



## Education Law Center

*Standing Up for Public School Children*

February 23, 2011

*David G. Sciarra, Esq.  
Executive Director*

**Student Rights Project**

*Elizabeth Athos, Esq.  
Senior Attorney*

*Ruth Deale Lowenkron, Esq.  
Senior Attorney*

*Lauren S. Michaels, Esq.  
Greenberg Traurig  
Equal Justice Works Fellow*

*Jenna L. Staffeld, Esq.  
Skadden Fellow*

*Aimee Roche  
Intake Coordinator*

Dolores Walther, Coordinator of Complaint Investigation  
Office of Special Education Programs (OSEP)  
New Jersey Department of Education  
P.O. Box 500  
Trenton, NJ 08625-0500  
Facsimile: (609) 984-8422

**VIA FIRST CLASS MAIL AND FACSIMILE**

**Re: Complaint # C2011-4193**

Dear Ms. Walther:

I am in receipt of your letter dated February 10, 2011, notifying me that the New Jersey Department of Education's Office of Special Education Programs (OSEP) has completed its investigation of C2011-4193, and providing me with OSEP's final Complaint Investigation Report ("Report"). I write this letter to request reconsideration of the Report under N.J.A.C. 6A:14-9.2(c)(1), because Education Law Center (ELC) believes that this final decision includes errors that are material to the determination in the decision, and to remediation of Paterson School District's ("the District's") relevant violations.

As a preliminary matter, ELC notes that OSEP did not interview any parents of children affected by the violations listed in the complaint investigation request that led to C2011-4193, despite my having provided the OSEP investigator with the names, contact information, and IEPs of more than a dozen parents who were willing to speak with OSEP as part of the investigation; had any parents been contacted, perhaps some or all of these issues would have been resolved prior to the issuance of the Report. For example, [REDACTED], one of the students whose circumstances were specifically brought to the attention of the investigator and the District, is a child on home instruction who is still not receiving speech-language services. By email that was sent to counsel for the

District and to OSEP on February 7, 2011, ELC already notified OSEP that [REDACTED] is still without speech services. See enclosed copy of email dated February 7, 2011. [REDACTED] has tried numerous times to contact District staff and the service provider directly. ELC requests that OSEP direct the District to immediately restore [REDACTED]'s speech-language services and to provide compensatory services for all of the speech-language services that he did not receive, and to direct the District to do the same for all other preschool students in the District who are on home instruction.

Please find ELC's objections and specific requests that relate to particular "Issues":

### **Issue # 1 - Evaluations**

"When a preschool age child is referred for an initial evaluation, a speech-language specialist shall participate as an additional member of the child study team in the meeting to determine whether to evaluate and the nature and scope of the evaluation." N.J.A.C. 6A:14-3.3(e)(3). Although the Report indicates that school-age child study teams (CSTs) are now being partially or entirely re-assigned to address the backlog of preschoolers awaiting evaluation, it is ELC's understanding that there is no speech-language specialist serving as a member of the child study team assigned to preschool students, and that the District has not been conducting, or only recently began to conduct, speech-language evaluations for preschoolers awaiting evaluation.

In addition, the students identified by the District as part of the "backlog" were only those for whom the parental request for evaluation was received by the District between May 21, 2010 and December 31, 2010. ELC is concerned that those children whose evaluation requests were received after December 31, 2010, but whose evaluations were or are delayed because of the lack of speech-language therapists participating as members of the CST and/or conducting a speech-language evaluations, are not included in the corrective action plan (CAP).

For this reason, ELC requests reconsideration and a directive to the District, specifically requiring the participation of a speech-language specialist in all meetings to determine if an initial special education evaluation is warranted for a preschool student. In addition, ELC requests reconsideration and a directive to the District that speech-language evaluations must be conducted in conformity with the procedural timelines in N.J.A.C. 6A:14-3.3 and 3.4, and that compensatory education must be given to students whose IEP implementation was delayed as a result of violations of the procedural timelines. Finally, ELC requests reconsideration and a directive to the District ensuring compliance with these requirements for preschoolers whose parental request for evaluation was received by the district from January 1, 2011 forward, in addition to those received between May 21, 2010 and December 31, 2010.

### **Issue #2 - Implementation of IEPs**

Regarding speech-language services, there is no dispute that speech-language services were not provided from the beginning of the school year through November 30, 2010.

However, even if the District began to provide some speech services “in December 2010,” for those students who did not begin to receive speech-language therapy as listed in their IEPs on December 1, 2010, ELC requests reconsideration and that OSEP direct the District to provide compensatory services for all services that it failed to provide each student, including those that were to have taken place in December 2010 or later. ELC also requests that OSEP specifically direct the District that compensatory services are to be provided in addition to current IEP services, not instead of them.

The District admitted that “the inclusion classrooms for TCU 1, 2, 3, 4, and 6 do not have separate certified special education teachers even though it is required by some students’ IEPs.” These classrooms were to be co-taught by both a general education teacher and a special education teacher. As OSEP is well aware, a failure to implement an IEP cannot be cured by changing an IEP “to reflect the current teaching model” when it is inconsistent with a student’s needs. A child’s education program and placement must be tailored to the student, not the child to a pre-packaged program and placement. 20 U.S.C.A. § 1401(29) and 1414(d)(1)(A); 34 C.F.R. §§ 300.39(a)(1), 300.39(b)(3); 300.320; N.J.A.C. 6A:14-1.3. ELC objects to the CAP that the District is to “conduct IEP meetings to discuss the provision of compensatory services for those identified students and program revisions to reflect the current teaching model” on the following grounds:

1. The CAP improperly directs a blanket revision of IEPs to conform to a “current teaching model” regardless of student need;
2. The CAP does not specify what the “current teaching model” is;
3. The CAP does not direct the District that for those students who require the services of both a special education and a general education teacher, the District must provide services in conformity with those children’s’ IEPs, rather than altering the children’s IEPs to “cure” this violation of special education law.

In addition, although “[a]ccording to the district, the general education teachers in these classrooms are dual-certified professionals holding both a P-3 and Teacher of the Handicapped or Teacher of Students with Disabilities licenses,” it does not appear that OSEP confirmed this information. ELC has learned that at least one preschool teacher of an “inclusion class” does not have appropriate special education certification. Therefore, ELC requests reconsideration and that OSEP independently verify the certification of all of the “inclusion” teachers at all Paterson preschools to ensure that they all actually possess both certifications. ELC also requests that OSEP verify that any assistants in those classes are paraprofessionals that meet the requirements of the Federal No Child Left Behind Act, 20 U.S.C. § 6319.

In addition, OSEP found that occupational therapy (OT) and physical therapy (PT) services began on approximately October 1, 2010. ELC requests reconsideration and a directive to

the District to provide OT and PT compensatory services for each student for services not provided from the beginning of the school year until services were restored.

**All Issues and CAPs in respect of compensatory education and services.**

“In resolving a complaint in which the SEA [State Education Agency] has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address-- (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and (2) Appropriate future provision of services for all children with disabilities.” 34 C.F.R. 300.151(b). The corrective action plan ordered when a District is found to have violated special education law “shall include, but not be limited to: 1. Objectives, strategies and activities for correcting each noncompliance item cited, including resources needed to obtain the objectives; and 2. The dates by which the noncompliance will be corrected.” N.J.A.C.6A:14-9.2(g).

ELC objects to the lack of specificity in the CAP Directive Activities regarding the process by which the District shall “conduct IEP meetings to discuss the provision of compensatory services.” ELC has already received reports from parents, including:

1. Speech-language service providers contracted through Kid Clan are being advised not to speak with parents.
2. Speech-language service providers are spending approximately one-third of compensatory services sessions filling out paperwork, rather than providing services for the whole session.
3. District staff members have told at least one parent that they “have no idea what is going on,” and that “everything keeps changing” regarding special education and related services, and compensatory education and services.
4. Parents are being invited to meetings to discuss the provision of compensatory education and services that are not IEP meetings and are not attended by a speech-language specialist, even where the missed services are speech-language therapy sessions.
5. Parents are being asked to “sign off” on compensatory services without an IEP meeting.
6. Parents are not being informed about how they may object to the District's compensatory education and services offer, or to whom they may object.
7. Parents are being told that their children will first receive compensatory services to make up for services denied from September through December, and then regular IEP services will start once those compensatory sessions are completed.

8. Parents are being told that the District's offer is the only compensatory service plan to which the District will agree.
9. Parents are not being provided with any information about the difference between compensatory services and regular services mandated by IEPs and their right to a free and appropriate public education (FAPE).

See attached document from Paterson Public Schools, apparently designed to explain the compensatory services offered by the District, with signature lines for "Parent" and "District Representative." This was the only document offered to one parent, and she was asked to sign it as "legal documentation" that she accepts the compensatory services offered by the District.

A particularly egregious example of how the District is implementing the CAP is that of a parent of a child who was supposed to be in a team-taught "inclusion class," with both a general education teacher and a special education teacher. The parent was told that because a special education teacher would have provided the equivalent of a half an hour of direct service a day to the child, the District was offering the number of hours in equivalent resource support. This parent was told that the District calculated that her son was denied 65 hours of services -- with no mention of the current and future missed services -- but the District would not provide it during the school year and instead was offering a summer program. Details about this program were not provided. When the parent stated that she did not agree with the District's offer, she was told by her child's case manager that this was the only offer that the District would make for compensatory education and services, and the case manager directed the parent to contact ELC with her objections.

Clearly, the lack of specificity and clarity in the Directive Actions is leading to confusion on the part of District personnel, the denial of parents' rights to meaningfully participate in the development of their children's program and to ensure that their children receive FAPE, and the denial of both IEP services, and compensatory education and services to remedy the District's past and ongoing failure to provide services mandated by their children's IEPs and by FAPE.

ELC additionally requests that OSEP clarify and direct the District that compensatory education and services must be provided for all services denied to each particular student. Although some students began to receive some speech-language services in December, children who were denied services in December, January, or February are entitled compensation for those services as well as those that were denied between September and November 2010.

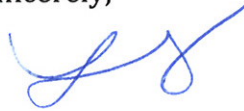
ELC also requests that OSEP clarify and direct the District regarding what process the IEP team must use to determine what compensatory education is appropriate, and that proper notice to parents must include the procedure by which they may object to the District's

offer of compensatory services or education if they believe that the compensatory services are inadequate to address the denial of IEP services and FAPE, and/or do not believe that the time, place, or manner of services offered are appropriate to their child's individual needs.

In addition, the "Compensatory Services Schedule" incorporated in the Report does not discuss IEP program revisions at all, so ELC requests that OSEP clarify and direct the District regarding what process parents may use to object to the "program revisions" envisioned by the CAP. Moreover, it does not appear that parents are being provided with the Report or the "Compensatory Services Schedule" when being asked to agree to services proposed by the District. ELC requests that this be corrected as well.

ELC also notes that although no extension of the 60-day statutory deadline was granted, OSEP did not issue the Report until 33 days after it was due. Given OSEP's lengthy delay in producing its Report, I will appreciate a prompt reply and the aforementioned issues being remedied without delay. Thank you for your reconsideration of these issues.

Sincerely,



Lauren S. Michaels, Esq.

Cc: John Worthington, Acting Director, OSEP  
Maria Desautelle, Complaint Investigator, OSEP  
Joanne L. Butler, Esq., Schenck Price Smith & King LLP  
Sidney A. Sayovitz, Esq., Schenck Price Smith & King LLP  
Paterson Parents