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State of New Jersey

DEPARTMENT OF EDUCATION

PO Box 500

TRENTON, NJ 08625-0500

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

KIMBERLEY HARRINGTON  
Commissioner

July 28, 2017

Jessica Levin, Esq.  
Education Law Center  
60 Park Place, Suite 300  
Newark, NJ 07102

**SUBJECT: Complaint Investigation #C2017-5758**

Dear Ms. Levine:

The Office of Special Education Policy and Procedure (OSEPP) 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 OSEPP will follow up with the district regarding these issues.

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

Sincerely,

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

Dolores Walther, Ph.D., Coordinator of Complaint Investigations  
Office of Special Education Policy and Procedure

Enclosure

c: Maria Desautelle, Complaint Investigator  
Passaic Executive County Superintendent



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### COMPLAINT INVESTIGATION REPORT

**Complaint Number:** C2017-5758

**Complainant:** Education Law Center

**Respondent:** Paterson School District

**County:** Passaic County

**Investigation Conducted By:** Maria B. Desautelle, Complaint Investigator  
Office of Special Education Policy and Procedure  
(OSEPP)

#### **Procedural History:**

This investigation was initiated on May 31, 2017 on behalf of students with disabilities in the Paterson School District. The complaint was filed by the Education Law Center ("ELC"). The complaint alleges that the district is failing to ensure that students with disabilities "in early intervention programs are appropriately transitioned to preschool programs with timely CST evaluations and IEPs developed by their third birthdays." The complaint further states that the district is failing to provide related services to preschool students with disabilities. The district responded that "upon information and belief," it was acting in accordance with the law. The OSEPP was unable to conduct a thorough investigation of the allegations as the district failed to respond to document requests and failed to make staff available for interviews. The OSEPP investigator was able to review some information in Easy IEP, but the documentation was inconclusive.

#### **Issue #1:**

**Whether the district is meeting its child find obligations for students transitioning from early intervention programs and/or students turning three years old who are referred for child study team evaluations by a parent or guardian.**

#### **Issue #2:**

**Whether the district is using proper procedures to complete initial child study team evaluations, determine eligibility, and, if appropriate, develop and implement IEPs within the timelines required by special education law.**

**Issue #3:**

**Whether the district is implementing the IEPs of preschool students with disabilities with regard to related services.**

**Code References:**

- N.J.A.C. 6A:14-1.1 (General Provisions: General requirements)
- N.J.A.C. 6A:14-3.3 (Services: Location, referral and identification)
- N.J.A.C. 6A:14-3.4 (Services: Evaluation)
- N.J.A.C. 6A:14-3.5 (Services: Determination of eligibility for special education and related services)
- N.J.A.C. 6A:14-4.1 (Programs and Instruction: General requirements)

**Findings of Fact:**

1. On June 6, 2017, OSEPP sent a letter to the district opening this complaint on Issues #1, #2 and #3 above.
2. The June 6, 2017 letter specified that the district had ten calendar days from receipt to either resolve the issue at the local level or submit a written response to the complaint.
3. On June 20, 2017, counsel for the district submitted the following response, in relevant part:

As you are aware, this office represents the State-Operated District of the City of Paterson (the "District") in connection with the above referenced matter. Please be advised the District is in receipt of Amended Complaint #2017-5758 (the "Amended Complaint") and your correspondence dated June 6, 2017. Please be advised that the District is in the process of examining the allegations but is upon information and belief acting in accordance with the law.

4. Subsequently, OSEPP made document requests and attempted to schedule a conference call or meeting to discuss the complaint; however, the district failed to provide any documentation or take appropriate steps to accommodate a conference call or a meeting with the complaint investigator. As of the date of this report, OSEPP has received no further response from the district regarding this complaint.

**Conclusion:**

**N.J.A.C. 6A:14-4.1(a) requires districts to fully implement the IEPs of students with disabilities. Additionally, N.J.A.C. 6A:14-1.1(h) requires districts to maintain documentation demonstrating compliance with the special education**

requirements set forth in Chapter 14 (Special Education) of the administrative code. In this case, the district has failed to show compliance with either of the requirements. The district further failed to demonstrate compliance with N.J.A.C. 6A:14-3.3 through 3.5. Therefore, the district is determined noncompliant, and corrective action is necessary.

**Corrective Action Plan (CAP):**

<p><b>Finding: Noncompliance regarding child find procedures</b></p> <p>Element #36: FOR INTERNAL USE ONLY.</p>			
<p><b>CAP Directive Activities:</b></p>	<p><b>Documentation needed to demonstrate compliance:</b></p>	<p><b>Documentation Due Date:</b></p>	<p><b>Documentation submitted to:</b></p>
<p><b>Issues #1 and #2:</b></p> <p>1. The district will provide a memorandum to OSEPP documenting its child find procedure. The district will further provide information demonstrating that the child find procedure has been disseminated in the community.</p>	<p>Memorandum to OSEPP with supporting documentation</p>	<p>August 15, 2017</p>	<p>Maria B. Desautelle, Complaint Investigator</p>
<p>2. The district will provide a list of all students referred for evaluation who turned age three during the 2016-2017 school year.</p>	<p>Spreadsheet with students' names and dates of birth</p>	<p>August 15, 2017</p>	<p>Maria B. Desautelle, Complaint Investigator</p>
<p>3. The district will provide a list of all students ages three – five who were referred for evaluation for special education and related services for the 2016-2017 school year. The list should be sorted to indicate referrals by parents, referrals by early intervention and total referrals.</p>	<p>Spreadsheet with student name, date of birth, date of referral, and the party who made the referral</p>	<p>August 15, 2017</p>	<p>Maria B. Desautelle, Complaint Investigator</p>

4. Once the lists in #2 and #3 above are provided, OSEPP will update this CAP to address initial evaluation timelines and compensatory services, if applicable.	TBD	TBD	TBD
<b>Finding: Noncompliance regarding documentation of related services and implementation of IEPs</b>  Elements #27 and #31: FOR INTERNAL USE ONLY.			
<b>CAP Directive Activities:</b>	<b>Documentation needed to demonstrate compliance:</b>	<b>Documentation Due Date:</b>	<b>Documentation submitted to:</b>
<b>Issue #3:</b>  1. The district will determine the number of occupational therapy (OT), physical therapy (PT) and speech services each preschool student was eligible for and missed for the 2016-2017 school year in accordance with each student's IEP.	Spreadsheet	August 15, 2017	Maria B. Desautelle, Complaint Investigator
2. The district must take steps to ensure that Easy IEP documentation is accurate and current so that OSEPP can review Easy IEP to determine accuracy of the district's documentation. If the district does not have documentation from a therapist documenting a session, the district may not count the session as provided.	The OSEPP will review Easy IEP to determine compliance.	Monthly, beginning August 15, 2017	Maria B. Desautelle, Complaint Investigator
3. The district will submit a plan to OSEPP for providing compensatory services for each student, including the modality through which the service is provided. For students whose services will be provided during	Plan and supporting documentation may be sent to OSEPP or presented at a site visit.	Monthly, beginning August 15, 2017	Maria B. Desautelle, Complaint Investigator

<p>Extended School Year (ESY) for whom the district proposes less than a one-to-one ratio, the district must send a request to amend the IEP without a meeting to the parent/guardian and receive written consent or hold an IEP meeting to effectuate an amendment. The district may start this process immediately and submit documentation of the parent/guardian's consent.</p>			
<p>4. The district will assure it has adequate staff or contracted therapists to provide compensatory services and regular IEP services. The district will further provide the services and differentiate in Easy IEP compensatory services versus regular IEP services.</p>	<p>Memorandum to OSEPP explaining how related services will be staffed and/or contracted.</p> <p>Spreadsheet documenting services and supported by service logs either in Easy IEP or manual logs.</p>	<p>August 15, 2017</p> <p>Monthly, beginning August 15, 2017</p>	<p>Maria B. Desautelle, Complaint Investigator</p> <p>Maria B. Desautelle, Complaint Investigator</p>

**Submission and Verification of Corrective Action:**

Pursuant to U.S. Department of Education requirements, the Office of Special Education Policy and Procedure (OSEPP) must ensure that any identified noncompliance is corrected as soon as possible, but in no case later than one year from identification. Therefore, the district 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 OSEPP to ensure completion. These may include the withholding of IDEA funds, until all corrective activities are documented and approved. Once submitted and approved, the OSEPP will be responsible for verifying the implementation of the corrective action plan through document review and/or onsite visit(s).

  
 John Worthington, Director  
 Office of Special Education Policy and Procedure

7-28-17  
 Date