



December 15, 2017

John Worthington, Esq., Director
Office of Special Education Policy and Procedure
New Jersey Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

Re: Follow-up to Complaint Investigations #C2017-5648 and #C2017-5758

Dear Mr. Worthington:

As you may know, ELC filed the above-referenced complaint investigation requests against the State-operated Paterson Public Schools (PPS) with OSEPP earlier this year. Those investigations resulted in State findings of serious deprivations of related services during 2016-17 to school-age and preschool children enrolled in PPS, and directives for corrective action. See enclosed Complaint Investigation Reports # C2017-5648 and #C2017-5758. ELC has since seen service logs documenting tens of thousands of hours of missed related services by PPS students during 2016-17, and has been attempting to monitor PPS's implementation of the corrective action plans mandated by OSEPP. Our efforts to date have uncovered critical issues that require OSEPP's immediate attention, expedited investigation, and, if warranted, prompt remediation.

Current Speech-Language Services and SLS Caseloads

We are still receiving reports of Paterson students who do not have speech-language services in place for 2017-18, combined with reports that there are Paterson speech-language specialists (SLS) who have caseloads of over 100 students. As a result, we are gravely concerned that the factors that led to systemic violations during 2016-17 have not yet been resolved in 2017-18.

Unlike OSEPP, ELC has neither the legal duty nor necessary access to conduct a far-reaching investigation to determine the scope of the current problem. The reports brought to our attention include students of various grades who have not received any speech-language services during 2017-18 at Alexander Hamilton Academy, students at other Paterson schools who are receiving fewer speech-language services than required by their IEPs due to SLS overload, and preschoolers at 17 of 23 preschool centers, including Gilmore II, who have not received any speech-language services during 2017-18.

The corrective action plan for preschool violations, #C2017-5758, requires the district to “assure that it has adequate staff or contracted therapists to provide compensatory services and regular IEP services.” While the corrective action plan for school-age students, #C2017-5748, does not include that explicit provision, it is implicit that the serious violations uncovered in that investigation will not have been corrected if the same problem continues into the following school year. Given the documented failures of PPS, the State’s role in operating PPS, and OSEPP’s obligation as the guarantor of a free appropriate public education for New Jersey students with disabilities, it is incumbent that OSEPP ensure that speech-language services are in place during 2017-18 for all of the Paterson students whose IEPs require those services.

If, as we believe, numbers of Paterson students are still not receiving speech-language therapy services, OSEPP must examine SLS case loads, hiring practices, and salaries to ensure that PPS has adequate staff. To the extent that PPS needs to contract with additional therapists to fulfill its obligations to its students, then OSEPP must ascertain whether PPS is unable to hire sufficient staff, N.J.A.C. 6A:14-5.1(c)(1)(v), by determining whether its hiring practices are appropriate and its salaries competitive with the prevailing market.

Moreover, OSEPP will have to work with PPS to ensure the immediate and appropriate implementation of speech-language services in accordance with each student’s IEP, and to develop a plan for compensatory services for 2017-18.

Compensatory Speech Services for 2016-17

As far as we know, PPS has yet to provide any compensatory speech services to students who were denied services during 2016-17. We understand that a plan is in the works, but are dismayed that it will be nearly half way through the school year before any compensatory services are implemented. With regard to the plan, we have seen PPS’s recently improved notice entitled “Compensatory Speech Services & Amendment of Speech and Language Services Options and Possible Request to Amend an IEP without a Meeting.” See enclosed notice. We are pleased that the new notice cures serious deficiencies of the prior version, such as by including the number of speech and language sessions missed during 2016-17, by offering the option of an IEP meeting, and by listing the option of declining compensatory services as the last option instead of the first.

However, the new notice remains flawed in at least two significant ways. First, parents are provided no assurance that the compensatory services offered will be provided in the group size mandated by their children’s IEPs. This is a particular concern for students with the most severe speech or language impairments, who may be entitled to therapy in an individual session or in a group size of no more than two or three. Second, parents are provided no information about the length of the ten in-school sessions that are offered as option 4. Without information that those sessions are likely to be 30 minutes, rather than the 1 hour sessions offered during the Saturday Academy as option 3, parents cannot fairly evaluate their options.

Moreover, it must be made clear to all staff and parents that parents who request IEP meetings will have their students' compensatory services individually determined. While the options offered to other parents may be considered at an IEP meeting, PPS cannot limit the options for provision of compensatory services to the set packages outlined on the notice.

Finally, PPS must address the translation of all compensatory service notices and IEP amendments into parents' native language. Because PPS' track record on translation has not been strong, it is important that OSEPP confirm that appropriate translations are being utilized.

Telepractice

Just this morning, it has come to our attention that PPS entered this month into a \$429,900 contract with DotCom Therapy of Missouri, an NJDOE-approved telepractice provider, to provide "skilled Speech and Language therapy and evaluation services to students to support program viability for greater use." If this agreement means that PPS intends to provide current or compensatory services to its students via telepractice, then OSEPP must immediately intervene to ensure that legal protections are in place.

First, OSEPP must enact regulations to govern the use of telepractice services in school. While ELC is aware that OSEPP issued guidance on September 26, 2017, under cases like Metromedia, Inc. v. Dir., Div. of Taxation, 97 N.J. 313 (1984), broad policy changes must be implemented in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and not through guidance alone.

Second, as spelled out in OSEPP's guidance, there must be a showing that a district is "unable to hire sufficient staff to provide the service in-person," before telepractice can be implemented.

Finally, as also spelled out in OSEPP's guidance, telepractice cannot be implemented without an IEP team determination that telepractice is the appropriate delivery method for a particular child.

OSEPP Responsibility for FAPE

It is undisputed under IDEA and its caselaw that OSEPP, as the State educational agency, bears ultimate responsibility for ensuring that New Jersey students with disabilities receive the free appropriate public education to which they are legally entitled. See, e.g., M.A. v. State-Operated Sch. Dist. of City of Newark, 344 F. 3d 335 (3d Cir. 2003); Kruelle v. New Castle County Sch. Dist., 642 F.2d 687, 696-97 (3d Cir. 1981).

OSEPP's obligation extends to ensuring that PPS has adequate resources for the hiring of sufficient staff. In that regard, we direct your attention to the enclosed ELC report, "Paterson Public Schools: Budget Impacts of Underfunding and Rapid Charter Growth," (August 2017) (PPS Budget Report), setting forth how resources in PPS have been "strained due to rising

enrollment, flat state aid and increasing charter school payments” over the period from 2008-2009 through 2015-2016. PPS Budget Report at 13. This report further documents that during the same period of resource constraints, PPS cut its spending on related services by a whopping 56%. Id.

Should legal action be required to vindicate the rights of PPS’s students, then OSEPP, as well as PPS, can be expected to bear liability for the relief due.

We seek your immediate assurance that urgent steps will be taken by OSEPP to address these important concerns. We appreciate your attention to this matter, and stand ready to assist in any way. If I can answer any questions, or you would like to discuss this matter by telephone, please do not hesitate to call me at (973) 624-1815, ext. 20.

Sincerely,

Elizabeth Athos, Esq.

Via electronic and regular mail

Encls.

Cc: Donna Arons, DAG
Frances Barto, Esq., Attorney for PPS
Eileen Shafer, Acting State District Superintendent
Dolores Walther, Ph.D., Coordinator of Complaint Investigations
Maria Desautelle, Complaint Investigator