

TRANSMITTED VIA EMAIL

March 11, 2021

Mary Jean Schierberl, Esq.
State Department of Education
Bureau of Special Education
Due Process Unit
P.O. Box 2219, Room 359
Hartford, CT 06145

SYSTEMIC COMPLAINT

RE: [REDACTED] (DOB: [REDACTED])

RE: [REDACTED] (DOB: [REDACTED])

Dear Attorney Schierberl:

The Center for Children’s Advocacy (“CCA”) and Connecticut Legal Services (“CLS”) file this state complaint on behalf of the parents and guardians of [REDACTED], [REDACTED], and other parents similarly situated.

CCA is a non-profit legal advocacy organization in Connecticut whose mission is to promote and protect the legal rights and interests of poor children who are dependent upon the judicial, child welfare, health and mental health, education, and juvenile justice systems for their care.

Connecticut Legal Services is a private nonprofit law firm providing free legal services in civil matters to low-income residents. Its mission is to represent, advise, and educate low-income individuals and families and thereby help them secure the protections, privileges, benefits, rights, and opportunities available under the law.

In accordance with these missions, CCA and CLS also file this complaint as organizational complainants against the Bridgeport Public Schools (“BPS”) on behalf of students who have been denied their IEP-mandated special education services. *See* §34 C.F.R. 300.151(a)(1) and §300.153(a) (state complaints may be filed by an organization).

BPS’s omissions and commissions in this matter constitute violations of the Individuals with Disabilities Education Act (“IDEA”), §504 of the Rehabilitation Act of 1973, and corresponding state law and regulations.

I. Legal Violations

BPS students are suffering due to the district's systemic failure to provide adequate special education staff to meet their needs, including, but not limited to, certified special education teachers. This is a failure that predates Covid-19 school disruption, which has only exacerbated the staffing issues at BPS.

In this matter, Wilbur Cross School failed to provide seventh and eighth grade students, including [REDACTED] and [REDACTED], their IEP-required direct instruction and push-in service hours for at least the 2019-2020 ([REDACTED]) and 2020-2021 school years ([REDACTED] and [REDACTED])¹. Further, school staff never communicated the extent of this violation to [REDACTED] or [REDACTED]'s parents, nor did they conduct a PPT to develop a remediation plan.

The Complaint alleges that BPS has violated federal and state law, as well as Connecticut state regulations, by:

1. Systemic failure to provide a **Free Appropriate Public Education** in violation of 20 U.S.C. § 1414, CFR §300.320, C.G.S. 10-76a-ii, and Conn. Agencies Reg. §10-76d-1-19.
2. Systemic failure to **implement Individualized Education Plans** in violation of 20 U.S.C. §1414(d)(2)(A); CFR §300.320, §300.323(c)(2), §300.324; C.G.S. §10-76d (a)(8)(A)(E); and Conn. Agencies Reg. §10-76d-13(a)(1), due to a failure to provide a certified special education teacher for at least 12 weeks of the 2019-2020 school year ([REDACTED]) and 8 weeks of the 2020-2021 school year ([REDACTED] and [REDACTED]).
3. Systemic failure to ensure meaningful parental participation in students' educational decision-making, especially by withholding information about students' educational program and by failing to provide students' complete educational record upon request, in violation of 20 U.S.C. §1414(d)(1)(b)(i), CFR §300.322, §300.501(a), and Conn. Agencies Reg. § 10-76d-18.

II. Facts Upon Which Complaint is Based

[REDACTED]

[REDACTED], [REDACTED]'s mother, contacted undersigned counsel in January 2021 to request assistance in ensuring that [REDACTED] received his special education service hours. [REDACTED] is a fourteen-year-old student who is currently in eighth grade. He is eligible for special education services

¹ [REDACTED] attended a different BPS school previous to the 2020-2021 school year.

under the primary disability of OHI-ADD/ADHD. [REDACTED]'s IEP mandates the provision of 7.5 hours a week of specialized instruction in language arts and math ([REDACTED] Exhibit 1).

Ms. [REDACTED] was aware, based on [REDACTED]'s reporting, that [REDACTED]'s primary case manager, Mr. John Maguire, had exhibited inconsistent attendance since before the Covid-19 school closure began. She had hoped that things would improve for the 2020-2021 school year, but [REDACTED] was again left without a teacher a few weeks into the fall. Further, both [REDACTED] and his regular education teachers report that he has not received *any push-in support* for at least the 2019-2020 and 2020-2021 school years. Ms. [REDACTED] reached out to school administrators numerous times in the fall of 2020 and never received information about her son's case. She did not receive notice of any inconsistency in provision of services to [REDACTED] until December 2020 when a new case manager was assigned, at least a full year after Mr. Maguire's absences began.

Undersigned counsel first requested [REDACTED]'s records, accompanied by a release signed by Ms. [REDACTED], on January 15, 2021. On January 27, 2021, BPS delivered an email with [REDACTED]'s records attached which included IEPs, report cards, standardized testing results, attendance records, and general demographic information. BPS only sent one IEP progress report from May 6, 2020. No service logs nor school emails were included in this batch of records. Undersigned counsel responded on February 2nd, specifically requesting service logs. Ms. Aponte, BPS Chief Custodian of Records, responded that counsel would receive the logs directly from the school. Ms. Cordova-Spoto was copied on this email ([REDACTED] Exhibit 2).

At the February 4th PPT, undersigned counsel again asked for service logs. Ms. Cordova-Spoto first claimed she did not know about the request, and then the team repeatedly refused to share any information pertaining to Mr. Maguire's provision of services for the 2019-2020 and 2020-2021 school year.

Based on Ms. [REDACTED]'s own accounting and other records, we believe [REDACTED] is due at least 200 hours of compensatory education hours. Upon information and belief, [REDACTED] did not receive specialized instruction from a certified special education teacher for approximately 12 weeks of the 2019-2020 school year, and approximately 8 weeks of the 2020-2021 school year.

However, this number appears to have grown—Ms. Denslow, the teacher hired to serve [REDACTED] and [REDACTED], has been absent frequently over the past few weeks. Therefore, though we requested 200 hours of compensatory education at the February 4th PPT, due to the ongoing nature of BPS' violation, we will need to increase this request.

[REDACTED]

[REDACTED], [REDACTED]'s mother, contacted undersigned counsel in October 2020 due to her concerns about [REDACTED]'s lack of special education services, and her desire to be represented at a PPT to address her concerns. [REDACTED] is a thirteen-year-old student who is currently in eighth grade. He is eligible for special education services under the primary disability of OHI-ADD/ADHD. [REDACTED]'s IEP mandates the provision of five hours a week of specialized instruction in language arts and math ([REDACTED] Exhibit 1).

In October 2020, Ms. ██████ contacted Mr. McGuire, ██████'s special education teacher and requested a PPT, as ██████ had just moved to Cross and his mother wanted to ensure his program was all set up for him. On October 27, 2020, Ms. ██████ informed counsel that she spoke to Mr. McGuire and he gave her a PPT date of November 19, 2020. Ms. ██████ attempted to obtain a time for the meeting date, but Mr. McGuire never responded. The school did not inform Ms. ██████ of Mr. McGuire's absences, nor did the school follow up with Ms. ██████'s PPT request. It was not until three months after the parent's request, on January 17, 2021, that BPS scheduled the PPT, and only then for the purpose of conducting an annual review and re-evaluations, not to address the parent's original concerns months previous.

Undersigned counsel requested ██████'s school records on January 14, 2021. On January 29, 2021, BPS transmitted an e-mail containing ██████'s records. Missing from the records were IEP progress reports, service logs, and the Learning Model IEP Implementation Plan. On February 3, 2021, counsel made an additional request for the missing records. On February 8, 2021, BPS provided undersigned counsel with the Learning Model IEP Implementation Plan and service logs from September through October 2020 and January of 2021. After yet another request for the missing records, on February 16, 2021 BPS provided the IEP progress report dated February 16, 2021. BPS, however, failed to produce the service logs for the period of November to December 2020.

The service logs from September 8 to October 30, 2020² indicate Mr. McGuire was absent at least 14 days³ (█████ Exhibit 2). During the days Mr. McGuire was absent, ██████ did not receive special education instruction. On the last page of the log, it indicates ██████ is owed 14.10 hours of specialized instruction. School staff failed to report to Ms. ██████ that ██████ did not receive specialized instruction for 14 days during the period of September to October of 2020. During the January 17, 2021 PPT, the PPT failed to inform Ms. ██████ and undersigned counsel of Mr. McGuire's absences and the fact that ██████ was entitled to compensatory education. A review of ██████'s IEP progress report dated February 16, 2021 indicates that for the marking period ending in November of 2020, ██████ made unsatisfactory progress in all his goals and objectives for reading and math (█████ Exhibit 3).

III. Procedural History

CCA and CLS are compelled to file this formal complaint in order to obtain relief and remedies on behalf of the complainants and other similarly-situated children with disabilities whose needs are not being met by BPS. The complainants are representative of any Bridgeport child who has been denied FAPE due to BPS' failure to appropriately staff its schools.

² These service logs were erroneously labeled "2021" and inaccurately described ██████'s instructional hours per the IEP.

³ This accounting is not in line with the accounting of parent and other staff member's records.

Upon information and belief, BPS has had a shortage of at least 19⁴ special education certified staff over the past year, which has resulted in a direct failure to provide IEP-mandated services to those students entitled to receive it. Despite BPS efforts to mitigate this urgent matter, little progress has been made, and students continue to suffer. Further, school administrators cover this egregious situation up, failing to inform parents, which inhibits parents' ability and right under IDEA to meaningfully participate in their children's education.

These ongoing staffing failures give jurisdiction to the Connecticut State Department of Education (SDE) in accordance with 34 CFR § 300.151 to continue monitoring BPS's compliance with federal and state statutes and regulations. We request that SDE evaluate this information and provide the monitoring that is required for BPS to fully comply with the Individual with Disabilities Education Act's (IDEA) laws and regulations. As has been demonstrated in the filing of previous systemic complaints against BPS in 2013 and 2015 (Complaint # 14-0243 and Complaint # 16-0087), and BPS' ongoing IDEA violations, without the input and *continued oversight of SDE*, BPS will not make these changes permanent or sustainable.

IV. Requested Remedies

The students, parents, the Center for Children's Advocacy, and Connecticut Legal Services request that the State Department of Education require that:

1. Within 30 days, BPS must conduct an audit and calculate individualized compensatory education hours for all students who have been affected by:
 - a. Open special education teacher positions that have not been filled
 - b. Special education teachers who exhibit inconsistent attendance and/or long period of absence
2. Within 60 days, BPS must conduct PPTs for all affected students identified in #1 (above) to present a *individualized* plans for implementing compensatory education hours. Parents must be presented the opportunity, as a member of the PPT, to give their input about the manner in which compensatory education will be delivered, the schedule of the compensatory education service delivery, and other logistical details.
3. Within 60 days, BPS must develop a centralized hotline for parents to report special education concerns, staffed by home-school liaisons hired for this purpose. The hotline must be staffed at least 40 hours per week, and messages left by parents must be responded to within three school days. BPS must collect data on the type of concerns received by the hotline, and its response, and share this data to SDE and counsel on a monthly basis for at least the next two years. BPS must publicize this hotline on its website and through a parent informational campaign in each of its schools.

⁴ We believe this number to be underestimated, based on staff accounts, news stories, and recent legislative testimony in front of the Education Committee.

4. Within 60 days, BPS must provide a corrective action plan to ensure the district is complying with all relevant federal and state laws and regulations regarding the provision of FAPE, which requires, at a minimum, the provision of PPT-recommended services to be implemented in student IEPs. This plan must include:
 - a. Monthly audit of staffing, to include the consideration of affected students and number of service hours owed. This audit must lead to the creation of compensatory education plans for each student owed hours and notification to parents of students affected.
 - b. Enhanced special education teacher, related service provider, and administrator training requirements to include:
 - i. The role of a case manager- specifically in communicating with parents.
 - ii. The accurate and timely keeping of service logs.
 - iii. The role of PPT facilitator- specifically in virtual PPT facilitation, and ensuring that parents have the opportunity to meaningfully participate in virtual PPTs.
 - c. New or enhanced strategies for teacher and related service provider recruitment, with consideration of surrounding districts' pay scale, as well as a focus for recruiting teachers of color.
 - d. Creative compensatory education solutions, such as contracting with educational agencies to provide virtual services.
5. Within 60 days, BPS must publish the corrective action plan to all parents or guardians of children who attend BPS.
6. BPS must submit to three years of independent monitoring of the corrective action plan by SDE or other appropriate entity using objective outcome measurements with incremental adherence to compliance during the three-year period.
7. Any other such relief as may be deemed appropriate.

We thank you in advance for your continued role in this matter and look forward to your response.

Respectfully,

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cc:

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Michael Testani, Superintendent, Bridgeport Public Schools
Marsha Moses, Counsel

List of Exhibits

- ■■■ Exhibit 1: May 7, 2020 IEP
- ■■■ Exhibit 2: Emails between Kathryn Meyer, Frances Aponte, and Melissa Cordova-Spoto, Dated from January 15- February 2, 2021
- ■■■ Exhibit 1: January 17, 2021 IEP
- ■■■ Exhibit 2: Service Log dated September 8- October 30, 2021 [sic]
- ■■■ Exhibit 3: February 16, 2021 Progress Report