

Center for *Children's* Advocacy

University of Connecticut School of Law
65 Elizabeth Street, Hartford, CT 06105

TRANSMITTED VIA FAX AND MAIL

June 1, 2009

State Department of Education
Bureau of Special Education
P.O. Box 2219, Room 359
Hartford, CT 06145

COMPLAINT

Dear Sir/Madam:

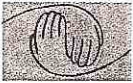
The Center for Children's Advocacy ("CCA") is a non-profit legal advocacy organization dedicated to the representation of at-risk children in Connecticut.

We file this state complaint as an organization complainant on behalf of all students with disabilities who are currently enrolled in the Hartford Transitional Learning Academy-Hartford Magnet Middle School ("HTLA-HMMS"). See §§34 C.F.R. 300.151(a)(1) and 300.153(a) (state complaints may be filed by an organization).

HTLA-HMMS is a self-contained, special education program administered by the Hartford Public Schools ("HPS") and directed by Dr. Marge Jackson ("Dr. Jackson"). HTLA-HMMS is located at 385 Washington Street, Hartford, Connecticut. In its present form, HPS created the HTLA-HMMS program at the start of the 2008-2009 school year. Although the program is officially part of the Hartford Magnet Middle School ("HMMS"), it is housed across the campus of the Learning Corridor from HMMS. Dr. Jackson informed undersigned counsel that HTLA-HMMS students only use the HMMS facilities for physical education and lunch and do not normally interact with regular education students during the school day. Upon information and belief, many HTLA-HMMS students are eligible for special education services under the identification of "Emotionally Disturbed."

CCA contends that the HPS has systematically and pervasively denied HTLA-HMMS students their rights under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), 29 U.S.C. § 794, Title II of the Americans with Disabilities Act of 1990 ("Title II"), 42 U.S.C. §12131 *et seq.*, and Conn. Gen. Stat. §10-233c by:

1) Failing to provide special education and related services in such a way as to confer on the class meaningful educational benefit;



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- 2) Failing to provide educational services in the least restrictive environment;
- 3) Excluding students from participation in school programs and activities based solely on their disability; and
- 4) Failing to comply with disciplinary requirements.

This letter serves to outline these violations and to ask for an expedited investigation, review and remedies designed to correct, as set forth in this Complaint, each and every violation found. We respectfully request an expedited review so that an appropriate remedy can be instituted by the start of the 2009-2010 school year.

I. Failure to Confer Meaningful Educational Benefit

HPS has failed to provide children enrolled in HTLA-HMMS with a free appropriate public education ("FAPE") by failing to provide appropriate and sufficient special education and related services to confer meaningful educational benefit as required by IDEA. Additionally, the physical design of HTLA-HMMS further inhibits students' progression towards their educational goals.

a. Failure to Provide Appropriate Educational and Related Services

HPS has furnished HTLA-HMMS students with either no services at all, or with inadequate levels of special education services and related services such as assistive technology, social work, counseling, psychological services, and parent counseling and training. Moreover, when provided, special education and related services appear unrelated to the students' individual needs, without regard for whether the student needs a different type of service or therapy, different setting or different frequency of service.

For example, Dr. Jackson informed undersigned counsel that HTLA-HMMS students had no access to computers and therefore could not receive computer-based instruction, even if it would enable them to make educational progress. During CCA's educational consultant's observation of the program, she noted that the majority of instructional time was consumed by children moving amongst classrooms and playing the card game Uno.¹ She further noted that, during one of the class periods, the certified teacher left the classroom for the entire period, leaving the students with two teacher's aides.

¹ CCA's educational consultant is Dr. Andrea (Penny) Spencer, Ph.D. Dr. Spencer is Associate Dean at Bank Street College in New York City. She advises graduate students in their supervised fieldwork placements, teaches special education courses and provides professional development to general education and special education teachers in elementary and middle schools in New York City school districts. Prior to joining the Bank Street Faculty, she supervised multiple special and alternative day and residential education programs for students with developmental disabilities, neurological impairments and social-emotional and behavioral disorders in Connecticut, Maine and Massachusetts. Dr. Spencer observed the HTLA-HMMS program on two separate dates.

The lack of formal social skills curriculum at HTLA-HMMS is especially troubling. During CCA's educational consultant's observation of the program, she could find no evidence of a behavioral system present in the classrooms, during the transit to lunch, nor in the lunch room, where teachers sat at a separate table. She also noted that children received little-to-no-positive feedback. Furthermore, upon information and belief, the only social worker available at HTLA-HMMS for counseling and behavioral redirection is not a certified school social worker. Given the population of emotionally disturbed and behavior-disordered children, the lack of structured social skills curriculum, lack of positive feedback and lack of access to a certified school social worker raises the concern that planning and placement team ("PPT") meetings for HTLA-HMMS students violate IDEA by failing to consider the use of positive behavioral interventions and supports. 20 U.S.C. §1414(d)(3)(B).

b. Failure to Provide an Appropriate Physical Structure to Allow Educational Benefit

The physical design of the HTLA-HMMS program additionally functions to deny meaningful educational benefit for the children enrolled in the program. The excessive noise and vibrations through the structure, the lack of space for freedom of movement and the absence of a quiet room for de-escalation all function to impede students' progress towards social and behavioral goals. Additionally, the abundance of glass places the students at physical risk.

The physical design of HTLA-HMMS is a narrow corridor with walls made of glass. In the corridor, there are a couple of tables and a few chairs, which obstruct portions of the corridor. Along one side of the corridor are a few classrooms and the social worker's office. Many of the interior walls of these classrooms and office are cubicle partitions, which neither firmly attach to the ground nor the ceiling.

Sound and vibrations carry through the HTLA-HMMS structure, due to the lack of impermeable walls. Upon information and belief, students pass notes under the cubicle partition walls to students in other classrooms. During CCA's educational consultant's observation of the program, she could hear children in the adjoining classroom shouting vulgarities. The constant distractions suffered by children due to this physical design impede their progress towards educational goals.

The lack of space for freedom of movement additionally impedes students' progress towards social and behavioral goals. The narrow corridor, with its obstructions, places these behaviorally-disordered children at close proximity to each other whenever they move between classes. During a visit to HTLA-HMMS, undersigned counsel observed students jostling and punching each in the corridor. Additionally, the classrooms themselves are small, providing little opportunity for students to remove themselves from volatile situations when necessary.

Although the social worker offers her children her office as a quiet space for de-escalation, the walls of this office are similarly permeable to noise and vibration from the other classrooms. Undersigned counsel attended a meeting in this office during which a rhythmic pounding could be heard from the classroom next door at points throughout the meeting. The other locations offered as de-escalation spaces are the main office, with its attendant noise from administrative

duties, and the lobby of the building, which has walls made entirely of glass. The physical structure of the HTLA-HMMS program, therefore, cannot provide a setting for a child who requires a calm, quiet space to de-escalate.

Finally, the amount of glass in the structure of HTLA-HMMS places these children at physical risk. CCA's educational consultant observed children punching the glass walls at HTLA-HMMS. At one point during the school year, the glass near the front door was broken, clearly indicating that the glass is breakable. Surrounding this group of behaviorally-disordered children with breakable glass puts them at constant risk of serious physical injury.

II. Failure to Provide Educational Services in the Least Restrictive Environment

HPS has failed to provide children enrolled in HTLA-HMMS with FAPE in the least restrictive environment ("LRE") as required by IDEA. The IDEA requires that, to the maximum extent possible, students with disabilities be educated in the least restrictive environment. 20 U.S.C. §1412 (a)(5); 34 C.F.R. §300.114-117.

Upon information and belief, HPS's plan at the start of the 2008-2009 school year was to include the HTLA-HMMS children in the regular education curriculum of HMMS, with necessary educational and related services. However, undersigned counsel was informed that the principal at HMMS refused to allow the HTLA-HMMS program to be located in the HMMS building. Undersigned counsel was further informed that the principal at HMMS refused to allow HTLA-HMMS students to use the HMMS facilities even for physical education or lunch until December 2008. As HPS's plan for these children indicates, they are children who could be educated with their non-disabled peers, given appropriate special education and related services.

Additionally, upon information and belief, HTLA-HMMS students do not interact with regular education students even when they are allowed onto the HMMS campus, during lunch and gym. Rather than being integrated with their non-disabled peers during these times, HTLA-HMMS students are fully segregated from their peers, in violation of 20 U.S.C. § 1412 (a)(5).

III. Discrimination Against Students Due to Their Disabilities

Upon information and belief, HPS's provision of physical education to students at HTLA-HMMS violates the IDEA, Section 504 and Title II, in that it (a) unlawfully excludes students from participation in physical education; and (b) denies students the benefit of other instructional curricula based solely on their disability.

Upon information and belief, HTLA-HMMS students are not allowed to attend physical education classes at HMMS when one of the physical education teachers is absent although non-disabled students at HMMS continue to receive physical education classes despite the absence of a particular physical education teacher. HPS's practice of excluding HTLA-HMMS students from physical education violates the IDEA, Section 504, and Title II by failing to provide children with disabilities with the same opportunity to participate in the physical education program available to their non-disabled peers. 20 U.S.C. §1412(a)(5)(A); 34 C.F.R. §300.108; 29 U.S.C. §794; 42 U.S.C. §12132.

Upon information and belief, HTLA-HMMS students walk to the main HMMS campus for physical education, a walk which denies students significant portions of instructional time. HTLA-HMMS staff informed undersigned counsel that the students' physical education class occurs between 1:10 p.m. and 2 p.m. Upon information and belief, staff begin walking HTLA-HMMS students to the gym across the Learning Corridor campus as early as 12:50 p.m. Undersigned counsel attended a meeting at HTLA-HMMS which lasted past 2:30 p.m. At the conclusion of that meeting, the students had yet to return from the gym. HTLA-HMMS staff informed undersigned counsel that it was not unusual for the return walk from the gym to take as long as thirty minutes. On any given day, therefore, students may lose as many as fifty minutes of instructional time to walking to the HMMS campus.

Upon information and belief, due to their comparative proximity to the gym, non-disabled students at HMMS do not lose similar lengths of instructional time to transport themselves to physical education classes. HPS's practice of denying instructional time to HTLA-HMMS students violates the IDEA, Section 504 and Title II by failing to provide children with disabilities: (a) the same opportunity to participate in the range of educational programs as their non-disabled peers; and (b) full educational opportunity. 20 U.S.C. §1412(a)(2); 34 C.F.R. §300.109-110; 29 U.S.C. §794; 42 U.S.C. §12132.

IV. Violation of State and Federal Disciplinary Requirements

HTLA-HMMS staff have regularly excluded children from their educational programs for more than ninety minutes without these exclusions being recorded as suspensions, as required by Conn. Gen. Stat. § 10-233a. Dr. Jackson informed undersigned counsel that the school's practice was to send children home from school without recording the exclusions as suspensions as long as students had gotten their "four hours in," a practice which violates the requirements of Conn. Gen. Stat. § 10-233c.

The failure of school staff to record these disciplinary exclusions as suspensions raises serious concerns about compliance with IDEA's disciplinary requirements. Without accurate records of the number of exclusions experienced by each child, it is unlikely that HTLA-HMMS provides children with the behavioral intervention services, educational services and due process protections required when a child experiences a change in educational placement. 20 U.S.C. §1415(k)(1). Indeed, without an accurate record of the number of exclusions, it is unlikely that HTLA-HMMS can determine when a child has experienced a change in educational placement under 34 C.F.R. §300.356.

At this time, we respectfully request the following:

1. An expedited investigation into HPS's violation of the rights of HTLA-HMMS students as guaranteed by federal and state law;
2. A written report of findings within 30 days; and

3. The implementation of an appropriate remedy before the start of the 2009-2010 school year, to include, at the minimum:
- a. The discontinuation of the HTLA-HMMS program;
 - b. Through PPT meetings, expedited reviews of the Individualized Education Programs ("IEP") of all current HTLA-HMMS students to ensure that they are designed to confer meaningful educational benefit;
 - c. Per PPT review of the IEPs, placement of all current HTLA-HMMS students in appropriate educational programs;
 - d. Compensatory educational services for all students enrolled at HTLA-HMMS during the 2008-2009 school year to be determined by PPT; and
 - e. Continued SDE oversight to ensure that the IEPs of current HTLA-HMMS students are implemented appropriately through the 2009-2010 school year, including on-site observations of educational programs and record monitoring.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at (860)570-5327.

Sincerely,



Hannah Benton
Attorney at Law

cc: Steven Adamowski, Superintendent, Hartford Public Schools;
Miriam Taylor, Assistant Superintendent for Special Education Services/ Student Support Services, Hartford Public Schools;
Ellen Stoltz, Senior Director for Special Education Services/ Student Support Services, Hartford Public Schools