



STATE OF CONNECTICUT
STATE DEPARTMENT OF EDUCATION



August 31, 2021

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Re: Systemic Complaint 21-0282

Dear Attorneys Scheinberg Meyer, Lugo and Moses:

A complaint was submitted to the Bureau of Special Education (the Bureau) on March 15, 2021 by the Center for Children's Advocacy and Connecticut Legal Services against the Bridgeport Public Schools. The complaint was filed on behalf of two named students and students similarly situated (Students). The complaint claimed the District had failed to provide adequate special education staff at Wilbur Cross School and otherwise throughout the District to meet the educational needs of Students which has resulted in the Students' individualized education programs (IEPs) not being implemented and further, that the District failed to provide education records upon Parent request. Specifically, the complaint alleges the District has had a shortage of 19 special education certified staff over the last year which has resulted in IEPs not being implemented. The Complaint Resolution Process provides for an investigation of complaints alleging a violation of state or federal special education requirements occurring in the last one-year period (relevant time period).

The complaint inquiry letter, dated March 26, 2021, set forth the issues to be investigated as follows:

Issue 1: 34 CFR §§ 300.323(c)(2) and 300.17, Regulations of Connecticut State Agencies (RCSA) § 10-76d-1(a)(1) require each board of education to provide in a timely way special education and related services in accordance with the student's IEPs.

Issue 2: RCSA § 10-76d-18 provides each board of education shall maintain records concerning children with disabilities or children referred for an evaluation to determine the child's eligibility for special education and related services. 34 CFR §§ 300.610-613 (incorporating by reference provisions of the Family Educational Rights and Privacy Act of 1974 (FERPA)) and State regulations give parents the right to inspect and review any education records relating to their child which are collected, maintained, or used by the board of education. The parent's right to inspect and review their child's records includes the right to one free copy of those records. If a written request for the free copy is made, the board of education must comply with the request not later than 10 days of the request. According to RCSA Section 10-76a-1(5), "days" means school days unless otherwise

specified. The complaint claims the District failed to comply with these requirements regarding two requests made for Students attending Wilbur Cross School.

In consideration of the timeline requirement that applies to complaint investigations, the BSE has concluded its investigation. Specific findings of fact and conclusions are set forth in this report and, where appropriate, Required Corrective Actions.

The following documents were reviewed:

- 1) 10-76d of the Connecticut General Statutes;
- 2) 34 CFR Part 300 of the Federal Register;
- 3) Complaint including:
 - a. regarding Student [REDACTED] IEPs dated May 9, 2019 and May 7, 2020, emails exchanged between the Complainants and the District re: [REDACTED] record request, and psychological evaluation dated January 16, 2016;
 - b. Regarding Student [REDACTED] IEP dated January 17, 2021, progress report for 2020-21 IEP, and special education teacher service log from September 8, 2021 to 10/31/2021 [sic];
- 4) The District's responses to the Inquiry Letter with the following attachments:
 - a. District's *Continued Educational Opportunities via Distance Learning* procedure dated March 24, 2021 (revised April 30, 2020);
 - b. Screen shot from CTREAP Teacher Job Listings; emails from District to higher education institutions re: staff recruitment
 - c. List of special education teacher vacancies March 2020 through March 2021 (Table A);
 - d. List of special education teacher extended absences March 2020 through March 2021 (Table B);
 - e. Chart indicating how Student IEPs were implemented during extended absences (Table C);
 - f. Chart indicating how Student IEPs were implemented during vacancies (Table D);
 - g. Wilbur Cross student list;
 - h. Sample letter to parent re: compensatory education offer dated May 7, 2021, with consent form and service log;
 - i. District Policy re: access to student records (Policy No. 5124), annual notice to parents, *records release checklist*, training PowerPoint presentation on records dated March 31, 2021 and April 7, 2021, record request timeline, State Library education record retention schedule;
 - j. Emails and letters exchanged between the Complainants and the District re: record request in January and February 2021 and April 2021 including FedEx labels;
 - k. Student lists and consent forms for compensatory education from Cross, Edison and Marin Schools;
 - l. Service logs for delivery of compensatory education for students at Cross and Barnum Schools;
 - m. Lists of Students determined to need compensatory education at Edison, Barnum and Marin Schools;
 - n. Contact information for staff who provided services during absences/vacancies; and
 - o. Contact information for families of students attending Batalla, Edison, Central High, Cross and Tisdale schools.
- 5) The District's website was reviewed to determine staffing levels
- 6) Statewide job posting sites were visited

The Investigation

The complaint included specific claims related to two students both of whom attended grade 8 at Wilbur Cross School during the last year. The complaint was made on behalf of these two named students and other unnamed students attending a Bridgeport Public School who were allegedly impacted by teacher vacancies. The inquiry letter requested a response from the District by April 12, 2021 to both the child specific claims and the District-wide claims. The District asked for an extension of time to respond to the Bureau's complaint inquiry letter. Specifically, the District requested the extension in part because of an upcoming school break and the need to gather information. The District was allowed additional time, until April 24 to provide a response. During April, the Complainants and District discussed whether the parties would try to mediate the complaint claims. Ultimately, an agreement to mediate did not result. An additional extension of time was allowed in consideration of the fact that the District's Executive Director of Specialized Instruction was on an extended leave. The District's request for an additional 4 week extension of the April 26, 2021 date to May 24, 2021 to submit a response to the complaint was granted. Bureau staff reviewed the complaint and met with the Complainants virtually. The District timely submitted a response. The BSE shared the District's response with the Complainants on June 4, 2021. On June 8, BSE notified the District staff of interviews BSE staff wished to conduct. The list identified a sample of staff from a sample of District schools that experienced special education teacher vacancies/extended absences. The last day of school in Bridgeport was June 15. The BSE asked for additional information from the District and the District provided a follow up response on June 25. The following District staff were available and were interviewed with the attorney representing the District present, via virtual platform, by BSE staff on July 20, 2021:

Substitute, Beardsley School;
Bridgeport certified Special Education teacher, Beardsley School;
Principal, Beardsley School;
Principal, Roosevelt School;
Assistant Principal, Roosevelt School;
Bridgeport Special Education teacher, Dunbar School;
Assistant Principal, Batalla School; and
Principal, Batalla School.

Additional District staff were requested to be interviewed but were unavailable.

Additionally, BSE conducted Parent interviews.

Findings of Fact:

Issue 1

1. There is agreement between the District and the Complainants, that a number of District special education teacher positions were vacant in the last year due to absences, retirements, or resignations. The complaint alleges 19 special education teacher vacancies: the District reports 14 vacancies. According to the District's Human Resources page as of March 2021, there were 19 special education teaching position postings, as of July 2021, there were 16. Full staffing for the District includes 233 full time certified special education teacher positions. These vacancies/extended absences impacted 18 of the approximately 30 District schools.¹ There

¹ Barnum, Bassick High, Batalla, Beardsley, Bridgeport Learning Center, Central High, Columbus, Wilbur Cross, Paul Laurence Dunbar, Edison, Fairchild Wheeler Magnet, Geraldine Johnson, Luiz Munoz Marin, Read, Roosevelt, Skane, Jettie Tisdale, and Waltersville.

were 8 vacancies from March 2020 to June 2020 and 14 vacancies during the 2020-21 school year through March of 2021. These vacancies/extended absences were of a long-term duration; over 40 school days in most cases. Twelve of the 22 vacancies were SOAR Program² teachers. Staff on extended absences were less frequent than vacancies due to resignations or retirements; one from March 2020 to June 2020 and 6 during the 2020-21 school year. Circumstances resulting from the COVID-19 pandemic played a role in at least some of these vacancies/extended absences.

2. The District took reasonable and expected steps in an effort to fill special education teacher position vacancies including recruiting from local colleges and universities, using job sites, online job fair, local media and billboards, etc., but was not able to do so in all cases. Teaching positions were harder to fill last year due to the COVID-19 pandemic. In-person job fairs were not an option. This circumstance is not unique to the District. Certified Special Education teaching positions are and have been an identified shortage area in the state, and nationally for several years.

3. The District employed different arrangements to cover the vacancies/extended absences. In two schools/programs (Functional Class³ and Columbus School) paraprofessionals were assigned to provide services. In three schools/programs (Barnum School, Functional Classroom, and Waltersville SOAR program), regular education certified staff (math, language arts, guidance) were assigned to provide special education services. In seven schools/programs, (Columbus School, Marin School Resource, Medically Fragile Class, Edison School, Cross School SOAR Program, Roosevelt School SOAR Program, Roosevelt School Resource, and Beardsley School), substitutes were hired and assigned to classes. In four schools/programs (Dunbar School, Functional Class, Beardsley School and Central High School), certified special education district staff covered the classes/programs.

4. For some schools/programs, the District acknowledges that, due to special education teacher vacancies and absences from March of 2020 and during the 2020-21 school year up to March of 2021, delivery of a number of Student IEPs was interrupted. For these impacted Students, the District has determined the Students are owed compensatory services make-up hours to be provided by certified staff. For these Students, the District contacted Students' families, offered compensatory education and obtained parental permission to provide these services. Fifteen impacted Students attended a resource room class at Wilbur Cross School. As of May 2021, PPT meetings have been held and compensatory academic instructional services in language arts and math has been offered to all impacted Cross students and, where consent was provided, delivery of make-up services has begun during an afterschool program and continuing, as needed into the summer. Two Parents of Students from Cross School, indicated that their children received the IEP services required.

5. The District has committed to following the same process for other schools where it has been determined make-up instructional services are owed to Students as a result of special education teacher vacancies/extended absences and the District's inability to find replacement teachers or otherwise provide instruction as set forth in Student IEPs.

² The SOAR (Success of Academic Rigor) Program is a program for special education students with social/emotional and behavioral difficulties. The program provides small classes with low student to high staff ratio, increased counseling services, specialized instruction, and paraprofessional support. Each student is given a motivation assessment, functional behavior assessment and positive behavioral management system based on a token economy and Positive Behavioral Interventions and Supports (PBIS)

³ Information was not provided to indicate in what school the Functional Class was located.

6. In at least one instance, for part of the last school year, a Dunbar school building special education resource room teacher was required to assume responsibility for three SOAR students in addition to her existing virtual class caseload from November 2020 to April 2021. No paraprofessional was assigned to this remote resource room class. The special education teacher provided the students from the SOAR Program the best instruction and structure that she was able to but was not able to provide the SOAR students with all of the hours of instruction, or full array of IEP services and supports in the Students' IEPs.

7. Where the District hired substitutes to cover special education teacher extended absences and vacancies during the relevant time period, the District used a placement agency to find the substitutes, Kelly Educational Staffing. The substitutes were supported by building internal special education staff (teachers and paraprofessionals) and building administrators.

8. Beardsley School started out the 2020-21 school year fully staffed in terms of special education staff. District students started out the 2020-21 school year following a hybrid model. In January of 2021, instruction was in-person. In mid-November a special education teacher who was responsible for providing specialized instruction to students in a resource room announced that she was retiring thus creating a vacancy. The District transferred a staff member who held a Durational Shortage Area Permit⁴ from another school to cover the vacancy. Another teacher went out on maternity leave. A substitute was hired to cover this leave. This individual was available to be interviewed. The substitute was enrolled in a program to obtain certification. The substitute had responsibility for a self-contained classroom serving students with autism in a K-1 grade class from March 2021 to May 2021.⁵ The class's regular special education teacher left the substitute with much valuable material, including instructional material and lesson plans. Prior to leaving, the teacher sent a letter to parents to introduce the substitute and the substitute sent a follow up letter of introduction to parents. A special education teacher was assigned as the direct support to the substitute for special education matters and was also teaching in Beardsley School. The special education teacher didn't have any of her existing responsibilities reduced to allow time to oversee the delivery of instruction to the autism class by the substitute. The special education teacher primarily supported the substitute by helping the substitute to update progress reporting information. The building principal was available to support the substitute but there was no scheduled time for oversight to occur regularly; contact occurred once every week or once every two weeks, the building administrator observed the class for 10 to 15 minutes occasionally and provided feedback to the substitute. The administrator had an "open door policy" and was available through email and texts.

9. When fully staffed, there are 3 special education teaching positions at Roosevelt School. A SOAR Program special education teacher position was vacant during the spring of 2020 and a resource room teacher position was vacant during the 2020-21 school year. The District hired a substitute to cover the vacancies. Investigators were able to interview the building administrators who were reported to supervise the resource room substitute. The assistant principal is certified in administration and Music. His involvement with the substitute was limited to collecting weekly service logs documenting service hours from the substitute and assisting her with any behavior challenges presented in the class. Reportedly, a paraprofessional oriented the substitute. The assistant principal had no role in ensuring implementation of IEP services. The principal is certified in administration and elementary education. She informally provided support to the substitute and monitored the attendance of

⁴ Applicants must hold a bachelor's degree, have earned 12 credits in relevant content area and be enrolled in an approved program, or hold a teaching certificate and have completed 12 credits in relevant content area. DSAP permit authorizes educator to be the "Teacher of Record".

⁵ This vacancy occurred outside of the relevant time period of the complaint investigation.

the substitute. She was not involved in IEP progress reporting, or the development of lesson plans or otherwise ensuring IEP implementation. The substitute collaborated with general education teachers to develop lesson plans. Other building special education teachers entered Student information on the electronic IEP platform.

10. When fully staffed, Batalla School has 10 special education teaching positions. Batalla experienced two vacancies, one teaching position in the Autism Program and one in the SOAR Program from September 2020 to March 2021. Parents were not notified of these vacancies. Substitutes were hired but were not available to be interviewed. Investigators were able to interview the principal and assistant principal. The principal is certified in administration and special education. The principal monitored the substitute in the SOAR program while the assistant principal monitored the substitute in the Autism Program. The assistant principal is certified in administration and special education. The substitute received assistance from a building special education teacher and had access to Students' IEPs. The assistant principal observed the Autism Program class at least once. The assistant principal did not have regular contact with the substitute. Building special education teachers assisted the substitute in addition to their existing class responsibilities; duties were not taken from the building special education staff to free up time to oversee the substitute's delivery of IEP services. The administrators received reports from the special education teachers regarding the substitute and how the substitute was performing. Staff reportedly were concerned the substitute was not meeting expectations in terms of delivering hours of instruction. The assistant principal followed up by meeting with the substitute. A Parent of a Student in the Autism Program in Batalla School indicated in an interview with investigators that the substitute servicing her child was not prepared to teach a student with the characteristics and needs of autism and was not able to implement her child's IEP.

11. Barnum School Resource special education teacher was absent on leave from January 4, 2021 to February 10, 2021. From January 4 through January 25, Barnum general education teachers were reported to have implemented IEPs. From January 25 through February 10, a substitute was hired to provide special education services to Students.

12. An Edison School Parent was interviewed and reported that the substitute assigned to her child's class did not offer the services in her child's IEP (e.g., services were either not offered or, those that were offered, were not at the frequency or duration required by the IEP). The Parent reported the District has been in contact with her to discuss compensatory education for missed services. Such services will be decided at a PPT meeting to be convened in September 2021. Another Parent from Edison School indicated that the substitute servicing her child did implement the Student's IEP as required.

13. The State Department of Education issues long-term substitute authorizations to applicants that hold a bachelor's degree and 12 credits in the content area/grade level in which the long-term substitute is sought, in this matter, special education, for any substitute position over 40 consecutive school days.

Issue 2:

14. On January 15, 2021, Attorney Meyers submitted a Family Educational Rights and Privacy Act (FERPA) request regarding a Student attending Cross School education records to the principal of the school, the District special education director and to the District's Chief Custodian of Records (record custodian). District policy is that FERPA requests are sent to the record custodian and the record custodian processes and coordinates a response through building principals. Six school days later, on January 27, the record custodian responded and sent the following records: IEPs dated November 12, 2015, February 25, 2016, March 20, 2017, May 30, 2018,

March 15, 2019, May 2019, May 7, 2020; Psychological Evaluation dated 2015; Achievement Report dated 2019; Achievement Report Clinician Version dated October 21, 2015; and Achievement Report Parent Version dated December 3, 2015. The following items were not included: IEP progress reports; service logs; and Learning Model IEP Implementation Plan(s) (LMIIP). Complainant made two follow up requests and the District provided the following additional records: LMIIP; service logs (September 2020, October 2020 and January 2021); and IEP progress report dated February 16, 2021.

15. On January 14, 2021, Complainants submitted a FERPA request regarding a Student attending Cross School to the record custodian requesting a "...copy of [Student's] educational records, including the all IEPs, permanent record cards, all evaluations and sub-test scores, and all disciplinary records for the period August 2020 to the present." On January 29, the record custodian sent some records. The following were not included in the District's response: IEP progress reports; service logs; and LMIIP(s). District provided an additional partial response on February 8, 2021; however, service logs were missing. Later, the District provided December 2020 service logs and reported that service logs for November were not prepared.

16. The District requires service providers to maintain service delivery logs for the purposes of billing but does not consider such logs to be students' educational records.

17. The District prepared a PowerPoint presentation entitled *Records* dated March 31, 2021 and April 7, 2021. The PowerPoint presentation does not include a discussion of what records are education records.

Conclusions:

Issue 1:

Student success depends on Students having access to appropriately certified or permitted educators. Part of implementing a student's IEP is ensuring that qualified teachers provide specialized instruction. While it is preferable to assign certified special education teachers as substitute teachers when special education teachers are absent, it is permissible for non-certified staff to serve as substitute teachers in a special education class. However, non-certified substitutes must meet qualifications under IDEA and state law. State requirements allow for flexible staffing, including substitute authorization and long-term substitute authorizations. For assignments that are 40 days or greater, the CSDE Bureau of Certification issues long-term substitute special education authorizations where the individual has a bachelor's degree and 12 credits in special education coursework. With one exception, the individuals hired by the District to provide special education services were not on record as having received a long-term substitute endorsement from the CSDE. The District was unable to demonstrate that the individuals hired to cover special education teacher vacancies/extended absences were qualified to deliver specialized instruction as set forth in Students' IEPs. This is true for substitute assignments less than 40 days and for assignments lasting more than 40 days.

Further, the District was not able to demonstrate that the paraprofessionals, substitutes or other building special education teachers assigned to cover vacancies/extended absences were adequately trained and/or supervised by certified staff in order to deliver FAPE by implementing Student IEPs. Special education teachers that have their own assignments cannot deliver specialized instruction to additional students if not provided additional time or relieved of existing duties. Paraprofessionals are qualified to assist teachers in delivering instruction and work under the direct supervision of certified staff. Paraprofessionals are not qualified to design

specialized instruction. Where non-certified individuals are used to provide substitute coverage for a special education teacher, provision must be made, through case management or otherwise, to ensure implementation of students' IEPs. The instruction provided to District Students impacted by special education teacher vacancies/extended absences was not adequately overseen by certified staff. District staff met with substitutes informally, often provided the substitute copies of Student IEPs and were available to answer questions when requested. Internal staff prioritized certain activities such as conducting evaluations where evaluations were due or recommended, attending planning and placement team meetings, assisting with behavior management challenges when needed, and updating student information, including progress reporting, on the electronic IEP platform. However, staff interviews establish that certified special education teachers did not oversee the delivery of instruction to Students by substitute teachers or paraprofessionals. It is important to note that in at least 12 of the classes where substitutes were placed- SOAR classes and classes for Students with autism, the Students were students with extensive education needs.

It is concluded the District was unable to implement Student IEPs where vacancies and extended absences occurred this past year, and as a result, Students impacted by the vacancies/extended absences were denied a free appropriate public education. Corrective action is required, see below.

Issue 2:

State and federal regulation provides that each board of education shall maintain records concerning children with disabilities or children referred for an evaluation to determine the child's eligibility for special education and related services. and state regulations give parents the right to inspect and review any education records relating to their child which are collected, maintained, or used by the board of education. The parent's right to inspect and review their child's records includes the right to one free copy of those records. If a written request for the free copy is made, the board of education must comply with the request not later than 10 days of the request. The District responded to the requests for records in a timely way but the copies of records provided were not complete. A parent's right to receive a complete and timely response to a record requests is important to ensure the parent is able to be a full participant in planning their child's program. The District failed to meet the timeline set out in state regulation. Corrective action is required, see below.

Required Corrective Actions:

1. The District must continue to provide the compensatory education to Students the District has already determined were owed compensatory education and provide this office monthly updates describing the progress on the delivery of compensatory education to such Students. The updates must be student specific and include information on the compensatory education owed in total and the hours delivered to date. The first monthly update is due on October 15, 2021. The BSE will monitor delivery of the compensatory education to each Student. Further Corrective Action may follow.
2. For the remaining Students impacted by special education teacher vacancies/extended absences, the District must convene Planning and Placement Team meetings for all Students. The purpose of the PPT meetings is to determine the compensatory education due to each Student to make up for the denial of FAPE and to develop an individualized plan to provide the compensatory education. The plans may provide for delivery of compensatory education services by non-certified staff so long as instruction is designed by certified staff, and certified staff oversee the delivery of the compensatory education and monitor effectiveness of the compensatory education. A copy of each Student's compensatory education plan must be provided to this

office and include a description of the compensatory education determined to be due. The District must provide this office with Student specific monthly updates that include information on the compensatory education owed in total and the hours delivered to date. It is expected that the PPT meetings will be held and compensatory education plans developed and shared with the Bureau no later than December 1, 2021. Further corrective action may follow review of the plans. The BSE will monitor delivery of the compensatory education to each Student. Further Corrective Action may follow.

3. The District has proposed a voluntary plan to address the need to be proactive and ready to respond to vacancies and absences going forward. This plan identifies the following steps to be taken:
 1. Develop a process to be followed by every school in the District to identify when a teacher vacancy or extended absence impacts a student with an IEP. Include a process for staffing for the position with appropriately qualified staff and to provide for adequate supervision of the staff with documentation of the provision of all services for students with IEPs.
 2. Develop a plan to identify, at an early point in time, when students have missed any IEP service due to staffing vacancies or absences and to address how services will be made up as well as a plan for notifying parent so the need for compensatory services and how such services will be delivered
 3. Develop a plan for promptly notifying parents when teachers are on an extended leave or have resigned/retired and the District's plan to address the absence/vacancy.
 4. Develop a comprehensive training program for all supervisory personnel to review the plan and ensure that all those responsible for supervision understand their roles.

The District's plan has been reviewed and approved with the addition of inclusion to the plan of a practice to document the specific supervision and training any substitute receives, in addition to documenting that the substitute received a copy of IEPs and behavior plans.

4. None of the District's approximately 8 magnet schools were reported to have experienced special education teacher vacancies/extended absences during the investigation time period. To ensure this was not an oversight in the District's response to the complaint, the District must review the vacancies/extended absences in District magnet schools and include any magnet school students in the Required Corrective Action 2 above.

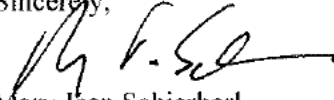
5. In addition to actions already taken to fill special education teacher vacancies, the District may consider incentives and strategies outlined by the CSDE Talent Office found at <https://portal.ct.gov/sde/certification/bureau-of-certification> if the District does not currently offer these incentives and strategies including rehiring retired educators.

6. The District must review with appropriate District staff the requirements regarding timely response to education record requests and a review of what records are *education records*. For the next ten requests for records for any District student, the District must provide this office with documentation of timely and complete response.

This complaint report is final and not subject to appeal pursuant to the complaint resolution process. A party who has a right to request a due process hearing (that is, the parent or a local education agency) and who disagrees with this decision may initiate a due process hearing, provided that the subject of the due process hearing request involves an issue about which a due process hearing can be filed and the two-year statute of limitations for due process hearings has not expired.

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Sincerely,



Mary Jean Schierberl
Education Consultant
Bureau of Special Education



Jay Brown
Education Consultant
Bureau of Special Education

cc: Ms. Christine Sullivan, Esq.
Mr. Michael Testani, Superintendent of Schools
Mr. Bryan Klimkiewicz, CSDE Special Education Division Director