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 DEPARTMENT OF EDUCATION
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COMPLAINT INVESTIGATION REPORT

Complaint Number: C2011-4325
Respondent: Paterson School District
County: Passaic County
Investigation Conducted By: Kathleen Ehling, Complaint Investigator
 Office of Special Education (OSE)

Background:

This investigation was initiated on June 24, 2011 on behalf of student #1 and all students with disabilities attending P.S. #10 in the Paterson School District. Investigation procedures included a review of documentation provided by the complainant and the district, and interviews with district personnel during a site visit.

Table of Documents:

See Appendix A

Persons Interviewed:

Title	Date of Interview
Special Education Director	July 26, 2011
Board Attorney	July 26, 2011

Issue:

Whether the district board of education is providing special education and related services as required by the IEPs of students attending P.S. #10

Code References:

N.J.A.C. 6A:14-1.1(h)
 N.J.A.C. 6A:14-4.1(a)

Statement of the Problem:

The complainant maintains in a written statement that the district is not providing the special education and related services required by the IEPs of students attending P.S. #10. Specifically, with regard to student #1, the complainant maintains that the district has not provided daily in-class support for Language Arts Literacy and Math, pull-out support for Language Arts Literacy and Math, speech-language services, and occupational therapy services.

According to the complainant, the legal guardian of student #1 was informed in September of 2010 that the services were not being provided due to staffing shortages. The complainant maintains that the guardian was told by the district that they were working to hire additional staff. According to the complainant, the district informed the guardian in October of 2010 that the special education resource services had resumed, but no information was provided regarding the related services. The guardian contends she later discovered that the student was still not receiving the required pull-out resource services.

The complainant maintains that on or about the middle of December 2010, the district contacted the guardian and asked if the student could be dismissed from speech-language therapy; however, the guardian did not consent to this change. Following this conversation, the guardian spoke with the student's case manager and maintains the case manager told her the student had been dismissed from occupational therapy without the guardian's consent.

A new IEP was developed for student #1 on March 28, 2011; however, the complainant maintains that the district did not provide the special education or related services required by this IEP.

District Response:

The district acknowledged that due to staffing shortages, students at P.S. #10 did not receive resource support as required by their IEPs. According to the district, additional staff were hired in October 2010 and March 2011 and by the end of March, all students were receiving the required resource support.

With regard to the complainant's assertion that the student did not receive occupational therapy as required by his IEP, the district explained that the student was dismissed from occupational therapy at the end of the 2009-2010 school year; however, due to an administrative error, the IEP developed for the 2010-2011 school year still listed occupational therapy as a related service. The district acknowledged that the student did not receive any occupational therapy services during the 2010-2011 school year.

With regard to the complainant's assertion that the student did not receive speech therapy as required by his IEP, the district denies this assertion and maintains that all students at P.S. #10 received speech and language therapy as required by their IEPs.

Findings of Fact:

1. Student #1's 2010-2011 IEP was developed on June 9, 2010. This IEP required in-class support, once per day, for Language Arts Literacy and Math for 90 minutes, pull-out support for Language Arts Literacy and Math, three times per A-F cycle for 30 minutes, occupational therapy, once per A-F cycle for 30 minutes in a small group and speech-language therapy, once per A-F cycle, for 30 minutes in a small group.
2. Page 5 of the June 9, 2010 IEP states in relevant part, "[i]t is recommended at this time that OT services be discontinued."
3. Student #1's IEP was revised on March 28, 2011. This IEP required in-class support, once per day, for Language Arts Literacy and Math for a total of 405 minutes per cycle, pull-out support for Language Arts Literacy, three times per A-F cycle for a total of 135 minutes, and speech-language therapy, once per A-F cycle, for 30 minutes in a small group.
4. Documentation submitted by the district identified 39 students, including student #1, who did not receive resource instruction as required by their IEPs.
5. Documentation provided by the district included staff assignments for the 2010-2011 school year which included the assignment of a speech-language therapist.

Conclusion:

N.J.A.C. 6A:14-4.1(a) requires that a district fully implement a student's IEP. In this case, the district acknowledged that due to staffing shortages students at P.S. #10 did not receive the resource services required by their IEPs. Therefore, with regard to resource services, the district is determined noncompliant and corrective action is necessary.

With regard to occupational therapy services for student #1, while one section of the student's 2010-2011 IEP stated he should be dismissed from occupational therapy, the district developed an IEP that listed occupational therapy as a related service. Therefore, the district made a procedural error and corrective action is necessary.

With regard to speech-language therapy services for student #1, the district provided documentation which indicated a speech-language therapist was

assigned to P.S. #10 for the entire 2010-2011 school year. However, the district was unable to produce any documentation which verified that the student did, in fact, receive the speech and language therapy required by his IEP. The district normally maintains these records on its EasyIEP database but the database does not contain any therapy logs for the therapist assigned to P.S. #10. Therefore, corrective action is necessary.

A side issue was discovered during the course of this investigation. The student's June 9, 2010 IEP had implementations dates of June 9, 2010 through October 5, 2010. A new IEP should have been developed on October 5, 2010; however, the student's IEP was not revised until March 28, 2011. Further, the March 28, 2011 IEP appears to have been implemented immediately following the March 28 meeting even though the parent did not sign consent to waive the 15-day review period. As the district did not develop an IEP until approximately six months after the June 9, 2010 IEP ended and did not wait 15 days to implement the IEP that was ultimately developed in March, corrective action is necessary.

Corrective Action:

<p>Finding: Noncompliance regarding IEP implementation Element #31: FOR INTERNAL USE ONLY</p>			
<p>CAP Directive Activities</p>	<p>Documentation needed to demonstrate compliance</p>	<p>Documentation Due Date</p>	<p>Documentation submitted to:</p>
<p>1. The district is directed to identify all students at P.S. #10 who did not receive resource instruction as required by their 2010-2011 IEPs.</p> <p>2. The district is directed to conduct IEP meetings for the students identified in #1 above to discuss the provision of compensatory services for the period of the 2010-2011 school year for which the students did not receive resource services as required by</p>	<p>List of students with corresponding resource instruction requirements</p> <p>Written notice following IEP meetings</p>	<p>September 15, 2011</p> <p>Monthly, beginning September 30, 2011 until all IEP meetings are completed</p>	<p>Kathy Ehling, Complaint Investigator</p> <p>Kathy Ehling, Complaint Investigator</p>

<p>their IEPs.</p> <p>3. Provide compensatory services. <i>See Addendum B for compensatory service requirements.</i></p>	<p>Log of compensatory services</p>	<p>Monthly, beginning September 30, 2011 until all compensatory services are provided</p>	<p>Kathy Ehling, Complaint Investigator</p>
<p>4. For student #1, the district is directed to conduct an occupational therapy evaluation to determine what, if any, compensatory services are required.</p>	<p>Copy of occupational therapy evaluation</p>	<p>September 30, 2011</p>	<p>Kathy Ehling, Complaint Investigator</p>
<p>5. If it is determined that the student is owed compensatory services, the district is directed to immediately provide the services. <i>See enclosed Addendum B for compensatory service requirements.</i></p>	<p>If needed, log of compensatory services</p>	<p>Monthly, beginning September 30, 2011 until all services are provided</p>	<p>Kathy Ehling, Complaint Investigator</p>
<p>6. The district is directed to either locate speech-language therapy logs for the 2010-2011 school year or in the absence of any documentation confirming the student received the required services, convene an IEP team meeting to discuss the provision of compensatory therapy.</p>	<p>Speech-language therapy logs or Written notice following IEP team meeting</p>	<p>September 30, 2011</p>	<p>Kathy Ehling, Complaint Investigator</p>
<p>7. If it is determined the student is owed compensatory services, the district is directed to immediately provide the services. <i>See enclosed Addendum B for compensatory service requirements.</i></p>	<p>If needed, log of compensatory services</p>	<p>Monthly, beginning September 30, 2011 until all services are required</p>	<p>Kathy Ehling, Complaint Investigator</p>

Finding: Noncompliance regarding IEP development <small>Element #30: FOR INTERNAL USE ONLY</small>			
CAP Directive Activities	Documentation needed to demonstrate compliance	Documentation Due Date	Documentation submitted to:
<p>1. The district is directed to review its procedures for developing student IEPs to ensure compliance with N.J.A.C. 6A:14-3.7(e)8 and N.J.A.C. 6A:14-2.3(h)2. Specifically, implementation dates must correspond with the provision of services and parents must be given 15 days to review a proposed IEP before it is implemented, unless consent to waive the 15 days is obtained by the district.</p>	<p>Copy of district procedures which highlight compliance with N.J.A.C. 6A:14-3.7(e)8 and N.J.A.C. 6A:14-2.3(h)2.</p>	<p>September 30, 2011</p>	<p>Kathy Ehling, Complaint Investigator</p>
<p>2. Following approval of the district procedures by the OSEP, conduct a staff inservice to review the revised procedures.</p>	<p>Copy of inservice agenda with a signed dated attendance list</p>	<p>October 31, 2011</p>	<p>Kathy Ehling, Complaint Investigator</p>
<p>3. Provide verification that the procedures are being correctly implemented.</p>	<p>A list of IEPs developed at P.S. #10 with corresponding implementation dates</p>	<p>Monthly, beginning September 30, 2011 until March 31, 2011</p>	<p>Kathy Ehling, Complaint Investigator</p>

Submission and Verification of Corrective Action:

Pursuant to U.S. Department of Education requirements, the Office of Special Education (OSE) must ensure that any identified noncompliance is corrected as soon as possible, but in no case later than one year from identification. Therefore, the local education agency (district, charter school, or receiving school) is expected to correct the

noncompliance according to the timelines established in the corrective action plan, but in no case later than one year from the date the education agency was notified of the noncompliance. Failure to complete the corrective actions within the one-year timeline does not relieve the education agency of its responsibility for completion and may result in additional action or sanctions by the OSE to ensure completion. These may include the withholding of IDEA funds, until all corrective activities are documented and approved. Once submitted and approved, the OSE will be responsible for verifying the implementation of the corrective action plan through document review and/or onsite visit(s).



Barbara Gantwerk, Assistant Commissioner
Division of Programs and Operations

8/15/11

Date

Appendix A

Document Title	Date
Student #1 IEP	June 9, 2010
Letter from the grandparent of student #1 to the superintendent regarding special education services	September 22, 2010
Student #1 IEP	March 28, 2011
List of resource instruction students at P.S. #10	2010-2011 school year
School Staff Assignments	2010-2011 school year
Master Schedule Inquiry for P.S. #10	2010-2011 school year

Appendix B

NEW JERSEY DEPARTMENT OF EDUCATION OFFICE OF SPECIAL EDUCATION (OSE) COMPENSATORY SERVICES SCHEDULE

The authority for granting compensatory services pursuant to a complaint investigation comes from the Individual with Disabilities Education Act (IDEA) and its implementing regulations, 34 C.F.R § 300.151(b)1. Compensatory services are *not* prospective relief, but rather compensation for a *past* violation. Therefore, compensatory services are not excused if the student withdraws from the school district¹; such services must be offered by the school district to a student that remains enrolled in a school district in New Jersey or as otherwise directed by the OSE.

When providing compensatory services pursuant to a corrective action plan (CAP), the education agency must offer a reasonable schedule to provide the compensatory services, taking into consideration the schedule of those services in the student's IEP, the school calendar and parental input regarding student availability. The school district may provide these services before school, after school, or during the school day as long as the provision of current IEP services is not affected. Compensatory services may be provided on weekends, holidays, or during school vacation time, by agreement of the parties or as determined necessary by OSE.

The school district must submit a **Compensatory Services Schedule** to the OSE in accordance with the dates outlined in the CAP chart in the report *for each student identified in the report*. The **Compensatory Services Schedule** must include, at a minimum:

- Dates and times of the compensatory service;
- Type of service (instruction, related service, etc.);
- Location of service;
- Service provider(s);
- Transportation arrangements;
- Confirmation that the compensatory services are in excess of those services that are required by the student's IEP; and
- A signed copy of the cover letter addressed to the parent which encloses a copy of the **Compensatory Services Schedule**.

Upon submission of the **Compensatory Services Schedule** to the OSE and absent objection from the parent, the school district may proceed with implementation of the schedule.

Once a **Compensatory Services Schedule** is established, shared with and accepted by the parent (*i.e.*, there are no objections to the schedule *or* services begin to be provided) the district is not required to reschedule or make up sessions if the parent does not make the child available for the scheduled sessions *for any reason*. If the district cancels or otherwise fails to provide the sessions in accordance with the **Compensatory Services Schedule**, it must make up any missed sessions.

To demonstrate compliance with the CAP, the school district must document the provision of the compensatory services (therapy logs, attendance records, etc). As noted above, the parent

¹ School district means the responsible education agency and may include a charter school, receiving school, education services commission or special services school district.

must make a student available in accordance with the **Compensatory Services Schedule**. If the parent does not make the child available for the scheduled sessions *for any reason*, the school district must document its efforts to provide the compensatory services and submit such documentation to the OSE. Upon review of the documentation, the OSE will determine whether the school district has complied with the CAP and whether the CAP may be closed. To the extent the district documents that a parent has interfered with the delivery of services of the plan, the OSE will consider such documentation and may in its discretion, either reduce or forgive the number of hours of compensatory services accordingly.

The school district is expected to correct noncompliance according to the timelines established in the corrective action plan, but in no case later than one year from the date the education agency was notified of the noncompliance. Failure to complete the corrective actions within the one year timeline does not relieve the district of its responsibility for completion and may result in additional action by the OSE to ensure completion.