



State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

CHRISTOPHER D. CERF
Acting Commissioner

April 13, 2011

Lauren S. Michaels, Esq.
Education Law Center
60 Park Place, Suite 300
Newark, NJ 07102

SUBJECT: Complaint Investigation #C2011-4215

Dear Ms. Michaels:

The Office of Special Education Programs has completed its investigation of your written allegation(s) of noncompliance regarding the provision of special education programs and/or services as required under federal and state statute and regulation in the Paterson School District.

Enclosed you will find the final complaint investigation report which details the findings, conclusions and corrective actions for the Paterson School District to follow in order to comply with mandated regulation and statute. The Office of Special Education Programs will follow up with the district regarding these issues.

Should additional information be required, Maria Desautelle, Complaint Investigator, may be reached at (609) 292-7602.

Sincerely,

A handwritten signature in blue ink that reads "Dolores Walther".

Dolores Walther, Coordinator of Complaint Investigations
Bureau of Policy and Planning
Office of Special Education Programs

DW/MD

Enclosure

c: John Worthington, Acting Manager
Maria Desautelle, Complaint Investigator



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COMPLAINT INVESTIGATION REPORT

Complaint Number: C2011-4215
Respondent: Paterson School District
County: Passaic County
Investigation Conducted By: Maria B. Desautelle, Complaint Investigator
 Office of Special Education Programs

Background:

This investigation of a systemic complaint was initiated on December 28, 2010 on behalf of students with disabilities in the Paterson School District. A 30-day extension was granted on February 28, 2011 in order to accommodate an individual parent's request for mediation, while keeping the systemic complaint viable. On March 17, 2011 the investigation was extended for another 14 days as the district was forced to cancel two investigation meetings due to flooding in Paterson.

Investigation procedures included a review of documentation provided by the complainant, interviews with district personnel, review of documentation provided by the district and review of student IEPs through the Easy IEP Program.

Table of Documents:

Document Title	Date
Complaint filed by the Education Law Center (ELC)	December 28, 2010
List of students requiring compensatory speech services at School #2	March 17, 2011
E-mail from district to the Office of Special Education Programs (OSEP) clarifying compensatory services log	March 21, 2011
List of speech therapists employed	March 22, 2011

by or contracted by district	
Sample schedules for speech therapists	March 22, 2011
E-mail from district to the OSEP forwarding information requested during interviews with district	March 23, 2011
List of students who receive speech services from district therapists	March 23, 2011
Sampling of letters sent to parents inviting them to meetings regarding compensatory services	March 23, 2011
10 randomly selected service logs for contracted speech therapists	March 23, 2011
E-mail to the OSEP from district confirming March 23, 2011 letters were mailed	March 25, 2011

Persons Interviewed:

Title	Date of Interview
Paterson School District Attorney	March 22, 2011
Supervisor of Special Services	March 22, 2011

Issue #1:

Whether students at School #2 are receiving speech services in accordance with their IEPs for the 2010-2011 school year.

Code References:

N.J.A.C. 6A:14-3.9 (Related Services)

N.J.A.C. 6A:14-4.1(a) (Programs and Instruction – General Requirements)

Statement of the Problem:

Complainant alleges the Paterson School District has failed to provide speech services for multiple students at School #2 in accordance with the IEPs of those students. One individual student was named as an example; however, the parent requested that an individual complaint be opened so that their child's case could be mediated and resolved separately.

The complainant further alleges that School #2 currently employs 2 full-time and 1 part-time speech therapist when, in fact, School #2 should have 4 full-time speech therapists. The complainant further alleges that the assignments and/or hours for the

speech therapists have been reduced at School #2 so that the therapists could provide services to preschool students who also were not receiving speech services.

District Response:

The district states that 116 students at School #2 are entitled to speech services. Of those students, 73 have received services. Those services are provided by 2 full-time district speech therapists and 1 part-time (2 days per week) speech therapist. The district admits that the remaining 43 students were not receiving speech services until the end of December 2010 and early January 2011. The district states that it needs 4 full-time speech therapists to service School #2, but only has the staffing as set forth above. The district admits the staffing shortage has existed for several years, due to a lack of qualified candidates. However, in past years, the district was able to compensate for staffing shortages with outside speech contractors.

In the current school year, due to budget constraints, the district was not permitted to contract with outside therapists until the end of December 2010. The district has contracted with an outside service provider and has begun to provide some compensatory services, in addition to providing services in accordance with students' IEPs.

The district denies any speech therapist was moved to address speech service shortages in the preschool or anywhere else in the district. According to the district, one speech therapist was moved by her request prior to the 2009-2010 school year to an autistic support program within the district.

Findings of Fact:

1. There is no dispute the district did not provide speech services for 43 students in accordance with their IEPs from the beginning of the school year to the end of December 2010 and January 2011.
2. Those 43 students are entitled to compensatory speech services.
3. Through interviews and documentation, the district has provided credible evidence to show it has contracted with an outside agency for 4 part-time speech therapists to provide speech services in accordance with IEPs and compensatory services for the 43 students.
4. Based on a sampling of service logs, as well as interviews with district staff, the district has shown that it is now providing speech services to the above students.
5. The above service logs do not differentiate between regular IEP sessions and compensatory sessions.

6. Based on a sampling of 10 letters, as well as e-mails from the district, it is determined that as of March 23, 2011, the parents or guardians of the 43 students who are entitled to compensatory services have been invited to a meeting to discuss compensatory services with the district.
7. The district provided a list of 73 students who have received speech services since September 2010. Based on interviews and a sampling of provider service logs, it is determined that those services were provided by district speech therapists.

Conclusion:

N.J.A.C. 6A:14-4.1(a) requires that a district fully implement a student's IEP. In this case, there is no dispute that due to staffing shortages, the district did not provide speech services as required by the IEPs of 43 students in School #2. Therefore, the district is determined noncompliant, and corrective action is necessary.

The district has already provided a list of students who are entitled to compensatory speech services for the 2010-2011 school year. Corrective action will require the district to provide the compensatory services, as well as demonstrate that speech services are being provided in accordance with students' IEPs for all students in School #2.

CORRECTIVE ACTION PLAN:

Finding #3: Provision of speech services for the 2010-2011 School Year Element #27: FOR INTERNAL USE ONLY			
CAP Directive Activities	Documentation needed to demonstrate compliance	Documentation Due Date	Documentation submitted to
1. The district is directed to provide a list of compensatory services owed as agreed to by the parent(s) for each of the 43 students identified as	List of students with corresponding compensatory services owed.	Monthly beginning April 29, 2011 until all compensatory services are provided.	Maria Desautelle, Complaint Investigator

<p>requiring compensatory services.</p> <p>2. The district is directed to develop a tracking mechanism for tracking the provision of compensatory services¹ to the 43 students identified as requiring compensatory services. <i>Refer to the enclosed addendum regarding the provision of compensatory services.</i></p> <p>3. Provide the compensatory speech services.</p> <p>4. The district will provide documentation demonstrating that students who are serviced by district speech therapists continue to receive services in accordance with their IEPs.</p>	<p>Sample of tracking mechanism</p> <p>Log of services differentiating between compensatory services and regular IEP services.</p> <p>Monthly service logs for 10 randomly selected students whose speech services are provided by district therapists. These logs should be for 10 different students each month.</p>	<p>April 29, 2011</p> <p>Monthly, beginning April 29, 2011 until all compensatory services are provided.</p> <p>Monthly, beginning April 29, 2011 until June 30, 2011.</p>	<p>Maria Desautelle, Complaint Investigator</p> <p>Maria Desautelle, Complaint Investigator</p> <p>Maria Desautelle, Complaint Investigator</p>
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¹ As part of the investigation, the district developed a chart which identifies all students and the corresponding amount of speech therapy owed. This chart should be submitted, via email, on a monthly basis to Maria Desautelle, Complaint Investigator at the OSEP, until all services are provided.

Submission and Verification of Corrective Action:

Pursuant to U.S. Department of Education requirements, the Office of Special Education Programs (OSEP) 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 OSEP to ensure completion. These may include the withholding of IDEA funds, until all corrective activities are documented and approved. Once submitted and approved, the OSEP 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 Student Services

7/11/11
Date

**NEW JERSEY DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION PROGRAMS (OSEP)
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 OSEP.

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 OSEP.

The school district must submit a **Compensatory Services Schedule** to the OSEP 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 OSEP 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 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

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

school district must document its efforts to provide the compensatory services and submit such documentation to the OSEP. Upon review of the documentation, the OSEP 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 OSEP 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 OSEP to ensure completion.