

**STATE OF CONNECTICUT
OFFICE OF THE CHILD ADVOCATE
165 CAPITOL AVENUE, HARTFORD, CONNECTICUT 06106**



Sarah Healy Eagan, J.D.
Child Advocate

May 4, 2021

VIA E-MAIL DELIVERY

Dr. Joseph Macary, Superintendent
Vernon Public Schools
30 Park Street
Vernon, CT 06066

RE: OCA Letter of Concern: Systemic Educational Programming Review - Children with Disabilities Transitioning to Vernon Public Schools

Dear Superintendent Macary:

The Office of the Child Advocate (“OCA”) is an independent government agency that is statutorily required to “[t]ake all possible action including, but not limited to, conducting programs of public education, undertaking legislative advocacy and making proposals for systemic reform and formal legal action, in order to secure and ensure the legal, civil and special rights of children who reside in this state.” See Conn. Gen. Stat. § 46a-131.

In accordance with that statutory responsibility, the OCA began a review in August of 2019, in response to concerns first identified during a child-specific educational programming review conducted by the OCA concerning a child transitioning from Birth to Three to the District. OCA concerns included, but were not limited to, lack of BCBA support and full-time programming for high need students. In response to those concerns, the OCA began a limited educational programming systemic review, which sought to determine whether those identified issues impacted similarly situated students.

The District was asked to provide information, including all policies, procedures, and practices regarding the evaluation and provision of special education and related services to children referred from Birth to Three to Vernon Public Schools. The District was also asked for specific de-identified data regarding students who were accepted for special education preschool during the 2017-18, and 2018-19 academic years, and the nature, duration, and frequency of services delivered to these children.

The District provided the requested information in a timely manner and cooperated fully in the OCA’s review. The OCA’s review was subsequently interrupted and delayed by the COVID pandemic and the high needs of Connecticut families created, in part, by the closure of many public schools.

As we turned our attention back to the information submitted by the District, the OCA developed concerns that some young children with disabilities who were transitioning to Vernon Public Schools

from the Birth to Three Program may not have been provided with an appropriate educational program consistent with his/her individual needs. As part of this review, OCA delivered a draft findings letter to your attention, and we appreciate the District's timely response and feedback, contained in a Letter to OCA, dated March 24, 2021. Below please find our updated findings and recommendations.

Children Transitioning from Birth to Three into Vernon Public Schools

During the period under review (PUR) there were 48 students age 3 to 4 years old who were referred to Vernon Public School District from the Birth to Three program.¹ Of those 48 students, disabilities included: Developmental Delay (25); Speech or Language (11); Autism (11) and Multiple Disabilities (1). The population was comprised of mostly males (34) and with the remaining females (14). Racial makeup was varied with mostly Caucasian (22) and then African American (11); Hispanic (10); Asian (4); and Unidentified (1).

Lack of Full Day Programming

The most immediate concern the OCA found was that the Vernon Preschool Program only provided full day educational programming to children age 4 before January 1st. All younger children were put in half day programs – regardless of the child's disability, strongly suggesting that children were delivered hours of services based on District model and not on their individualized needs. Such a practice and policy was confirmed in the District's *Vernon Collaborative Preschool Family Handbook (2019)*:

Our Preschool classes meet 5 days per week. Children turning 4 years old before January 1 will attend the full school day. Children younger than that will attend three hours in the morning session or an afternoon session.

Only 16 of the 48 students received and/or were qualified to receive educational programming for 6.50 hours a day for 5 days a week. Those students were 4 years old with one student turning 4 before January 1st. The students receiving a full day of programming were diagnosed with the following disability: Developmental Delay (7); Speech or Language Impairment (5) and Autism (4).

We note and appreciate that the District indicated it changed this language in response to OCA's draft Letter of Concern, and has since substituted the following language:

Our preschool classes meet 5 days per week in half-day sessions, morning and afternoon. Decisions about session participation by identified special education students shall be made by Planning and Placement Teams.

As the OCA noted in its 2016 investigative report, *Educational Service Delivery for Preschool Age Children with Disabilities Entering New Britain Public School* (October, 2016) ("New Britain Report"), "Districts are not obligated to provide 'full day' programming to all children with disabilities. Rather, districts must have a continuum of educational placement/program options and services so that students with disabilities, including pre-school students, will receive the appropriate duration, frequency and intensity of interventions that they require to make educational progress. The amount of time a child spends in special education programming must depend on his or her needs. Preschool-age children have the same right as older students to be educated in the least restrictive environment appropriate to their needs." As reiterated in the New Britain Report, in order for certain children with disabilities

¹Of those 48 students referred to Vernon, the parents of 4 children declined enrollment and 2 children were withdrawn. For purposes of this review, students either received the services and supports or were *qualified to receive the services and support* but may have withdrawn or declined to enroll.

to receive a Free Appropriate Public Education as entitled under the IDEA and state law, full-day educational programming is often required. Connecticut regulations specifically provide that “each board of education shall ensure that extended school day or extended school year services are available to each child with a disability in accordance with the IDEA.”² Multiple state hearing decisions in Connecticut have also found that, under IDEA, full day programming may be required for a preschool age child with disabilities.

Instructional Hours for Children with Autism

OCA found that the majority of children (7/11) diagnosed with Autism Spectrum Disorder (ASD) attended and/or were qualified to attend school for 2.45 hours a day for five days a week for a total of **13.45 hours a week**, which OCA notes is well below the recommended National best practice standard of **25 hours a week** for children diagnosed with Autism. OCA acknowledges the District’s response that these hours do not reflect inadequate instructional time for children with Autism, but rather reflect the District’s practice of individualizing supports and services, including instructional hours, for all children. However, OCA’s finding regarding limited instructional time for certain students with Autism, in combination with our finding regarding the Vernon handbook language appearing to limit instructional hours based on age, raise a concern that there were students with intensive service needs that did not receive individualized services appropriate to their level of need.

Inadequate instructional hours can be especially harmful and cause poor outcomes for children with complex disabilities, especially those who are diagnosed with ASD. As stated in OCA’s New Britain Report, “[t]he early classification or identification of children with ASD is critical so that children can receive appropriate educational programs with adequately intensive instruction consistent with their diagnosis. The National Research Council (“NRC”) recommends that children with ASD participate in an intensive educational program as soon as possible after diagnosis. After extensive review of model programs, the NRC issued a report in 2001 that is widely cited today, regarding educating children with Autism. The NRC concluded that the provision of active engagement in intensive instructional programming for at least twenty-five (25) hours per week [full school days, five days a week] is critical for children with ASD.”³

The committee recommends that educational services begin as soon as a child is suspected of having an autistic spectrum disorder. Those services should include a minimum of 25 hours a week, 12 months a year, in which the child is engaged in systematically planned, and developmentally appropriate educational activity toward identified objectives. What constitutes these hours, however, will vary according to a child’s chronological age, developmental level, specific strengths and weaknesses, and family needs. Each child must receive sufficient individualized attention on a daily basis so that adequate implementation of objectives can be carried out effectively. The priorities of focus include functional spontaneous communication, social instruction delivered throughout the day in various settings, cognitive development and play skills, and proactive approaches to behavior problems. To the extent that it leads to the acquisition of children’s educational goals, young children with an autistic spectrum disorder should receive specialized instruction in a setting in which ongoing interactions occur with typically developing children.⁴

² Connecticut Regulation § 10-76d-3.

³ National Resource Council (2001) recommendations may be found at the National Academies of Sciences, Engineering and Medicine (2001 NRC Report), <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=10017>.

⁴ Id. At 6.

The 2001 NRC Report has been referenced by the Connecticut State Department of Education for its relevance for the educational programming for children diagnosed with ASD.

Again, we appreciate the District's commitment to ensuring that its handbook, practices and protocols support individualized determination of service hours based on need rather than age.

Few Functional Behavioral Assessments (FBA) or Behavioral Intervention Plans (BIP) and Limited Board Certified Behavioral Analyst (BCBA) Involvement:

Only 3 of the 48 students had a Functional Behavioral Assessment (FBA) and Behavioral Intervention Plan (BIP). Only 6 of the 48 students had BCBA support. All 6 students had a diagnosis of ASD. However, there were 5 students with ASD who did not receive any BCBA support.

BCBA support is often a critical core support for students diagnosed with ASD. As noted in OCA's New Britain Report, "[i]t is the Behaviorist who is often the lead expert in developing structured teaching programs for children with ASD, monitoring the implementation of the programs, reviewing data regarding the child's progress and modifying individual programs as needed to support the child's skill development." OCA agrees with the District that additional follow-up would be required to identify whether this is a systemic problem in need of correction with regard to the availability of BCBA support for children.

Overall, the information provided by the District raised concerns for OCA about a lack of individualized assessment and provision of services to young children who may present with complex learning needs and disabilities. As our office must conduct reviews within available appropriations, and given the significant demand for OCA services during the COVID-19 pandemic, we will close OCA's fact-finding process at this time. We are forwarding our preliminary findings to the State Department of Education, and will request follow up from that agency, including additional fact-finding needed to ensure that all children entering the District are fully evaluated and receiving individualized education programs consistent with his/her needs.

On a statewide level, the OCA remains concerned about the variability in school districts' available resources and approaches to early childhood special education services, resulting in students with similar needs in different cities and towns receiving significantly different educational programs during a developmentally critical window, with differences based in part on available resources rather than the needs of students.

Thank you for your timely cooperation with OCA's review.

Sincerely,

Sarah Eagan

Sarah H. Eagan
Child Advocate

cc: Charlene Russell-Tucker, Acting Commissioner, Connecticut State Board of Education
Beth Bye, Commissioner, Connecticut Office of Early Education