

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

Date: November 5, 2010

To: **Roberta Wohle, Director**  
**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

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

Phone: (973) 624- 1815 x 15 Fax: (973) 624 - 7339 Email address: lmichaels@edlawcenter.org

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], minor ward of [REDACTED]; [REDACTED], minor child of [REDACTED]; [REDACTED], minor child of [REDACTED]; [REDACTED], minor child of [REDACTED]; [REDACTED], minor child of [REDACTED]; and all students with disabilities or potential disabilities attending preschool programs funded by Paterson Public Schools.

School where the alleged violation(s) occurred: All Paterson preschools  
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.

Please see attached

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

Please see attached

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

Please see attached

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

On November 3, 2010, ELC Executive Director David Sciarra discussed the complaint with Superintendent Evans, who indicated that the County Executive Superintendent has just lifted the hiring freeze imposed in August, and the district would be taking steps to try to resolve the problem. We are proceeding with this complaint on behalf of our clients and similarly situated parents until the complaint is fully resolved, but would be willing to participate in mediation or other settlement efforts.

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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.

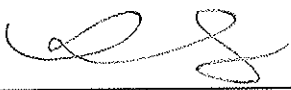
Check below to verify whether:

A copy of the complaint request, along with attachments, was mailed to: Superintendent Donnie Evans (name) on November 5, 2010 (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)

## **Attachments to Complaint Investigation Request**

Paterson Public Schools and New Jersey Department of Education

**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 clients 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 (1) the denial of services to eligible preschool-aged students in violation of IDEA's FAPE requirement and in violation of those students' IEPs, and (2) the denial of special education evaluations in violation of IDEA's child-find requirements.

(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), which 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 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 students, and upon information and belief, all special education students attending classes in Paterson's preschool programs, are not receiving special education and related services, or in some cases receiving only limited related services, in violation of FAPE and in violation of their IEPs. Also upon information and belief, students in self-contained classes are being taught by substitute teachers rather than certified special education teachers, and students in team-taught inclusion classes are being taught only by a general education teacher, in violation of FAPE and in violation of their IEPs.

(B) All children aged three through twenty-one years old with disabilities who are in need of special education and related services must be located, identified, referred for evaluation and evaluated; this is known as the "child find" obligation. 20 U.S.C.A. § 1412(a)(3)(A); 34 C.F.R. § 300.111(a); N.J.A.C. 6A:14-3.3(a)(3)(ii). A parent may also make a written request for an evaluation, which must be treated as a referral and forwarded to the CST without delay. 20 U.S.C.A. § 1414(a)(1)(B); 34 C.F.R. § 300.301(b); N.J.A.C. 3.3(d)(1).

Within twenty days of a referral, the school district must convene a meeting of the CST, the parent and the general education teacher of the child who is knowledgeable about the child's educational performance to determine whether a special education evaluation is warranted. N.J.A.C. 6A:14-2.3(h)(5)(i) and 6A:14-3.3(e). If the group determines that an evaluation is

warranted, the parent must be provided with a written notice that describes the types of assessments to be performed; a request for consent to evaluate must be included with the notice. 20 U.S.C.A. §§1414(a)(1) ,1414(a)(1)(D)(1), and 1414 (b)(1); 34 C.F.R. § 300.300(a); N.J.A.C. 6A:14-2.3(a)(1), (d), (f) and (h). The consent to evaluate a preschool age child must be obtained without delay. N.J.A.C. 6A:14-3.4(e)(3).

Upon information and belief, Paterson is neither processing referrals and requests for evaluation for preschoolers, nor requesting or accepting parental consents for students who need evaluations, and the evaluations are therefore not being performed, therefore violating Paterson's child-find obligation with respect to students in its preschool programs. Upon information and belief, Paterson does not have a full CST to process referrals, requests, and evaluations for preschool students.

(C) It is the responsibility of the state educational agency, and your office in particular, to ensure that Paterson students receive a free and appropriate public education in accordance with their IEPs . 20 U.S.C.A. § 1412(a)(11)(A). Upon information and belief, the aforementioned violations are due to an order from the New Jersey Department of Education, "freezing" Paterson's budget and prohibiting Paterson from making hiring and other expenditures necessary to provide special education services and programs to eligible preschool children and children who are waiting to be evaluated for special education eligibility. Through this "freeze," the state educational agency is violating the rights of preschool students in Paterson to FAPE, to services in accordance with their IEPs, and to child find.

**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).**

Upon information and belief, there are approximately 250 students in Paterson aged three through five years old who have be determined to be eligible for special education and related services, and have IEPs detailing the services to which they are entitled. These related services include, but are not limited to, speech therapy, occupational therapy, and physical therapy. Upon information and belief, there are approximately sixty students in Paterson aged three through five who have been identified and referred for a special education evaluation and who are waiting for the CST to determine whether evaluation is warranted.

Upon information and belief, on September 13, 2010, special education teachers and related service providers including speech therapists, occupational therapists, and physical therapists were to begin providing services to students at Concerned Parents for Head Start (CPHS), a preschool provider in Paterson. However, upon information and belief the special education teachers and speech therapists did not arrive to provide services. Upon information and belief, inquiries from parents and CPHS personnel were met with the response that Paterson would soon

resume providing those services. However, to date, special education and related services have either not been provided at all or have been provided in a limited amount that does not satisfy the requirements of the IEPs of CPHS students.

██████████, born ██████████, has been classified as a preschool child with a disability eligible for special education and related services. **Exhibit A.** His IEP for the 2010-2011 year includes In-Class Resource Center Support for 30 minutes every six school days. **Exhibit A.** Upon information and belief, ██████████ has not received any In-Class Resource Center Support in the 2010-2011 school year.

██████████, born ██████████, has been classified as a preschool child with a disability eligible for special education and related services. **Exhibit B.**<sup>1</sup> His IEP for the 2010-2011 year includes Resource Support for 30 minutes every six school days, and speech/language therapy every six school days in a group of two to five children. **Exhibit B.** Upon information and belief, ██████████ has not received any Resource Support or speech/language therapy in the 2010-2011 school year.

██████████, born ██████████, has been classified as a preschool child with a disability eligible for special education and related services. **Exhibit C.** His IEP for the 2010-2011 year includes Resource for 30 minutes every six school days, speech/language therapy every six school days in a group of two to five children, and occupational therapy every six school days. **Exhibit C.** Upon information and belief, ██████████ has not received any Resource, speech/language therapy, or occupational therapy in the 2010-2011 school year.

██████████, born ██████████, has been classified as a preschool child with a disability eligible for special education and related services. **Exhibit D.** His IEP for the 2010-2011 year includes Resource Support for 30 minutes every six school days, and speech/language therapy every six school days in a group of two to five children. **Exhibit D.** Upon information and belief, ██████████ has not received any Resource Support or speech/language therapy in the 2010-2011 school year.

██████████, born ██████████, has been classified as a preschool child with a disability eligible for special education and related services. **Exhibit E.** His IEP for the 2010-2011 year includes In-Class Resource Center Support for 30 minutes every six school days, and speech/language therapy every six school days in a group of two to five children. **Exhibit E.** Upon information and belief, ██████████ has not received any In-Class Resource Center Support or speech/language therapy in the 2010-2011 school year.

██████████, born ██████████, has been classified as a preschool child with a disability eligible for special education and related services. **Exhibit F.** Her IEP for the 2010-2011 year includes Resource Support for 30 minutes every six school days, Resource Consultation twenty minutes once per month, speech/language therapy every six school days in a group of two to five children, and speech/language consultation twenty minutes once per month.

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<sup>1</sup> Because ELC's fax machine is currently out of commission, IEPs for ██████████, ██████████, ██████████, ██████████, and ██████████ (Exhibits B, D, F, and G) will be sent by separate mailing next week.

**Exhibit F.** Upon information and belief, [REDACTED] has not received any Resource Support, speech/language therapy, or resource or speech language consultation in the 2010-2011 school year.

[REDACTED], born [REDACTED], has been classified as a preschool child with a disability eligible for special education and related services. **Exhibit G.** His IEP for the 2010-2011 year includes Resource Support for 30 minutes every six school days, and speech/language therapy every six school days in a group of two to five children. **Exhibit G.** Upon information and belief, [REDACTED] has not received any Resource Support or speech/language therapy in the 2010-2011 school year.

Upon information and belief, related services either have not provided at all, or provided to a lesser extent than required by children's IEPs, at all other preschool programs in Paterson for the 2010-2011 school year. In addition, upon information and belief, some self-contained classrooms were and continue to be taught by teachers who only have substitute teaching certification, and some team-taught classes were and continue to lack a special education teacher. Moreover, on information and belief, Paterson CSTs failed and continue to fail to process paperwork for initial evaluations, and have not sought parental consent to evaluate in an attempt to delay or deny special education and related services.

On October 6, 2010, Gloria Bodker, Early Childhood Supervisor for Paterson, sent a letter to parents of children in preschool who should be receiving special education and related services. **Exhibit H.** In that letter, Bodker stated that "the District is going through a difficult financial situation. As a result, there have been personnel and program changes which may have affected your child's educational program. Many families have contacted me with concerns about their children's program and services." **Exhibit H.** The letter invited parents to meet with her on October 13, 2010 "[i]n order to clarify how your child's program has been affected and to clarify how services will be delivered for this year." **Exhibit H.** Upon information and belief, this was the first and only notice that parents received from Paterson regarding this issue. On October 7, 2010, Bodker emailed supervisors of preschool programs, also inviting them to come the meeting to address their concerns "about the special education program at your sites" and forwarding them a copy of the letter sent to parents of preschool special education students. **Exhibit I.**

Upon information and belief, at that meeting Bodker told those who attended only that Paterson was working to address the problem and restore services for the affected children. Upon information and belief, she did not explain how or when the situation would be resolved.

Upon information and belief, at a meeting of Paterson's Board of Education, Paterson Superintendent Donnie Evans told parents that Paterson's budget was "frozen" due to a state audit.

On October 21, 2010, a parent emailed Superintendent Evans, requesting information regarding why the services were not being provided, and asking that they be restored. **Exhibit J.** The

following day, Evans responded to the parent's concerns, stating only that "I assure you that we will meet the needs of your child as reflected on the Individual Education Plan." **Exhibit J.**

CPHS Disability Manager Jenna Kerekes arranged to have additional sessions with Bodker for those parents who were unable to attend the October 13, 2010 session. See **Exhibit K.** At these meetings, Bodker informed parents that she had submitted her office's budget to the Superintendent, and that her office had been recently notified that it was either cancelling or freezing services due to an audit of Paterson's budget by "the state." She told parents that she was trying to hire additional CST members to obtain funding to "outsource." In response to parent questions regarding how and when the services would be restored, Bodker stated that she was meeting with Evans on October 29, 2010 to discuss the issue. Bodker told parents that her office was tracking how many hours of services that students were missing so that they could be made up.

On October 27, 2010, after the 10:00 a.m. meeting with Bodker, a parent spoke to a contracted speech therapy provider who was at CPHS providing services to a child. The therapist told that parent that her hours had been cut and her understanding was that only students with hearing impairments were getting some speech services. This parent called the Superintendent's office and was told that the early childhood education budget was submitted late and that Superintendent Evans, Bodker, and Bodker's supervisor would be meeting on October 29, 2010 to review the budget.

Upon information and belief, parents called Bodker's office on November 2, 2010 to learn the outcome of the October 29, 2010 meeting. Bodker's secretary told a parent that no decision had been made. On November 3, 2010, one parent received a voice message from Susana Peron, Paterson's Director of Early Childhood Education, indicating that staff positions that were "held" because of the budget freeze had now been approved, and that Paterson planned to hire speech therapists and to evaluate staff deployment so that children would begin receiving related services. She also stated that Paterson was exploring contracting to provide "some" compensatory services. However, no details were provided regarding when this would occur, whether, after hiring, Paterson will have a sufficient number of speech therapists, whether other related service providers and special education teachers will also be hired, and when and to what extent Paterson intends to provide compensatory education to affected students.

Upon information and belief, to date, preschool students in Paterson are receiving no special education or related services, or significantly fewer services than are listed in their IEPs. In addition, upon information and belief, CSTs are no longer having initial identification meetings for students who have been identified and referred for a determination of whether an evaluation is warranted. Parents and preschool program personnel had not been informed as to when services will be restored, and when and how Paterson will provide compensatory services. Upon information and belief, the reason that Paterson has given for these violations is that its budget was audited by NJDOE, and that until the audit is completed, the budget for preschool special education services would remain "frozen."



**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 Paterson preschool students with necessary services required by their IEPs and failure to obtain their parents' consent for evaluations for special education eligibility. 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 pending an audit at the beginning of the school year 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 students and the class of Paterson preschoolers who are or in the future will be eligible for special education in the form of (1) immediate restoration of special education and related services; (2) immediate referrals to the Child Study Team (CST) of students suspected of having a disability and needing special education and related services, and immediate referral of students whose parents requested a special education evaluation, in order for the CST to determine if evaluation is warranted; (3) immediate requests for parental consent for those whom the CST determined an evaluation is warranted, and immediate evaluation for those children whose parents have consented to an evaluation; (4) compensatory special education and related services; (5) reimbursement of parents' out-of-pocket-expenses for private assessment, placement, and other educational services; and (6) 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 preschool students.