

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

Date: June 24, 2011

To: **John Worthington**
Office of Special Education Programs (OSEP)
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Relationship to Student(s): (Check One)

Parent/Guardian Attorney Advocate Other: _____

Name: Lauren S. Michaels, Esq., Education Law Center

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

The students affected by the violations are [REDACTED]; and all students at School Number 10 who entitled to but who are not receiving special education and related services in accordance with their IEPs.

School where the alleged violation(s) occurred: School Number 10
District: Paterson Public Schools 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.

* In the case of a homeless child, please provide available contact information.

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.

Pursuant to N.J.A.C. 6A:14-9.2, Education Law Center (ELC) and its above-named client request an investigation of Paterson Public Schools ("Paterson") and the New Jersey Department of Education (NJDOE) into violations of the federal and state implementing regulations of the Individuals with Disabilities Education Improvement Act ("IDEA"), 20 U.S.C.A. § 1400 et seq. The purpose of this complaint investigation is to investigate to what extent Paterson's and NJDOE's policies, procedures, and practices are resulting in the denial of special education and related services to eligible students at School Number 10 in violation of IDEA's FAPE requirement and in violation of those students' IEPs.

(A) Students with disabilities must receive a free appropriate public education (FAPE) in accordance with their Individualized Education Programs (IEPs), 20 U.S.C.A. § 1401(9); 34 C.F.R. § 300.17(d), N.J.A.C. 6A:14-4.1(a). This includes both special education, which is an individualized educational program designed to meet a child's unique needs, 20 U.S.C.A. § 1400(d)(1)(A); 34 C.F.R. § 300.1(a); N.J.A.C. 6A:14-1.3, and related services, which are developmental, corrective, and other supportive services, including speech language services, that a child needs to benefit from his or her educational program, 20 U.S.C.A. § 1401(26); 34 C.F.R. § 300.34(a); N.J.A.C. 6A:14-3.9.

The above-named student, and upon information and belief, other students in School Number 10, are not receiving, or are receiving to a lesser extent than required by their IEPs, special education and related services, in violation of FAPE.

(B) It is the responsibility of the state educational agency, and your office in particular, to ensure that Paterson students receive FAPE in accordance with their IEPs. 20 U.S.C.A. § 1412(a)(11)(A). This obligation is heightened because Paterson has been under state operation and control for almost two decades. Upon information and belief, the state educational agency has failed to ensure FAPE to the above-named student and other students in School Number 10 by failing to provide sufficient financial and other support to Paterson, leading to an insufficient number of special education teachers and related service providers.

3. Specify the period of time or dates when the alleged violation(s) occurred. September 2010 to the present

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? X 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).

During the 2010-2011 school year, ELC filed a series of complaint investigation requests, including complaints numbered C2011-4193 and C2011-4251, with NJDOE's Office of Special Education Programs (OSEP), requesting that OSEP investigate violations of special education law affecting preschool-aged students and students at School Number 2. In each case, OSEP determined that services were not provided in accordance with students' IEPs and ordered corrective action.

Upon information and belief, students attending School Number 10 in Paterson who are entitled to special education and related services have not received those services in accordance with their IEPs during the 2010-2011 school year. Upon information and belief, parents have been told that this is due to the district's budget being audited and "frozen" by NJDOE.

One such affected student is [REDACTED] born [REDACTED] classified as a child with a disability, Specific Learning Disability, who is eligible for special education and related services. Exhibit A. His IEP dated June 9, 2010 includes 90 minutes of Language Arts Literacy – In Class Support per day; 30 minutes of Language Arts Literacy - Pull-Out Support three times per A-F week; Mathematics – In Class Support for 90 minutes per day; 30 minutes of Mathematics - Pull-Out Support three times per A-F week A-F week; Speech/Language for 30 minutes once per A-F week in a group of 2-5; and Occupational Therapy for 30 minutes once per A-F week in a group of 2-5. Exhibit A. Upon information and belief, the school district has either have not provided these services, or provided them to a lesser extent than required by [REDACTED]'s IEP.

[REDACTED]'s grandmother and legal guardian, Ms. [REDACTED] only learned that her grandson was not receiving special education and related services, in violation of his IEP, on or about September 21, 2010, during Back to School Night. [REDACTED]'s language arts general education teacher told Ms. [REDACTED] that there were no special education teachers to provide resource services to children in School Number 10, and that students in School Number 10 were also not receiving any related services. Ms. [REDACTED] asked the teacher whether she was implementing modifications and accommodations for children with IEPs, and the language arts teacher replied that she was doing as much as she could. When Ms. [REDACTED] also asked the mathematics general education teacher about implementing modification and accommodations, that teacher told her that she was not doing so. On the same night, Ms. [REDACTED] spoke to the school's principal about the lack of special education teachers and related service providers, but he only told her that they were "working on it."

On September 22, 2010, Ms. [REDACTED] wrote a letter to Superintendent Donnie Evans regarding the lack of special education teachers and related service providers at School Number 10. Exhibit B. A few days later, Ms. [REDACTED] received a phone call from Assistant Superintendent of School Administration, Kathi Kellett. Ms. Kellett told Ms. [REDACTED] that due to funding cuts, there were no special education teachers assigned to School 10; however, two teachers would be assigned to the school shortly to provide resource services.

In the middle of October, Ms. [REDACTED] received a phone call from [REDACTED]'s case manager, who told Ms. [REDACTED] that special education resource services had resumed. There was no information provided about related services.

On or about a week later, Ms. [REDACTED] spoke to one of the two special education teachers assigned to provide special education resource services to [REDACTED]. The teacher told Ms. [REDACTED] that he was unable to provide the pull-out services to the extent required by [REDACTED]'s IEP because there were too many children that required those services in School Number 10. The teacher informed Ms. [REDACTED] that there were only two special education teachers assigned to provide special education resource services for all of the children in School Number 10.

On or about the middle of December, a speech language therapist called Ms. [REDACTED] to ask her permission to stop providing speech therapy to [REDACTED]. [REDACTED] did not consent to the denial of services or the cessation of services.

After that conversation, Ms. [REDACTED] called the case manager to express her concerns regarding the provision of both speech and occupational therapy. The case manager called Ms. [REDACTED] back and informed her that speech language therapy would in fact continue, but that [REDACTED] had received no occupational therapy during that school year, and that the occupational therapist had decided to discontinue [REDACTED]'s occupational therapy without consulting with Ms. [REDACTED].

On or about February 2011, Ms. [REDACTED] was informed that a third special education teacher was hired to serve students in School Number 10.

On March 28, 2011, a new IEP for [REDACTED] was developed, which includes 405 minutes of Language Arts Literacy – In Class Support once per A-F week; 135 minutes of Language Arts Literacy Pull-Out Support three times per A-F week; Mathematics – In Class Support for 405 minutes once per A-F week; and Speech/Language for 30 minutes once per A-F week in a group of 2-5. **Exhibit C.** Upon information and belief, the school district has either not provided these services, or provided them to a lesser extent than required by [REDACTED]'s IEP.

Upon information and belief, special education and related services either have not been provided at all, or provided to a lesser extent than required by children's IEPs, to other students at School Number 10. Upon information and belief, the parents of these students have not been informed as to when services will be restored, and when and how Paterson will provide compensatory services.

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

Upon information and belief, there is a pervasive and illegal failure to provide students at School Number 10 with necessary services required by their IEPs. We request that NJDOE investigate these illegal practices under IDEA and New Jersey State law. We also request that the NJDOE investigate its role in freezing Paterson's budget to determine whether and to what extent this led to or exacerbated these violations, and investigate the failure of NJDOE to remedy the situation as soon as possible.

We seek corrective action with regard to the above-named student and the class of Paterson school-aged students at School Number 10 who are eligible for special education and related

services, including: (1) immediate restoration of special education and related services; (2) compensatory services; (3) reimbursement of parents' out-of-pocket-expenses for private special education and related services; and (4) provision of NJDOE to Paterson of sufficient resources to hire sufficient qualified staff and make other expenditures as required to meet the needs of its students who are entitled to special education and related services.

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

ELC has been in communication for counsel for Paterson Public Schools regarding other complaints related to insufficient staffing and provision of special education and related services. We are proceeding with this complaint on behalf of our client and similarly situated parents until the complaints are fully resolved, but would be willing to participate in mediation or other settlement efforts.

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:

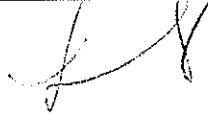
A copy of the complaint request, along with attachments, was mailed to: Superintendent Donnie Evans (name) on June 24, 2011 (date);

A copy of the complaint was also mailed and faxed to Joanne Butler, Esq. on the same 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:  _____
(Person(s) Submitting Request)