special education services in accordance with their IEPs; are not being provided special education services by appropriately certified and qualified professional staff members; and/or have not been timely identified or provided with timely evaluations and re-evaluations. (A separate amended complaint was filed on 3/15/17 to address the district's failure to provide related services in accordance with IEPs.)

School where the alleged violation(s) occurred: District-wide

\* Items marked with an asterisk are not required; however, providing the requested information will assist in expediting your request.

\*District: Paterson \*County: Passaic

\*1. Please check which statement applies:

I am currently involved in, or have recently requested, a due process hearing. I have enclosed a copy of the request.

I am considering filing for a due process hearing. I will send a copy of the request.

I am not planning on filing for a due process hearing.

**Note: Any issues contained in a request for a complaint investigation that are also the subject of a due process hearing will be set aside until the conclusion of the hearing. If the Administrative Law Judge makes a ruling on the issue(s), that ruling is binding.**

\*2. Briefly state the specific violation(s) of **special education law or regulation** that you believe occurred. If you choose to attach additional information or documentation, **you must nevertheless summarize the alleged violations**, as you see them.

Failure to provide a free appropriate public education as specified in students' IEPs. 20 U.S.C. § 1401(9) (a "free appropriate public education" includes special education services that are "provided in conformity with" a student's IEP); 34 C.F.R. § 300.17 (same); see also N.J.A.C. 6A:14-1.1(d).

Failure to ensure that special education services are provided by appropriately certified and qualified professional staff members, 34 C.F.R. § 300.18; N.J.A.C. 6A:14-1.1(d)(2).

Failure to timely comply with "child find" obligations, 20 U.S.C. § 1412(a)(3), 34 C.F.R. § 300.111, N.J.A.C. 6A:14-3.3, to conduct timely evaluations, 20 U.S.C. § 1414(a)(1)(C)(i)(I), 34 C.F.R. § 300.301, N.J.A.C. 6A:14-3.3(e), -3.4(e), and to timely implement IEPs, 34 C.F.R. § 300.323(c), N.J.A.C. 6A:14-3.7(a).

3. Specify the period of time or dates when the alleged violation(s) occurred.

2016-2017 school year

**Note: The complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received.**

\*4. Is/Are the alleged violation(s) continuing at present?  Yes  No

5. **State the relevant facts**, including any claim that the district has failed to provide services required by the IEP of a student with disabilities. If you are claiming that the district has failed to implement the IEP, *please include a copy of the entire IEP*. (Attach additional pages, if necessary. If you have other written documentation from the school that you believe would assist in verifying the violation, please submit them with this request).

Education Law Center (“ELC”) has received information from various reliable sources that large numbers of students with disabilities throughout PPS are not receiving required special education services as set forth below.

Special education staffing shortages are apparently rampant in Paterson, including staff who reportedly left the district just prior to or during the 2016-17 school year without being replaced. The shortages have adversely affected students in the following ways: students have attended classes that are not taught by appropriately certified staff; student evaluations or re-evaluations have been delayed; students have not received resource services required by their IEPs; and students have been denied the services of aides either required by their IEPs or by state regulations pertaining to classroom size. ELC has received the following specific complaints from staff or parents at the following specific schools, but is again advised that these problems are representative of district-wide staffing shortages:

1. School 1 has a psychologist on maternity leave and that absence has resulted in evaluation delays for students in the school. School 1 was also without resource services for five pre-school students from September 2016 until February 2017.
2. School 2 has had no psychologist since June 2016, except for an agency staff person two times per week, resulting in evaluation delays. School 2 has also had a special education teacher vacancy following a resignation two years ago that has resulted in no resource services for second graders in the school. Moreover, the autism program at School 2 has been without a behaviorist since that individual resigned in September 2016 and has not been replaced.
3. At former School 4, the Frank Napier Academy, there has been no replacement for a special education resource teacher who left the district in October or November 2016, leaving at least three students without in-class or pull-out resource support. Another resource teacher retired in February 2017. Currently, there are no resource pull-out services at all at this school.
4. School 6, the Senator Frank R. Lautenberg School, has inadequate staffing to fulfill IEPs and needs another special education teacher. School 6 has a self-contained autism class without a permanent teacher. The prior teacher resigned over the summer, leaving the position vacant at the start of the school year. Another teacher was assigned in December 2016, but that teacher used accumulated leave days until her resignation in February 2017, so was present in the classroom only briefly in December. The position remains vacant and students are regressing in academic and social skills.

5. At School 7, classroom, and even personal, aides are pulled from special education classrooms 2-3 times per week to cover for absent staff throughout the school, leaving students without aides that are required by their IEPs or by state regulations due to class size.
6. School 8 does not provide in-class support to special education students in classes such as science and social studies, even when those students require significant assistance in language arts and math.
7. At School 10, resource teachers are constantly pulled from their duties to cover other staff absences, leaving students without the resource services required by their IEPs.
8. School 12 had a resource teacher retire on January 1, 2017 and already had insufficient resource staff before that date, resulting in the school's inability to provide the resource services required by its students' IEPs.
9. School 13 has only two resource teachers for a K-8 school with a high special education population and is unable to comply with provision of the resource services required by its students' IEPs.
10. At School 15, the special education teacher of a self-contained class resigned on February 1, 2017 and has not been replaced, leaving the students with a substitute or substitutes who may not be appropriately credentialed.
11. School 21 lost its LDT-C on January 1, 2016, without having that position replaced. Due to the vacancy, there are insufficient case management services to oversee students' IEPs in a proper and timely manner, and there are insufficient staff to provide needed evaluations and re-evaluations.
12. At School 26, three certified special education teachers resigned in January 2017, leaving those students with sporadic substitutes. Students in various grade levels are not receiving either in-class or pull-out resource services in accordance with their IEPs.
13. At School 27, staff shortages have resulted in widespread non-implementation of IEPs, as well as evaluation delays of six to twelve months and IEPs not being approved in a timely manner. The school does not have a full child study team, there have been no classroom or personal aides in two self-contained LLD classes throughout this school year, and both students' aides and special education teachers get routinely pulled to serve as substitutes in other classes.
14. Alexander Hamilton Academy has an aide teaching a math class instead of a special education teacher.
15. At Dale Avenue School, there is inadequate staffing for the autistic classes in the school.

16. East Side High School has an insufficient number of LDT-Cs to conduct evaluations and annual reviews, and many students with IEPs have incomplete, and out-of-date, files in Easy IEP.
17. HARP Academy has no special education teacher providing in-class support in at least one Social Studies class serving students with disabilities.

6. Please describe how the issue(s) could be resolved. Attach additional pages as necessary.

PPS must immediately reinstate provision of special education services to all students whose IEPs require them. All special education services must be provided in conformance with the IEPs and must be provided by personnel with appropriate training and qualifications.

Additionally, PPS must provide compensatory education to all students who the district has failed to provide with special education services as specified in their IEPs at any point during the 2016-17 school year. The amount of compensatory education for each student should be equivalent to the special education services sessions that were missed by that student. A plan for the delivery of compensatory education services must be developed for each affected student. PPS should be required to provide all compensatory education services by August 31, 2017, except where a child's individual situation mandates that compensatory services continue beyond that date.

PPS must immediately conduct all initial evaluations and re-evaluations that are overdue, with evaluation reports completed within 60 days of the complaint investigation report. If delay in the completion of evaluations has resulted in students being denied special education services they would have received during the period of delay, compensatory services must be provided as outlined above.

PPS must develop a budget of the staff and funding needed to address special education vacancies within the district, as well as a plan for how those vacancies will be filled. OSEPP, as the entity ultimately responsible for the provision of FAPE, must ensure that PPS has the funding necessary to fill all such vacancies, and must ensure that all vacancies are filled with appropriately qualified candidates at the earliest possible date.

Please note that because PPS is a State-operated school district, ELC requests the designation of a neutral investigator not employed by the State to handle this complaint. See N.J.A.C. 6A:14-9.2 ("The State Director of the Office of Special Education Programs or designee(s) shall

be responsible for reviewing, investigating and taking action on any signed written complaint regarding the provision of special education and related services . . . ." (emphasis added)).

\*7. Please list the district personnel you have already talked with to resolve this complaint, along with their response(s) to your request.

Many parents and district personnel have brought this matter to the district's attention, including to special education director Cheryl Coy, but the problem is ongoing.

**Complainants are required to forward a copy of the complaint to the Chief School Administrator of the district/education agency against which the complaint is directed at the same time the complaint is filed with the Department of Education.**

**Check below to verify whether:**

X  **A copy of the complaint request, along with attachments, was mailed to:  Superintendent Donnie Evans  (name) on  3/20/17  (date);**

or

**A copy of the complaint request, along with attachments, was hand-delivered to: \_\_\_\_\_ (name) on \_\_\_\_\_ (date).**

**Pursuant to N.J.A.C. 6A:14-9.2(b), please note that a complaint cannot be processed until the OSEP is notified that a copy was provided to the appropriate education agency.**

Signature:  Elizabeth Athos   
(Person(s) Submitting Request)