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By Electronic Mail

June 25, 2024

By Email: ADA.complaint@usdoj.gov
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Re: ADA, Section 504 and IDEA Discrimination Complaint Against the Hartford Public Schools, Bridgeport Public Schools, Waterbury Public Schools, Stratford Public Schools

Dear Ms. Bond, Ms. Simons, and Mr. Eichner:

The Connecticut Office of the Child Advocate ("OCA") and Disability Rights Connecticut ("DRCT") file this Complaint on behalf of their respective constituents alleging disability discrimination and violations of special education law by the Hartford Public Schools ("HPS"), Bridgeport Public Schools ("BPS"), Waterbury Public Schools ("WPS"), and Stratford Public Schools ("SPS"), and in violation of Title II of the Americans with Disabilities Act of 1990 ("Title II" of the "ADA"), which prohibits discrimination on the basis of disability by public entities, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and the Individuals with Disabilities Education Act ("IDEA") and their respective implementing regulations. The Complaint is based upon investigative findings made by OCA and DRCT resulting from a joint investigation into the

programming being provided to children enrolled in certain privately owned segregated schools for students with behavioral health disabilities known as "High Road Schools."[1]

As discussed more fully below, as a result of this investigation, OCA and DRCT found that students with disabilities eligible for special education, particularly children from low-income and Black and Brown communities, are routinely placed by the Local Education Agencies ("LEAs") at the segregated High Road Schools where they receive substandard and unequal education from often unqualified staff, are regularly subject to seclusion and restraint, and often have no pathway to returning to their home schools and districts. Additionally, the investigation revealed that the LEAs do not exercise the requisite monitoring and oversight of the High Road schools to ensure that the students are in fact receiving a free appropriate education ("FAPE") in the least restrictive environment ("LRE") and in the most integrated setting and are receiving equal educational opportunities as provided to their peers without disabilities.

A copy of the OCA-DRCT Report (and Executive Summary) setting forth the findings of the investigation and the requested remedial actions and the February 27, 2024, response submitted by Hartford Public Schools are attached.[2]

I. RELEVANT FACTS[3]

A. Overview of Background Facts Regarding the OCA/DRCT Investigation

The OCA/DRCT investigation took place between March of 2022 through March of 2024 and included multiple information requests of High Road Schools, the State Department of Education, and school districts, as well as site visits, and extensive records reviews. For purposes of this investigation, OCA and DRCT focused primarily on the following six (6) High Road schools (collectively referred to in this Report as the "Schools") including:

- High Road School of Hartford Primary/Middle
- High Road School of Hartford High School
- High Road B.E.S.T. Academy of Wallingford
- High Road School of Fairfield County
- High Road School of New London[4]
- High Road School of Windham County

During the 2021-2022 academic year, there were approximately 316 students enrolled across the High Road sites investigated by OCA/DRCT. Those 316 students came from forty-two (42)[5]

[1]The High Road schools are owned by American Securities, Inc., a private equity corporation.

[2] At that time of OCA/DRCT's investigation and final report, High Road Schools and Hartford Public Schools were both represented by Berchem Moses PC.

[3] The facts described here are to summarize and highlight key facts to support this Complaint. The comprehensive details of all of the findings are set forth in the attached Report which is incorporated herein by reference and part of this Complaint.

[4] During OCA/DRCT's investigation, SESI closed its New London facility.

[5] Though this complaint focuses on the (4) LEAs listed, HPS, BPS, WPS, and SPS there were a total of (42) school districts (LEAs) that sent students to the High Road Schools during the PUR. These (42) schools included: Ashford,

different school districts across Connecticut.[6] The Connecticut State Department of Education ("CSDE") "approved capacity" documentation indicates that High Road sites' collective capacity is among the highest in Connecticut. Most (80%) of those 316 students are male, and more than 70% are children of color. High Road's student population is consistent with state data indicating that most students educated in "separate schools" are Black, Hispanic, or Bi-Racial. Further, most High Road enrolled students are from school districts that serve predominantly low-income students and families, including HPS, BPS, WPS, and SPS. All students are identified as students with disabilities who are eligible for special education services. The most frequent student disability classifications for students at High Road schools were: Emotional Disability ("ED"), Autism, and Other Health Impairment ("OHI"). Each student has an Individualized Education Program ("IEP") that must be implemented by the High Road Schools pursuant to student-specific contracts with the local school district.

The OCA/DRCT investigation found that many of the children placed at High Road schools by the LEAs were grossly underserved both in terms of educational planning and service delivery. OCA and DRCT's site visits, data, and records reviewed as part of its investigation overall indicate a persistent and widespread problem of student disengagement and absenteeism, lack of adequate assessments and evaluations to determine students' needs, lack of an individualized approach to student education, uneven related service delivery, and perhaps most alarmingly, significant deficiencies in the number of certified special education teachers and other credentialed educational staff along with widespread failures to document legally required background checking for staff working with children. While High Road worked throughout the duration of the OCA/DRCT investigation to address certain concerns identified in the Report, OCA/DRCT also found that many of the concerns were the result of inadequate oversight by the LEAs.

Connecticut currently leads all states in the placement of children with disabilities in "separate schools,"[7] and the majority of these students are children of color. [8] Connecticut also ranks second among all states for the percentage of children identified as having Emotional Disturbance who were educated in "separate schools," with **almost a third of these students statewide educated in separate settings**.[9] A majority of public school-enrolled students in Connecticut placed into "separate schools," whether privately or publicly operated, have been children of color.[10] During the period under review (2021-2022 academic school year), there were several districts that outplaced a high number of students to be segregated at High Road Schools: HPS, BPS, WPS, and

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Beacon Falls (Region 16), Bozrah, Bridgeport, Bristol, Brooklyn, Cheshire, Colebrook (Region 7), East Hartford, East Haven, Glastonbury, Greenwich, Groton, Hamden, Hartford, Killingly, Manchester, Meriden, Middletown, Montville (Uncasville) Naugatuck, New Britain, New Haven, New London, New Milford, North Haven, Norwalk, Norwich, Plainfield, Portland, Putnam, Rocky Hill, Seymour, Southington, Stamford, Stratford, Torrington, Wallingford, Waterbury, West Hartford, Weston, Windsor.

[6] CSDE's Approved Private Special Education Programs Evaluation Preliminary Reports lists the Approved Student Capacity for each school. Approval Student Capacity for all Connecticut High Road Schools is 286. Although the Approved Student Capacity for High Road Schools is 286, 316 students attended at some point during the period under review.

[7] Report can be found here: https://sites.ed.gov/idea/files/43rd-arc-for-idea.pdf.

[8] Child Count Data provided by CSDE on March 4, 2022, as reported to OSEP.

[9] "Separate schools" is defined in the report to include "students with disabilities who receive special education and related services, at public expense, for greater than 50 percent of the school day in public or private separate day schools or residential facilities."

[10] Child Count Data provided by CSDE on March 4, 2022, as reported to OSEP.

SPS, which LEAs are subject to this complaint. Those districts outplaced the following number of students at High Road Schools: HPS outplaced 77 students, BPS outplaced 27 students, WPS outplaced 16 students, and SPS outplaced 9 students.

HPS, BPS, WPS, and SPS were all notified throughout the course of the investigation of concerns raised in the Report. Although HPS agreed to take certain remedial measures to improve oversight of students at High Road and improve in-district capacity for students with disabilities, HPS remains the largest consumer of services, with more than 70 students enrolled in High Road programs. Consequently, these HPS students continue to suffer ongoing serious harm by being forced to receive education that is substandard and unequal to that of the education being provided to their nondisabled peers, and in an unnecessarily segregated setting, in violation of state and federal laws. Aside from HPS, the other LEAs provided little to no follow-up communication or indication of actions taken in response to these concerns.

B. Key Factual Findings Regarding the LEAs Resulting from the Investigation

The key categories of overall systemic findings of the OCA/DRCT investigation which collectively implicate the provision of FAPE by all LEAs contracting with High Road Schools, including the 4 LEAs named in this Complaint are discussed below and more extensively in the attached Report include: 1) failure to provide students with appropriate positive behavioral supports and High Road's concomitant inappropriate reliance on seclusion and restraint; 2) lack of adequate staffing at High Road schools; 3) lack of individualized programming for students; 4) certain LEAs' failure to provide students with FAPE in the LRE due to lack of capacity and consequently unnecessary reliance on segregated and restrictive out-of-district placements for students with behavioral health disabilities; and 5) the failure of LEAs to monitor and provide required oversight.[11]

1. Failure to Provide Appropriate Positive Behavioral Supports and Concomitant Excessive Use of Seclusion and Restraint, Implicating Provision of FAPE, and Program Oversight by All LEAs

OCA and DRCT's investigation revealed that High Road Schools relied extensively on seclusion, and particularly restraints, to manage students' behavioral problems. Data produced by High Road during the investigation showed more than 1200 reported incidents of restraint and seclusion of students during the 2021-2022 school year including students sent to High Road by HPS, BPS, WPS, and SPS. The investigation also revealed a high rate of restraint and seclusion of students by school staff in "time out" rooms leading to loss of instructional time among other adverse effects on students. Referring to seclusion as "time out" eliminates the mandatory reporting requirement and other safeguards intended to ensure that students are receiving the appropriate educational programming. If a student is not permitted to leave a "time out" then it becomes a seclusion. Blocking the doorway to a "time out" room and/or placing the student back into the "time out" room if he/she attempts to leave transforms a "time out" to a seclusion. At the same time, of the 30 student records reviewed, most did not include Functional Behavioral Assessments ("FBAs")

[11] The investigation also faulted CSDE for failing to adequately oversee High Road and failing to ensure that students with disabilities receive a safe and appropriate education.

or Behavior Intervention Plans ("BIPs") despite students with complex behavioral presentations and frequent restraint and seclusion of these students. The results of the investigation also show only a handful of the students at High Road Schools had access to a board-certified behavior analyst ("BCBA"), either directly or indirectly.

Restraint and Seclusion of Students at Each High Road Schools Campus

The investigation revealed an excessive use of seclusion and restraint by staff across all the High Road Schools. The chart below is a summary of data from the 2021-2022 school year of the counts of students at the (6) High Road Schools as well as the number of those students who were subjected to restraint and/or seclusion ("R/S") and the number of those students who had Behavior Intervention Plans from all of the LEAs, including but not limited to Hartford, Waterbury, Stratford, and Bridgeport, that placed students at High Road Schools in Connecticut. In total, there were 316 students enrolled at these schools, with 75 (24%) of them subjected to restraint and/or seclusion. Twenty-two of the 75 students were subjected to ten or more incidents of R/S with 13 students subjected to 20 or more incidents of R/S. Again, the data shows a lack of behavior plans with only 28 of those 75 students having BIPs in place. Though the presence of BIPs in student educational records varied, records reflected a pervasive lack of proactive assessment, planning, and behavior interventions for students with these levels of restraint and/or seclusion, implicating the provision of FAPE and oversight of contracted special education services by the LEAs overall, and the 4 LEAs who are the subject of this Complaint. Again, it is important to note, there were 826 total incidents of restraint and/or seclusion during the 2021-2022 school year across these (6) High Road Schools.

In addition to the use of restraint and seclusion as reported by High Road Schools, OCA/DRCT's investigation revealed a high use of "time outs" and other exclusionary discipline by staff placing students in "time out" or "break" rooms. During OCA and DRCT's monitoring visits, we witnessed many students in these "time out" rooms for a variety of reasons, seemingly much of which was not reported as official incidents of seclusions.

Data from 2021-2022 school year (supplied by High Road Schools)

High Road School	# students at High Road	# of students w/ R/S* (% of students with R/S)	Students with BIP/Total with R/S	# of incidents of R/S
Hartford Primary/Middle	65	19 (29%)	8/19	181 (R=153, S=28)
Hartford High School	46	4 (9%)	2/4	11 (R=11, S=0)
BEST	81	23 (28%)	17/23	438 (R=358, S=80)
Fairfield	76	22 (29%)	0/22	166 (R=164, S=2)
New London	29	4 (14%)	0/4	10 (R=10, S=0)
Windham	19	3 (16%)	1/3	20

				(R=12, S=8)
Total (6) schools	316	75 (24%)	28/75	826 (R=708, S=118)

*"R/S" means "restraint and/or seclusion"
Below is a summary of the data in the table above for one of the High Road Schools.

Hartford Primary/Middle - During the period of review, High Road of Hartford Primary/Middle School had 65 students enrolled across kindergarten to 8th grade. Nineteen (19) of these 65 students, or 29%, were subjected to restraint and/or seclusion during the 2021 – 2022 school year with 8 students subjected to more than 10 incidents of restraint or seclusion and 2 of them subjected to 27 incidents of restraint or seclusion. Again, there is an alarming absence of Behavior Intervention Plans for many of these students. Of the 19 students subjected to restraint or seclusion, only 8 of them (or 42%) had BIPs in place. Additionally, only 2 of the 8 students subjected to 10 or more incidents of restraint or seclusion during the school year had BIPs in place. This lack of proactive assessment, planning, and behavior interventions for students with these levels of restraint and/or seclusion is troubling. There were 153 incidents of restraint and 28 incidents of seclusion total during this school year for these 19 students at High Road Hartford Primary/Middle School.

Restraint and Seclusion of Students From HPS, BPS, WPS, and SPS.

Each of the (4) LEAs subject to this Complaint sent numerous students to the High Road Schools, many of whom were subjected to restraint and/or seclusion. The chart below is a summary of data for the 2021-2022 school year of the counts of students outplaced by the (4) LEAs at High Road Schools as well as the number of those students who were subjected to restraint and/or seclusion (R/S) and the number of those students who had Behavior Intervention Plans (BIPs) in place. A written summary of this information follows.

Data from 2021-2022 school year (supplied by High Road Schools)

LEA	# of students at High Road from LEA	# of students w/ R/S* (% of students with R/S)	# of students with BIP/Total with R/S	Total # of incidents of R/S
Hartford	77	19 (25%)	9/19	162 (R=145, S=17)
Bridgeport	27	10 (37%)	3/10	84 (R=80, S=4)
Waterbury	16	5 (31%)	4/5	127 (R=83, S=44)
Stratford	9	5 (56%)	1/5	74 (R=70, S=4)

*"R/S" means "restraint and/or seclusion"

Hartford Public Schools

During the period under review, Hartford Public Schools had 77 students enrolled across three High Road Schools across both primary and secondary grades. Nineteen (19) of these 77 students, or 25%, were subjected to restraint and/or seclusion during the 2021 – 2022 school year with 7 students subjected to more than 10 incidents of restraint or seclusion. Alarmingly there was an absence of Behavior Intervention Plans (BIPs) for many of these students. Of the 19 students subjected to restraint or seclusion, only 9 of them (or 47%) had BIPs in place. Additionally, only 2 of the 7 students subjected to 10 or more incidents of restraint or seclusion during the school year had BIPs in place. This lack of proactive assessment, planning, and behavior interventions for students with these levels of restraint and/or seclusion is troubling. It is also important to note there were 145 incidents of restraint and 17 incidents of seclusion total during this school year for these 19 Hartford Public School students.

It is notable that in conversations DRCT/OCA had with Hartford Public Schools, administrators indicated that some of the students outplaced to these segregated High Road Schools were placed there due to a lack of capacity in their in-district schools and programs. They shared that they have some programs within their in-district continuum of services but that there was a lack of capacity to serve these students there, leading to their outplacement at the segregated High Road Schools. This points to serious concerns and violations of the Least Restrictive Environment, LRE, component of the IDEA.

Bridgeport Public Schools

During the PUR, Bridgeport Public Schools had 27 students enrolled across two High Road Schools across both primary and secondary grades. Ten of these 27 students, or 37%, were subjected to restraint and/or seclusion during the 2021 – 2022 school year with 1 of them subjected to 60 incidents of restraint. Again, there was an absence of Behavior Intervention Plans (BIPs) for many of these students. Of the 10 students subjected to restraint or seclusion, only 3 of them (or 30%) had a BIP in place. Alarmingly, the student subjected to 60 incidents of restraint during the school year had no BIP in place. These 10 students were subjected to 80 total incidents of restraint and 4 total incidents of seclusion. To repeat, this lack of proactive assessment, planning, and behavior interventions for students with these levels of restraint and/or seclusion is very troubling.

Waterbury Public Schools

During the PUR, Waterbury Public Schools had 16 students enrolled in BEST Academy across both primary and secondary grades. Five of these 16 students, or 31%, were subjected to restraint and/or seclusion during the 2021 – 2022 school year with 2 of those students subjected to more than 20 incidents of restraint or seclusion. Four of the 5 students (80%) subjected to restraint or seclusion had a BIP in place. Interestingly, only one of the two students subjected to 20 or more incidents of restraint or seclusion during the school year had a BIP in place. These 5 students were subjected to 83 total incidents of restraint and 44 total incidents of seclusion.

Stratford Public Schools

During the PUR, Stratford Public Schools had 9 students enrolled across three High Road Schools across both primary and secondary grades. Five of these 9 students, or 56%, were subjected to restraint and/or seclusion during the 2021 – 2022 school year with 2 of those students subjected to more than 20 incidents of restraint or seclusion. Again, there was an absence of Behavior Intervention Plans (BIPs) for many of these students. Of the 5 students subjected to restraint or seclusion, only 1 of them (or 20%) had a BIP in place. Additionally, neither of the two students subjected to 20 or more incidents of restraint or seclusion during the school year had a BIP in place. Lastly, these five students were subjected to 70 total incidents of restraint and 4 total incidents of seclusion.

2. Lack of Adequate Staffing

OCA/DRCT's investigation revealed significant deficiencies with respect to staffing throughout High Road locations in Connecticut. These inadequacies included: lack of credentialed staff; failure to conduct background checks of staff; and failure of High Road to file the requisite annual statements of assurance regarding compliance with staffing requirements.

a) Lack of credentialed staff across High Road locations

OCA and DRCT's investigation revealed that almost half of the teachers employed at High Road for the period OCA/DRCT sought staff data lacked teacher certification from the state of Connecticut. Additionally, the investigation found that there was a pervasive failure by High Road Schools to communicate staffing gaps to the LEAs despite the company's contracts with districts to deliver services *via* credentialed staff consistent with student IEPs. The LEAs also failed to inquire about staffing levels and credentialing to ensure that High Road Schools could meet the needs of the students placed there.

There was also a lack of adequate documentation or CSDE approval for multiple individuals purportedly teaching with "durational permits" (an uncertified short-term teaching permit that must be approved by CSDE). Relatedly, High Road Schools inappropriately relied heavily on Long-Term Substitute Teachers (uncertified staff), for whom a number were not appropriately credentialed and approved by CSDE. There was also a lack of certified administrators across all High Road programs during the review period. There was also no documentation of physical education, art, or music teachers at High Road Schools and nurses are not employed at all buildings.

Despite these widespread staffing deficiencies, High Road's document submission to OCA revealed no written communications with any LEAs regarding these staffing deficiencies or the plans to address them. HPS, BPS, WPS, and SPS did not provide any response to OCA's subpoena asking specifically for the qualifications of staff who were educating the LEA's students. Notably HPS paid millions of dollars to outplace its students at High Road Schools during the period of review. Despite the statewide education labor shortages, and the significant investment of public funds expended by the district, HPS acknowledged to OCA that it did not ask about any staffing deficiencies at High Road during the period under review.

b) *Systemic failure to conduct background checks of staff working with children.*

High Road could not document that it conducted basic background checks for all staff, including employment checks, criminal history, or DCF background checks. High Road lacked background check documentation for more than sixty of its employees during a three-year period reviewed by OCA/DRCT.

c) *Failure to annually file statements of assurance regarding staffing as required by the State.*

To remain state-approved, a facility must submit annual "signed statement of assurances," that the program employs or contracts only with credentialed/licensed staff. Despite this requirement, CSDE could not produce annual copies of Statements of Assurance for each High Road location for a 5-year span requested. CSDE had no documents showing that it audited High Road's failure to provide such Assurances.

3. Lack of Individualized Programming

OCA's and DRCT's investigation found serious deficiencies in all aspects of educational service delivery across multiple High Road locations, showing a lack of individualized programming. That lack of individualized programming impacted all segregated students, including those students outplaced by HPS, BPS, WPS, and SPS

a) Records and site visits reflected significant educational service deficiencies.

Beyond investigators' 18 site visits to High Road schools and concurrent review of extensive program and staffing data, investigators' review of thirty (30) educational records confirmed significant educational service deficiencies across most programs – implicating provision of FAPE in the least restrictive environment for all students, including those from HPS, BPS, WPS and SPS. One administrator (who upon further review was not state certified despite asserting to investigators that he was a principal) told investigators "Students here don't have academic goals; they are here because of behavior." Individual student records review (30 students) revealed that reading and mathematics diagnostic assessments were rare; comprehensive evaluations were often missing; and there was a lack of evidence of individualized or personalized instructional or behavioral strategies. Full academic records provided for review contained no raw data to support progress monitoring. Records reflected students with extensive need for language supports who did not receive intervention, as well as a lack of individualized programming and transition services for older students. It is reasonable to conclude that findings identified by investigators from these 30 records would apply to many, if not all, students served in the High Road programs.

b) Records and observations found widespread student disengagement and chronic absenteeism.

While investigators' visits to program locations varied in terms of impressions, most site visits saw students who were sleeping for prolonged periods during class and students who were

completely disengaged from classroom activities. Investigators consistently saw students who were left entirely to themselves during a 30 minute or even 45-minute class period, alone in a cubicle or at a computer, without any or only the briefest of interactions with a teacher or an aide. Review of attendance data for the review period found that just under 40% of students across High Road locations were chronically absent. More than a quarter of all students missed 25 or more days of school for excused and unexcused reasons. Ten percent of all students missed 50 or more days of school.

4. Failure of LEAs to Monitor and Provide Required Oversight

LEAs are responsible for ensuring a student's IEP is implemented and for oversight and monitoring of the schools and programs where they place students, including APSEPs. DRCT/OCA reached out to school districts, including HPS, BPS, WPS, and SPS, that had a number of students placed at High Road during the review period to outline preliminary concerns, request follow up, and seek further information about monitoring of their students' education at High Road. While some school districts followed up immediately, several districts did not provide any substantive response at all, including HPS, BPS, WPS, and SPS. In addition to this communication, OCA issued a subpoena to school districts including HPS, BPS, WPS, and SPS requesting information regarding staffing and LEA monitoring activities. OCA/DRCT findings include:

a) LEAs generally reported no concerns about High Road programming.

During the investigation, the LEAs that were notified about the preliminary concerns raised in the report and were asked to follow up *via* programs reviews, possibly conduct site visits, monitor the delivery of services to students, and hold PPTs for their students. LEAs had a range of responses, but most, including HPS, BPS, WPS, and SPS, showed little interest in those preliminary concerns and took no actions to specifically address the conditions that students were being subjected to while segregated at High Road Schools.

HPS's Assistant Superintendent for Special Education and Pupil Services replied *via* email stating, "I have reviewed the attached and have no concerns at this time. Hartford has attended all PPTs and completed LRE checklists for all students at High Road. Hartford students have been offered FAPE and at no time was the district concerned that special education or related services were not being delivered. "[12] SPS, WPS, and BPS provided no follow-up communication or indication of actions taken in response to these concerns. In fact, in email communications, SPS sent an email in response that merely stated "[t]his email confirms your letter is received, thank you. We will look into this."[13] However, OCA and DRCT received no follow-up communication from SPS. Likewise, an email from BPS stated "Thank you! We will begin working on this

[12] Email from HPS to DRCT and OCA dated July 20, 2022
[13] Email from SPS to DRCT and OCA dated July 8, 2022

immediately."[14] We received no follow-up communication from BPS. WPS acknowledged receipt of the communication but provided no follow-up regarding actions taken.[15]

b) The LEA's monitoring is inadequate to protect and ensure children's right to special education and related services and for that education to be free from discrimination.

In response to a subpoena issued by the OCA to eighteen (18) of the sending districts, in which the districts were asked to provide "[a]ll dates that representatives from the District observed the educational programming being provided to the Students during his enrollment at High Road. Provide the names of the observers, positions of the observers, and all notes from such observations" most districts could not provide any dates, including HPS, BPS, WPS and SPS. Additionally, districts relied almost exclusively on information, including written progress reports, provided by High Road personnel at Planning and Placement Team meetings as the only monitoring mechanism. One district stated that it "trusted" High Road to implement the IEP of the student attending the School.

Finally, at least one of the subject LEAs (HPS) maintained that CSDE is responsible for ensuring that High Road schools have qualified staff employed. As outlined above, there were significant deficiencies with staffing throughout the High Road locations impacting students from all sending LEAs, including lack of credentialed staff; failure to conduct background checks of staff; and failure of High Road to file the requisite annual statements of assurance regarding compliance with staffing requirements. Despite those deficiencies, sending districts did not appear to take any steps to ensure adequate staffing. With respect to the LEAs subject to this Complaint, HPS, BPS, WPS and SPS were unable to provide names or qualifications of the staff serving their students. These Districts were also unable to produce documentation that they inquired with High Road about staffing levels, despite statewide concerns about special education staffing shortages.

OCA and DRCT's investigation found that some of the 18 sending LEAs placed and maintained students at High Road because they lack the resources to serve students within their home districts either because they have not developed the capacity that they already have in place to provide such services or do not provide such services at all—in violation of the LRE provisions of IDEA. Specifically, HPS indicated they often place students in these segregated out of district placements due to a lack of capacity in their in-district programs. They were clear that they do have some programming and continuum of services available in-district but that a lack of capacity leads to students being outplaced. Additionally, the LEAs interviewed, which included HPS, were not

[14] Email from BPS to DRCT dated July 7, 2022

[15] Of other LEAs that were notified, one reported being "pleased" with High Road Schools, noting that other programs are "worse," and that there were no red flags for service hours not being met. Investigators determined that this District had more than a dozen students at the High Road programs during the review period and that five of the students were significantly chronically absent with a combined number of absences of 306 days, though none of these students had a behavior intervention plan in place. Another LEA that reported no concerns had 9 students enrolled at its local High Road program in the '21-'22 school year. Six of these students were chronically absent, with a combined 333 absences. None of the students were identified as receiving related services or having a behavior intervention plan. A third LEA conducted a site visit and concluded the provision of services and staff support to its students was adequate. Another LEA conducted an observation of its student, documented a poor site visit, including poorly trained support staff, and ultimately returned its student to the home district.

proactive about returning students to in-district programs from outplacements, including High Road Schools. Rather, they relied on requests from parents/guardians and then applied strict standards to determine whether the student could meet the expectations of the in-district program based on attendance, completing tasks and no behavioral issues.

C. STUDENT EXEMPLARS

As part of its investigation, the OCA and DRCT brought in educational consultants to review the files of 30 students attending High Road Schools. Included in those record reviews were the following students, which serve as additional examples of the inadequate educational programming at High Road Schools and lack of proper oversight and monitoring by the LEAs.

HPS Student Exemplar: Student A (African American) was described as having excessive absences with attendance rates of 36% and a pattern of sleeping for the whole day when he did attend, waking only to eat lunch. Student A also had a history of psychiatric hospitalization, yet services provided at High Road were limited to individual and small group counseling by a social worker without evidence of ongoing collaboration or consultation with psychiatric or clinical service providers. Student A's records indicate that his Behavior Intervention Plans (BIP) were inconsistent. Student A was placed at the Hartford Primary-Middle School program when he was in the third grade, at the age of ten, with a BIP created at his previous public school. Despite having a BIP from his previous school, a program review later that year indicated he was performing below grade level due to a lack of access to education based on extended timeouts, raising questions about the degree to which his BIP reflected his current needs. Among the students initially placed at the High Road Hartford Primary-Middle School site, Student A transitioned to High Road Hartford High School. Student A's placement was terminated abruptly following a Manifestation Determination and a ten-day suspension for threats of violence, with ten hours of tutoring provided by Hartford Public Schools as an interim service while awaiting the next placement.

HPS Student exemplar: Student B is a 15-year-old **(Other)** girl with ADHD, Anxiety, Depression, Disruptive Mood Disorder, Dysregulation Disorder. She also was determined to have borderline verbal comprehension skills, low average perceptual skills, borderline working memory, average processing speed, moderate receptive and expressive language delays. She has a history of being sexually abused. Student B's records showed that she was given multiple timeouts most days ranging from 4-49 minutes. Upon placement at High Road Schools, a safety plan recommended that she be searched daily to ensure that she had not brought anything to school which could be used to self-harm. The plan also recommended that the student also receive adult supervision at all times. A social work summary a year after her placement at High Road noted a history of 70 timeouts and seven (7) restraints during her first year in the placement at High Road There was no Functional Behavioral Assessment or BIP included in the available records.

BPS Student exemplar: Student L (African American) was evaluated three years prior to admission to High Road with a Full-Scale IQ (FSIQ) of 72. Upon admission in 2019 to High Road schools at age 15, (Grade 8) she was reading at second grade level and had difficulties with basic mathematical functions (adding and subtracting). During the 2020-2021 school year, Student L accumulated 121 absences. During the pandemic, she completed no assignments in any subject

while ostensibly participating in class remotely. Her report card at the end of the 2020-2021 school year recorded F's in all subjects. She had no high school credits. She was receiving services of 29 hours of special education, 19.30 minutes of special education once a week and three 30-minute sessions of individual and group counseling. A contact log between 2019.03.20 and 2022.06.10. recorded almost daily calls and messages about attendance. There was no evidence in this student's records of personalized academic or behavioral services. Her continuation in the program was unclear.

WPS Student exemplar: Records of **Student F (Hispanic)** placed at High Road Hartford High call into question the degree to which the environment is supportive and focused on personalized academic and behavioral goals. These records raise concerns similar to those identified at High Road Hartford Primary Middle School but indicate a greater degree of severity of mental health issues including (for Student F) school suspension related to a psychotic break and hospitalization for major depression disorder, suicidal ideation, ADHD conduct and emotional disorder, mixed. Despite indications of severe mental health issues for this student, services were limited to 29 hours of special education and one hour per week of social work. Student F also had a history of multiple absences and was labeled "habitually truant." Although he was said to have "solid average intellectual ability" the record did not contain a detailed educational, academic, or psychological evaluation. Further, despite the general statement in the 2022.05.19 IEP that "evaluations were not needed" (2022.05.19)" the record noted that Student F needed to improve comprehension strategies and increase vocabulary. Although Student F expressed an active interest in occupational skills development, the degree to which there were programmatic opportunities to access training in areas of interest was unclear.

SPS Student Exemplar: Student AB, a 14-year-old female student (**African American)** with the educational classification of Intellectual Disability was repeatedly placed in "time-outs" in a cool down space/room for behaviors, which were not considered "seclusions" for purposes of reporting and/or monitoring the student's educational programming. These "time-outs" and behaviors included:

- 5 minutes after eloping from the classroom to the hallway running around.
- 5 minutes when during an intervention attempted to elope outside, throwing and grabbing nearby objects.
- 5 minutes for running away from social worker, given time out for elopement.
- 5 minutes for running down the hallway, received immediate time out for elopement.
- 5 minutes for ripping pictures and items on wall, drawing on desk.
- 5 minutes for breaking shelving unit after jumping on it.
- 7 minutes for not wanting to wait for a break, eloped classroom.
- 8 minutes for walking around the classroom, pushed staff with force when redirected then punched self in space in the cool down area. The child was bleeding from his nose.
- 10 minutes for throwing binders, pencils and food, received time out for throwing objects.
- 10 minutes when unable to take break, became upset and pushed staff, received immediate time out for physical aggression.
- 12 minutes for running down hallway attempting to elope.
- 15 minutes for walking out of classroom early during dismissal, received immediate time out for elopement.

- 18 minutes for throwing teacher's belonging on ground and stomped on them, received immediate time out for minor property destruction.
- 21 minutes for eloping from classroom.
- 25 minutes for refusing to go to cool down, kicked hole in wall, shoving and kicking staff.
- 29 minutes when frustrated she could not take a break, eloped classroom and received immediate time out.
- 34 minutes for eloping classroom
- 38 minutes for leaving classroom, received immediate time out for eloping.
- 44 minutes for walking out of classroom after being instructed to wait for staff.

II. RELEVANT LEGAL STANDARDS

The above-described deficiencies constitute violations of state and federal law. For the purposes of this federal complaint, OCA and DRCT will focus on the federal law violations for which it asks the Department of Justice to investigate and remediate.

Violations of the Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act ("IDEA") mandates that all children with disabilities receive a Free Appropriate Public Education ("FAPE") in the Least Restrictive Environment ("LRE") 20 U.S.C. § 1412(a)(5)(A). The IDEA's monitoring and enforcement responsibilities require that the State Educational Authority (SEA)[16] monitor the school districts' (LEAs) compliance with federal special education requirements. The LEAs are responsible for ensuring that each child who is eligible for special education and related services receives FAPE, including for students who have been outplaced at school programs such as High Road Schools. This dual system of monitoring and enforcement ensures that children with disabilities are afforded the supports and services needed to access his/her educational programming. The IDEA also requires that a student in special education receive their education and related services in the least restrictive environment ("LRE") to meet their needs. 20 U.S.C. § 1412(a)(5)(A). Where an LEA fails to provide students with education in the LRE based upon the student's individual needs and instead provide such education in the setting that it chooses to provide violates the IDEA's LRE requirements. *T.M. ex rel. A.M. v. Cromwell Centr. Sch. Dist*., 752 F.3d 145, 165 (2d Cir. 2014) ("A school district therefore cannot avoid the LRE requirement just by deciding not to operate certain types of educational environments; instead, it must provide a continuum of alternative placements that meet the needs of the disabled children that it serves."). Districts must offer a continuum of services to meet the needs of its students. 34 C.F.R. § 300.115(a).

[16] Under Connecticut State law, the Connecticut State Board of Education is statutorily responsible for the overall structure, development and supervision of special education programs provided to children residing in or attending any facility (private or public) that receives state funds. That supervision includes overseeing the "educational aspects of all programs and instructional facilities in any day or residential child- caring agency or school which provides training for children requiring special education and which receives funding from the state under the provisions of sections 10-76a to 10-76g, inclusive." *See* Conn. Gen. Stat. § 10-76b. Section 10-76b, entitled, State supervision of special education programs and services. Regulations.

Here, the LEAs fail to ensure that the students placed at High Road Schools receive adequate assessments and education tailored to meet their individualized needs in violation of the FAPE requirements of the IDEA and relevant state law. Additionally, the LEAs' practice of placing and maintaining students at High Road because they lack the resources to serve students within the district either because they have not developed sufficient capacity that they already have in place to provide such services or do not provide such services at all—violates the LRE provisions of IDEA.

Here, the LEAs failed to ensure that the students placed at High Road Schools received adequate assessments and education tailored to meet their individualized needs in violation of the FAPE requirements of the IDEA and relevant state law. Additionally, the LEAs' practice of placing and maintaining students at High Road because they lack the resources to serve students within the district either because they have not developed sufficient capacity in their own special education programs or do not provide such services at all—violates the LRE provisions of IDEA.

Failure to Monitor and Ensure Compliance with the IDEA and Relevant State Special Education Law

The IDEA and relevant Connecticut special education law require LEAs to be responsible for the overall structure and provision of special education to the students for whom they are responsible for serving. As such, LEAs are responsible for providing and/or acquiring the actual special education services, the development of individualized education programs, planning and placements meetings and public agency placements. *See* Conn. Gen. Stat. § 10-76d. By failing to regularly monitor and ensure the provision of adequate and appropriate services for the students whom they placed at High Road, and the sufficiency of the credentials of the teachers and paraprofessionals at High Road to provide the students with their education services, the LEAs violated the IDEA and Conn. Gen. Stat. § 10-76d. Additionally, CSDE and the LEAs did not meet their monitoring requirements by failing to monitor to ensure that High Road completed background checks on their employees as required by Connecticut state law. See Conn. Gen. Stat. § 10-222c.

Violations of the Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. Section 504 similarly provides that "[n]o otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794.

The LEAs Violates the Title's II's Integration Mandate

In enacting the ADA, Congress recognized that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of

discrimination against individuals with disabilities continue to be a serious and pervasive social problem"; that "discrimination against individuals with disabilities persists in such critical areas as . . . institutionalization"; and that "the Nation's proper goals regarding individuals with disabilities are to assure . . . full participation[] [and] independent living." 42 U.S.C. § 12101(a)(2)-(3), (7); *see also* House Report (Part III) at 49-50 ("The purpose of [T]itle II is to continue to break down barriers to the integrated participation of people with disabilities in all aspects of community life."). Congress further found that "individuals with disabilities continually encounter various forms of discrimination, including . . . segregation." 42 U.S.C. § 12101(a)(5). The very purpose of the ADA is to "provide clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).

Title II of the ADA's "integration mandate"—arising out of the statute itself, the regulations of the Attorney General implementing Title II, and the Supreme Court's decision in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999)—requires that when a state provides services to people with disabilities, it must do so "in the most integrated setting appropriate to [their] needs." 28 C.F.R §35.130(d), *Olmstead*, 527 U.S. at 592, 42 U.S.C. §12132. The Supreme Court in *Olmstead* explicitly held that "[u]njustified isolation . . . is properly regarded as discrimination based on disability." *Olmstead*, 527 U.S. at 597. The Court noted that "in findings applicable to the entire statute, Congress explicitly identified unjustified 'segregation' of persons with disabilities as a 'for[m] of discrimination.'" *Id.* at 600. The Court held that unnecessary institutionalization violates the ADA because it "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life," and "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 600-01.

The Supreme Court concluded that the ADA requires public entities to provide community services in the most integrated setting when: (a) such services are appropriate, (b) the affected persons do not oppose community-based treatment, and (c) community services can reasonably be accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities. *Olmstead*, 527 U.S at 607.

In violation of Title II's integration mandate, the LEAs unlawfully segregates students with behavioral health disabilities from their non-disabled peers. Students with behavioral health disabilities are often removed from their neighborhood schools due to their behavioral issues that could be addressed effectively in their neighborhood schools with appropriate reasonable modifications and accommodations. Further, it is questionable whether LEAs have clear, or any, plans to reintegrat students back into their neighborhood schools due to a lack of plan to do so and/or lack of sufficient capacity of the LEAs to provide such services such as the case with HPS. Consequently, the LEAs discriminates against these students on the basis of their disabilities by denying them reasonable modifications and accommodations of existing educational and related programs, services, and supports and failing to develop sufficient service capacity within the district, and by requiring them to be in segregated settings such as High Road Schools in violation of 42 U.S.C. § 12132 and 28 C.F.R. § 35.130(d).

The LEAS' Fail to Reasonably Modify Its Policies, Practices and Procedures to Affords Students with Behavioral Health Disabilities with Equal Educational Opportunities.

Title II of the ADA also requires that public entities, including public schools and school districts and their contractors, such as High Road, make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that such modifications would fundamentally alter the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7). Title II also prohibits public entities, including public schools and their contractors such from: denying students with disabilities "an opportunity to participate in or benefit from the aid, benefit, or service" that is equal to that afforded to other students (28 C.F.R. § 35.130(b)(1)(ii)) and providing students with disabilities an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others" (28 C.F.R. § 35.130(b)(1)(iii)).

The LEAs fail to reasonably modify their policies, procedures, practices, and programs and activities, to provide students with behavioral health disabilities with an opportunity to participate in and benefit from public education that is equal and afforded to other students. *See* 28 C.F.R. § 35.130(b)(1)(ii). The LEAs have also failed to provide students with behavioral health disabilities with aids, benefits, and services that are as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement provided to others. *See* 28 C.F.R. § 35.130(b)(1)(iii). Students who are placed at High Road Schools do not receive the full range of educational opportunities afforded to students without disabilities or students with disabilities that do not impact behavior. For example, the High Road Schools students do not receive opportunities to receive courses such as physical education, art, health and safety, or music, among other similar courses. They also do not always receive instruction from qualified teachers and do not receive the appropriate level of instruction to meet their needs, among other educational deficiencies identified by OCR and DRCT, as well as being segregated and denied opportunities to learn alongside their non-disabled peers.

The LEAs Engage in Discriminatory Methods of Administration in Violation of Title II and Section 504.

Methods of administration, such as those of the LEAs, "[t]hat have the effect of subjecting qualified individuals with disabilities to discrimination," 28 C.F.R. § 35.130(b)(3), including excluding students with behavioral health disabilities who have behavioral support needs from access to the services and supports that they need to receive their educational services in integrated, community school-based settings violate 42 U.S.C. § 12132, 28 C.F.R. § 35.130(b)(3) and (d), and *Olmstead*, 527 U.S. at 607. Specifically, the LEAs, including HPS, BPS, WPS, and SPS' failure to adopt methods of administration of its educational service system that are necessary to enable students with behavioral health disabilities who need behavioral support services to receive their education in the most integrated setting appropriate, including through having sufficient services for students behavioral health needs violates 42 U.S.C. §§12132 and 12201(d), 28 C.F.R. § 35.130(b)(3), (d), and (e)(1), and *Olmstead*, 527 U.S. at 607.

The LEAs violate Title II by planning, administering, funding, and operating an educational service system that results in the unnecessary segregation of students with behavioral health

disabilities in segregated out-of-district educational placements such as High Road schools. HPS, BPS, WPS, and SPS also unlawfully plans, administers, funds, and operates an educational services system that results in disability discrimination by denying students with behavioral health disabilities with equal educational opportunities provided to their nondisabled peers.

The LEAs ADA Violations Disproportionately Burden Children of Color

Although this complaint is grounded on the assertion that HPS, BPS, WPS and SPS, violated specific provisions of the ADA, Section 504, and the IDEA, it should be noted that the students described above with behavioral health disabilities are mostly Black or Brown students.

IV. REQUEST FOR RELIEF

DRCT and OCA respectfully request that DOJ investigate and remediate the deficiencies identified in this letter and attached report, and any other deficiencies identified by DOJ throughout its investigation. To remediate the numerous deficiencies revealed by the investigation, OCA and DRCT ask that DOJ mandate that the LEAs take the measures set forth below.

1) Require the LEAs to ensure sufficient resources for special education services to support HPS's provision of services to students with disabilities in the least restrictive environment and the most integrated setting and to enable these students to have an equal educational opportunity to that of their nondisabled peers.

2) Require the LEAs to provide services to students with behavioral health and related disabilities so they can remain and be served in the most integrated setting as required by federal law.

3) Require the LEAs to include in their contracts with High Road Schools and other separate schools, provisions for services required for children attending public schools, including physical education, the arts, and health and safety.

4) Require the LEAs to provide special education and related services to ensure that each student receives a FAPE in the least restrictive environment and in the most integrated setting to meet the students' needs.

If you would like to discuss this matter further, please do not hesitate to contact Deborah Dorfman at Disability Rights Connecticut at (860) 469-4463 or by email at deborah.dorfman@disrightsct.org and Sarah Eagan, Connecticut Office of the Child Advocate at (860) 566-2106 or by email at Sarah.Eagan@ct.gov .

Sincerely,

DISABILITY RIGHTS CONNECTICUT

/s/
Deborah A. Dorfman
Executive Director/Attorney

/s/
Tom Cosker
Advocate

CONNECTICUT OFFICE OF THE CHILD ADVOCATE

/s/
Sarah Eagan
Child Advocate

/s/
Virginia Brown
Staff Attorney III

EXHIBIT A

Disability Rights Connecticut
Connecticut's Protection and Advocacy System

75 Charter Oak Avenue
Suite 1-101
Hartford, CT 06106

EXECUTIVE SUMMARY

From March 2022 to March 2024, the Office of the Child Advocate ("OCA")[1] and Disability Rights Connecticut ("DRCT")[2] collaborated on an investigation into High Road Schools, a group of eight state-approved private special education programs ("APSEPS") in Connecticut owned by Specialized Education Services, Inc. ("SESI"). In conducting this investigation, OCA and DRCT examined the programming provided to students with disabilities placed by their home school district to receive their special education services at High Road schools and the state and local oversight of such programming.

During the 2021-2022 school year there were approximately 316 students eligible for special education services who had Individualized Education Plans ("IEPs") enrolled at High Road Schools in Connecticut from 38 school districts across the state.

Federal special education law and Title II of the Americans with Disabilities Act (ADA) requires, respectively, that students receive their education and related services in the least restrictive environment ("LRE") and most integrated setting appropriate to their needs. Placement of a student in an "outplacement" such as High Road Schools may only be considered if there is no reasonable in-district option that can meet the student's needs. Connecticut currently leads all states in the placement of children with disabilities in "separate schools," and the majority of these students are children of color.

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[1] ***Office of the Child Advocate*** The mission of the Office of the Child Advocate (OCA) is to oversee the protection and care of children and to advocate for their well-being. OCA is not an administrator of programs. Rather, the OCA monitors and evaluates public and private agencies that are charged with the protection of children, and reviews state agency policies and procedures to ensure they protect children's rights and promote their best interest. OCA helps to: advocate for children at risk; address public policy issues concerning juvenile justice, child care, foster care, and treatment; review individual cases and investigate complaints; educate and inform the public of laws and services affecting families and children who are placed under state supervision; coach families, concerned citizens, and agencies to "navigate" public service and information systems and advocate for children effectively; review facilities and procedures of public or private institutions or residences where juveniles are placed; and facilitate change by bringing different agencies together to find creative solutions to difficult problems.

[2] ***Disability Rights Connecticut's*** mission is to advocate, educate, investigate, and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities to participate equally and fully in all facets of community life in Connecticut. Disability Rights Connecticut provides legal advocacy and rights protection to people of all ages with disabilities. DRCT focuses its legal and other advocacy on a wide range of disability justice issues for Connecticut residents with disabilities. DRCT's services include advocating for the rights of individuals with disabilities on issues including abuse, neglect, discrimination, community integration, forensic mental health, voting, and other rights protection issues. DRCT replaced the Office of Protection & Advocacy for Persons with Disabilities, which was abolished by Connecticut Law as of June 30, 2017, and is now Connecticut's federally mandated Protection and Advocacy System pursuant to the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801, *et seq*., *as amended*, 42 C.F.R. § 51; the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15041, *et seq*., *as amended*, 45 C.F.R. § 1326; the Protection and Advocacy for Individuals with Traumatic Brain Injury Act, 42 U.S.C. §§ 300d-52, 53, the Protection and Advocacy for Individual Rights Act, 29 U.S.C. §794e.

BACKGROUND

High Road is one of the state's largest state-approved private special education providers and it primarily serves children from low-income school districts. High Road receives millions of dollars in public funds each year.

- Of the 316 students enrolled at High Road schools during the review period, 80% are boys, and more than 70% are children of color.
- While 38 school districts contracted with High Road during the review period, 80 students came from the Hartford Public Schools—the largest district consumer of High Road services.
- All students enrolled at High Road have an IEP that must be implemented by the High Road Schools pursuant to student-specific contracts with the student's local school district.
- For the 2021-22 academic year, High Road charged districts a base per student rate that ranged from $222.89 a day to $548.16, not including the cost of related services such as social work support (additional $85.00 per 30 minutes) or 1:1 support (additional $187.4 per day). Some facilities offered discounted rates to residents in the town in which they are located. Districts also bear the costs of transporting students door to door to High Road School locations.

METHODOLOGY

The joint investigation consisted of more than a dozen site visits to High Road locations across Connecticut, interviews of staff and students, reviews of data and records obtained from SESI, the Connecticut State Department of Education ("CSDE"), and Local Education Agencies ("LEAs") as well as a review of individual educational files for thirty High Road students. Investigators consulted with educational experts in the development of this Report, including Dr. Michael Powers and his colleagues at The Center for Children with Special Needs, Andrea M. Spencer, Ph.D., Associate Professor, Department of Education, University of Saint Joseph, and Dr. Ross Greene and his colleagues at Lives in the Balance.

INVESTIGATORY FINDINGS

In sum, OCA and DRCT found that many of the students at High Road Schools were grossly underserved both in terms of educational planning and service delivery. The investigation revealed widespread student disengagement and chronic absenteeism across High Road locations, failure to adequately assess and support students' educational needs through individualized service delivery, and perhaps most alarmingly, gross deficiencies in the number of certified special education teachers and other credentialed educational staff working with children and systemic failure to ensure and/or document that staff had undergone employment checks and criminal and child welfare background checks.

The children at High Road Schools, some as young as five years old, are among the state's most vulnerable students. OCA/DRCT investigation revealed significant deficiencies with respect to the statutorily required oversight and monitoring by CSDE and the LEAs of services to these students—disproportionately low-income children of color. Additionally, the investigators identified systemic violations of Title II of the ADA, Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act. This Report speaks to urgent system concerns, and OCA/DRCT offer several recommendations to improve service delivery to children and increase local and state oversight

and accountability for ensuring children with disabilities receive the appropriate education they are entitled to under state and federal law. OCA and DRCT investigative findings, as summarized below, fell into four main categories including: staffing, individualized educational programming, LEA monitoring, and CSDE oversight. The recommendations that follow address these findings and show there is a path forward to remediate the deficiencies.

I. INADEQUATE STAFFING AT HIGH ROAD

OCA and DRCT found numerous gaps in the provision of certified, trained, and qualified staff to deliver special education and related services as required by individual student IEPs, the contracts with LEAs, state standards for operation of an APSEP, and federal law. The findings implicate inadequate local and state oversight of staffing and service delivery for some of the state's highest need students, who have a civil right to special education under state and federal law.

Lack of credentialed staff across High Road locations

- Almost half of the teachers employed at High Road for the period OCA/DRCT sought staff data lacked teacher certification from the state of Connecticut.
- Failure to communicate staffing gaps to LEAs despite the company's contracts with districts to deliver services via credentialed staff consistent with student IEPs.
- Lack of adequate documentation or CSDE approval for multiple individuals purportedly teaching with "durational permits" (an uncertified short-term teaching permit that must be approved by CSDE).
- Heavy reliance on Long-Term Substitute Teachers (uncertified staff), not all of which were appropriately credentialed and approved by CSDE.

> *During an early 2022 site visit to a High Road location, OCA/DRCT observed a classroom identified by the New England Executive Director as the "Autism Classroom," though High Road executives later disputed that designation. The classroom teacher reported to investigators during the site visit that s/he was not a certified special education teacher, and a review of the SDE certification database indicates that the individual had only a previously issued Long Term Substitute authorization for a different program, and which was not transferrable to High Road.*

- Certified administrators lacking across all High Road programs during the review period.
- No documentation of physical education, art, or music teachers at High Road Schools.
- Nurses are not employed at all buildings.

> *Primary students at one High Road location were observed to represent a broad age and developmental span but there was no indication of physical education, recess, active indoor or outdoor activities except "break rooms" equipped with shag carpet pieces, a beanbag chair or two, an indoor trampoline.*

Systemic failure to conduct background checks of staff working with children.

- High Road could not document that it conducted basic background checks for staff, including employment checks, criminal history, or DCF background checks.
- High Road lacked background check documentation for more than sixty of its employees during a three-year period reviewed by OCA/DRCT.

Failure to annually file statements of assurance regarding staffing as required by the State.

- To remain state-approved, a facility must submit annual "signed statement of assurances," that the program employs or contracts only with credentialed/licensed staff.
- Despite this requirement, CSDE could not produce annual copies of Statements of Assurance for each High Road location for a 5-year span requested. CSDE had no documents that it audited High Road's failure to provide such Assurances.

II. LACK OF INDIVIDUALIZED PROGRAMMING

Individualized educational programming is a cornerstone of special education yet is an area of significant concern at High Road Schools. OCA's and DRCT's investigation found serious and widespread deficiencies in all aspects of educational service delivery across multiple High Road locations.

Overreliance on restraint and seclusion to manage student behaviors.

- There were more than 1200 reported incidents of restraint and seclusion of students during the 2021-2022 school year.
- High Road School of Hartford Primary/Middle School had a total of 543 instances of Restraint alone during the 2021-2022 school year.
- High instances of restraint and seclusion of students by school staff in "time out" rooms leading to loss of instructional time among other adverse effects on students.
- Student records reviewed included almost no Functional Behavior Assessments or Behavior Intervention Plans despite students with complex behavioral presentations and frequent restraint and seclusion of these students.

Student B's record showed multiple timeouts most days ranging from 4-49 minutes. Upon placement, a safety plan recommended that she be searched daily to ensure that she had not brought anything to school which could be used to self-harm and that she receive adult supervision at all times. A social work summary a year after her placement at High Road noted a history of 70 timeouts and 7 restraints during her first year in the placement. No Functional Behavioral Assessment or BIP was included in her records.

Records and site visits reflected significant educational service deficiencies.

- One administrator (who upon further review was not state certified despite asserting to investigators that he was a principal) told investigators "Students here don't have academic goals; they are here because of behavior."
- Individual student records review (30 students) revealed that reading and mathematics diagnostic assessments were rare; comprehensive evaluations were often missing; and there was a lack of evidence of individualized or personalized instructional or behavioral strategies. Full academic records provided for review contained no raw data to support progress monitoring. Records reflected students with extensive need for language supports who did not receive intervention.

Student A was placed at the Hartford Primary-Middle School program in Grade 3, at age 10, with a Behavior Intervention Plan created at his previous public school. Yet a program review later that year indicated he was performing below grade level due to a lack of access to education based on extended timeouts, raising questions about the degree to which his Behavior Plan was reflective of his current needs. In addition, Student A had multiple absences, slept for the whole day on multiple days waking only to eat lunch and had significant academic delays. Despite a psychological evaluation (prior to enrollment) indicating "unusually poor expressive and receptive communication skills" no language evaluation or therapy was provided. Complex academic/behavioral/disengagement issues persisted from enrollment at High Road for 7 years without his needs being properly addressed.

- At multiple sites, almost none of the students received Functional Behavioral Assessments (FBAs) or Behavior Intervention Plans (BIPs) despite many students having complex behavioral presentations and frequent restraints and seclusions.
- Lack of individualized programming/transition services for older students.

Student F had been diagnosed with PTSD and an adjustment disorder, had a Full-Scale IQ in the average range and was described as "working below potential" as a "credit deficient 12th grader." However, she was not able to participate in job exploration in the community because she was "not on the correct level" of the contingency management levels system. She withdrew from the program to enroll in Adult Education with an F in all grades.

Records and observations found widespread student disengagement and chronic absenteeism.

- While investigators' visits to program locations varied in terms of impressions, most site visits saw students who were sleeping for prolonged periods during class and students who were completely disengaged from classroom activities.
- Investigators consistently saw students who were left entirely to themselves during a 30 minute or even 45-minute class period, alone in a cubicle or at a computer, without any or only the briefest of interactions with a teacher or an aide.
- Review of attendance data for the review period found that just under 40% of students across High Road locations were chronically absent. More than a quarter of all students missed 25 or more days of school for excused and unexcused reasons. Ten percent of all students missed 50 or more days of school.

III. Failure of LEAs to Monitor and Provide Required Oversight

LEAs are responsible for ensuring a student's IEP is implemented and for oversight and monitoring of the schools and programs where they place students, including APSEPs. DRCT/OCA reached out to 18 school districts that had a number of students placed at High Road during the review period to outline preliminary concerns, request follow up, and seek further information about monitoring of their students' education at High Road. While some school districts followed up immediately, several districts did not provide any substantive response at all. OCA/DRCT findings include:

LEAs generally reported no concerns about High Road programming.

- One LEA reported being "pleased" with High Road Schools, noting that other programs are "worse," and that there were no red flags for service hours not being met. Investigators determined that this District had more than a dozen students at the High Road programs during the review period and that five of the students were significantly chronically absent with a combined number of absences of 306 days, though none of these students had a behavior intervention plan in place.
- Another LEA that reported no concerns had 9 students enrolled at its local High Road program in the '21-'22 school year. Six of these students were chronically absent, with a combined 333 absences. None of the students were identified as receiving related services or having a behavior intervention plan.
- A third LEA conducted a site visit and concluded the provision of services and staff support to its students was adequate.
- Another LEA conducted an observation of its student, documented a poor site visit, including poorly trained support staff, and ultimately returned its student to the home district.

Most school districts did not conduct regular site visits to High Road, observe education, or inquire about staffing.

- Only 3/18 Districts stated that they observe students after placement at High Road.
- Most districts were unable to provide names or qualifications of the staff serving their students.
- Districts were unable to produce documentation that they inquired with High Road about staffing levels, despite statewide concerns about special education staffing shortages.

- Districts relied almost exclusively on information, including written progress reports, provided by High Road personnel at Planning and Placement Team meetings as the only monitoring mechanism.
- One district stated that it "trusted" High Road to implement the IEP of the student attending the School.
- Multiple districts maintained that CSDE is responsible for ensuring that High Road schools have qualified staff employed.

Overall, LEA monitoring is inadequate to protect and ensure children's right to special education and related services and for that education to be free from discrimination.

- OCA and DRCT's investigation found that certain LEAs that place and maintain students at High Road do so because they lack the resources to serve students within their home districts either because they have not developed the capacity that they already have in place to provide such services or do not provide such services at all—in violation of the LRE provisions of IDEA.
- Investigators identified systemic violations of Title II of the ADA and Section 504 of the Rehabilitation Act for failure to provide services in the most integrated setting and failure to ensure students with behavioral health and/or developmental disabilities have an equal educational opportunity to students without disabilities.
- Investigators identified violations of the Individuals with Disabilities Education Act and Connecticut special education law due to LEAs failing to ensure students are receiving a free appropriate public education in the least restrictive environment including adequate assessments.

IV. CSDE Oversight of High Road and Provision of Special Education is Deficient

The CSDE has regulatory oversight obligations of all special education schools and programs including APSEPs. The investigation found significant deficiencies in this area including:

Inadequate follow up by CSDE to identified deficiencies and concerns.

- Site visit/program approval records produced by CSDE indicated "deficiencies" had been found, including concerns about background checking, inadequate documentation in students' IEPs and education records, but there were no corresponding records of CSDE follow up or monitoring of corrective action.
- Following a previous concern transmitted by OCA to CSDE regarding the failure of High Road to conduct background checks in a particular case, CSDE required some corrective action. In November 2019, High Road agreed to conduct an internal audit of its background checking activities. The CSDE file requested by OCA/DRCT, however, contained no such audit or any other follow up activities to ascertain whether the background checking deficiencies had been remedied. Subsequent investigative findings by OCA/DRCT confirmed this problem was not remedied.

CSDE did not follow up on High Road failure to comply with state standards.

- Programs are required to submit yearly assurances that they are compliant with state standards for utilization of credentialed staff. While CSDE provided High Road's assurances for 2017-2019, it did not produce assurances for 2020 and 2021 for most of the High Road schools. Nor did CSDE produce documentation that it had followed up with High Road regarding the missing assurances.

CSDE did not properly monitor and ensure compliance with IDEA and relevant state special education law.

- It does not appear that CSDE conducts reasonably designed supervision of education provided in APSEPs as contemplated by federal guidance.
- CSDE did not conduct a prompt visit of the High Road Danielson location prior to that program's approval.
- CSDE did not ensure corrective action to identified deficiencies.
- CSDE did not take adequate measures to ensure High Road's compliance with state standards for APSEPs.
- While OCA/DRCT briefed CSDE in 2022 on preliminary findings of this investigation, that briefing did not lead to documentation of a timely inquiry by the state into the High Road programs or the contracting districts' compliance with IDEA.

REMEDIAL RECOMMENDATIONS

Any recommendations that include proposed legislative changes are made solely on behalf of OCA. DRCT does not propose legislative changes. However, DRCT does believe that such legislative changes proposed by OCA in these recommendations would be beneficial to students with disabilities.

To remediate the numerous deficiencies revealed by the investigation, OCA and DRCT recommend that CSDE, the LEAs and High Road take the following measures:

CSDE/SEA Oversight and Resources

1. Amend state law to require strengthened CSDE oversight of state-approved private special education programs including determinations by LEAs of an APSEP as the Least Restrictive Environment (LRE); annual inspections and site visits to ensure IDEA and regulatory compliance; mandatory follow up where corrective actions are mandated by CSDE; periodic audits of required statements of assurances regarding employee credentials and background checks; and parent questionnaires as contemplated by the September 29, 2023, federal guidance for states.

2. Amend state law to mandate transparency of CSDE's federally required monitoring and enforcement regarding placement of children with disabilities in "separate schools," including APSEPS, and the provision of FAPE to children in separate schools.

3. CSDE should enhance monitoring and enforcement of restraint and seclusion laws pertaining to students with disabilities, inclusive of site visits to seclusion spaces used by "separate schools"/APSEPS, audits of restraint and seclusion and "time out" incident reports and parental notifications and establish criteria for mandatory staff and administrator professional development to reduce reliance on isolation and restraint.

4. CSDE should ensure all monitoring and enforcement activities related to APSEPS and public "separate schools" are included on its website and that the CSDE website include a compliant form/link for members of the public to alert CSDE to concerns around such programs.

5. CSDE should house an "inclusion" page on their website with resources for schools and families. One such resource is *A Summary of Evidence on Inclusion Education* from August 2016 showing the benefits of inclusion to both students with disabilities and without. The page should include technical assistance resources to assist school districts in educating children in the least restrictive environment.

6. CSDE should consider rulemaking regarding the use of restraint and seclusion to protect students from these ineffective and dangerous practices, especially students segregated due to their disabilities and provide professional development to reduce or eliminate restraint and seclusion.

7. CSDE should request the Connecticut Medicaid office clarify if Medicaid reimbursement is available when staff use restraint on a child in outpatient behavioral health settings, including school settings.

Improvements in LEA Oversight

1. State law should require specific monitoring by LEAs of students placed in "separate schools," including APSEPs. CSDE should work with LEAs to provide a template for monitoring the provision of special education and related services by credentialed staff in APSEPs to include, periodic site visits and observation of educational service delivery, review of onsite educational records, review of assigned staff's credentials, and maintenance of programs' annual statements of assurance to CSDE regarding the provision of education by credentialed and background checked staff.

2. Ensure resources for special education services are adequate to support LEAs' provision of services to students with disabilities in the least restrictive environment and the most integrated setting and to enable these students to have an equal educational opportunity to that of their nondisabled peers.

3. Require LEAs to provide services to students with behavioral health and related disabilities so they can remain and be served in the most integrated setting as required by federal law.

4. LEAs should ensure that they are contracting with High Road schools for services required for children attending public schools, including physical education, the arts, and health and safety.

APSEPS – Student Supports

1. APSEPs should be required to utilize evidence based behavioral health strategies that are truly proactive interventions and highly individualized. We recommend an instrument such as the Assessment of Lagging Skills and Unsolved Problems (ALSUP) for this purpose.

2. Staff should be trained in evidence-based models that emphasize problem solving as the primary treatment component.
3. APSEPs should add cameras to the time out/seclusion rooms and include weekly viewing of those video recordings to ensure compliance with all state and federal laws and best practices with respect to time out/seclusion of students.

4. APSEPs should be required to notify parents and school districts of changes in staffing or vacancies that impact the delivery of educational services to students.

5. APSEPs should be required to routinely conduct audits to ensure that all staff are properly qualified, trained, and have gone through the proper background checking process.

RESPONSES

In response to a draft of this Report, High Road, Hartford Public Schools, and CSDE, were invited to offer corrections to any factual errors contained in the draft and were later offered an opportunity to submit a "1-to-2-page summary of response/actions steps." High Road's and Hartford Public Schools' action step submissions are being released with this Report. CSDE did not offer factual corrections. Instead of providing a summary of its "response/action steps," and without disputing the factual findings in the Report, CSDE expressed its disagreement with the Report's conclusions and recommendations. Specifically, CSDE "disagrees . . . with the Report to the extent that is suggests that the CSDE may have failed to adequately exercise general supervision over the High Road Schools."

EXHIBIT B

STATE OF CONNECTICUT
OFFICE OF THE CHILD ADVOCATE
&
DISABILITY RIGHTS CONNECTICUT

JOINT INVESTIGATIVE REPORT

HIGH ROAD SCHOOLS AND EDUCATIONAL ADMINISTRATION & PROGRAMMING DEFICIENCIES

MARCH 2024

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[1] The OCA acknowledges the contribution of its student intern, Aaron Gauvin, to this report. Mr. Guavin interned with the OCA for the fall of 2022 and spring of 2023 during his senior year at the University of Saint Joseph College (Political Science) and began his first year at Western New England Law School in September of 2023.

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INTRODUCTION

The Office of the Child Advocate ("OCA") is an independent government agency that is statutorily required to "[r]eview complaints of persons concerning the actions of any state or municipal agency providing services to children and of any entity that provides services to children through funds provided by the state … investigate those where the Child Advocate determines that a child or family may be in need of assistance from the Child Advocate or that a systemic issue in the state's provision of services to children is raised by the complaint … provide assistance to a child or family who the Child Advocate determines is in need of such assistance including, but not limited to, advocating with an agency, provider or others on behalf of the best interests of the child . . . [and] [e]valuate the delivery of services to children by state agencies and those entities that provide services to children through funds provided by the state."[2] Concurrently, OCA is 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."[3]

Disability Rights Connecticut ("DRCT") is an independent private nonprofit organization that has been designated as Connecticut's protection and advocacy ("P&A") system for the state of Connecticut.[4] Disability Rights Connecticut's mission is to advocate, educate, investigate, and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities to participate equally and fully in all facets of community life in Connecticut.[5] Disability Rights Connecticut provides legal advocacy and rights protection to people of all ages with disabilities. DRCT focuses its legal and other advocacy on a wide range of disability justice issues for Connecticut residents with disabilities. DRCT's services include advocating for the rights of individuals with disabilities on issues including abuse, neglect, discrimination, community integration, forensic mental health, voting, and other rights protection issues. DRCT replaced the Office of Protection & Advocacy for Persons with Disabilities, which was abolished by Connecticut Law as of June 30, 2017, and is now Connecticut's federally mandated Protection and Advocacy System.

During this investigation, several consultants partnered with OCA/DRCT and offered their knowledge and relevant expertise, including Dr. Michael Powers and his colleagues at The Center for Children with Special Needs; Andrea M. Spencer, Ph.D., Associate Professor, Department of Education, University of Saint Joseph; and Dr. Ross Greene and his colleagues at Lives in the Balance.

In recent years OCA received complaints regarding certain High Road schools,[6] which schools are owned and operated by a privately held company, Specialized Education Services, Inc. ("SESI"), providing

[2] Conn. Gen. Stat. § 46a-13*l*.

[3] *Id.*

[4] Conn. Gen. Stat. § 46a-10a.

[5] See the Protection and Advocacy for Individuals with Mental Illness ("PAIMI") Act, 42 U.S.C. § 10801, *et seq*., *as amended*, 42 C.F.R. § 51; the Developmental Disabilities Assistance and Bill of Rights Act ("DD Act"), 42 U.S.C. § 15041, *et seq*., *as amended*, 45 C.F.R. § 1326; the Protection and Advocacy for Individuals with Traumatic Brain Injury (PATBI) Act, 42 U.S.C. § 300d-52, the Protection and Advocacy for Individual Rights (PAIR) Act, 29 U.S.C. §794e, and their respective implementing regulations.

[6] All complaints received by the OCA are confidential in accordance with Conn. Gen. Stat. § 46a-13n.

special education programs for pre-K -12 students nationally.[7] There are eight (8) High Road schools across Connecticut.[8] High Road Schools are state-approved private special education programs (APSEPS), providing services to children with disabilities pursuant to publicly-funded individual contracts with local school districts. High Road Schools receives millions of dollars each year of public funding to educate students with special education needs and the company is one of the largest providers in the state.[9]

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[7] SESI was originally founded in 1976 under the corporate name, READS, providing educational services for exclusively private and parochial schools. READS was acquired by Sylvan Learning Systems, Inc., in 1993 and changed its corporate name to Sylvan Education Solutions. In 2003, Sylvan sold its K-12 business to Apollo Management LP, a private equity investment firm that formed Educate Inc. in 2004, Educate renamed the K-12 business segment Catapult Learning. In 2008, Educate was sold to private investors and ceased trading on the NASDAQ Global Select Market - moving forward under the corporate name - Catapult Learning. In 2015, Catapult Learning merged with Specialized Education Services, Inc., (SESI) a provider of alternative and special education services and became known as Catapult Learning. In January of 2020, Catapult Learning rebranded itself under the new parent company brand – "FullBloom" creating three divisional brands:

- Catapult Education Solutions becomes Catapult Learning, continuing our leadership position in intervention and professional development solutions for public and non-public schools. Steve Quattrociocchi is the President of Catapult Learning.
- Catapult Schools Group becomes Specialized Education Services, Inc., or SESI, a return to the original name of our division that operates standalone Special Education schools and classrooms across the country. Andrea Vargas is the President of SESI.
- Capital Education Group becomes Little Leaves, our network of Applied Behavior Analysis (ABA) therapy centers for young children with Autism Spectrum Disorder. Marina Major is the President of Little Leaves.

https://fullbloom.org/2020/01/20/catapult-learning-unveils-new-parent-company-brand-fullbloom. In December of 2020, FullBloom acquired Camelot Learning, which was combined in the SESI Division, together operating 140+ programs nationwide. During the period in which Educate was publicly traded, it reported significant revenues from its Catapult Learning business segment in its filings with the Securities and Exchange Commission ("SEC"). In 2004, Educator reported revenues of $119.0 million from its Catapult Learning business segment - - 2003 reported revenues of $78.0 million; 2002 reported revenues of $67.0 million; 2001 reported revenues of $70.0 million and 2000 reported revenues of $69.0 million. As also reported to the SEC in its 2004 filing, Catapult Learning relied heavily on the "increasing parental dissatisfaction with the quality of public education, an increasing competitive education system and the heightened focus on school performance due to the continued failure of many students to achieve basic skills," for the continued growth of its business.

[8] At the time of this investigation, SESI had eight (8) High Road Schools in operation in Connecticut, including: (1) High Road School of Wallingford High School; (2) High Road School of Wallingford Primary/Middle School; (3) High Road B.E.S.T. Academy of Wallingford; (4) High Road School of Hartford High School; (5) High Road School of Hartford Primary/Middle School; (6) High Road School of New London; (7) High Road School of Fairfield County; and (8) High Road School of Windham County. SESI also has two (2) in-district classrooms in Connecticut – one in Hamden and one in Windham.

[9] A review of enrollment data submitted by SESI showed that the tuition rates for students for the 2021-2022 academic year varied by facility from a low of $222.89 a day to $548.16, which then could be higher due to related services (direct and indirect) that are provided at an additional cost to the school district of $85.00 per 30 minutes. Related services include occupational therapy, physical therapy, speech and language, social work and 1:1 support. If a 1:1 support is required pursuant to a student's IEP, the cost would increase an additional $187.46 a day. There was a significant increase in the cost of tuition from the 2019-2020 academic year to the 2020-2021 academic year. In particular, H.R. Best raised its tuition rates from $336.22 in 2019-2020 to $527.00 in 2020-2021. Some facilities offered discounted rates to residents in the town in which they are located – such as Hartford and New London.

Pursuant to concurrent statutory responsibilities, OCA and DRCT began a joint investigation into the programming being provided to children enrolled in certain High Road schools and state and local oversight of such programming.[10] This OCA/DRCT investigation took place between March of 2022 through March of 2024 and included multiple information requests of High Road Schools, the State Department of Education, and school districts, as well as site visits, and extensive records reviews. For purposes of this investigation, OCA/DRCT focused primarily[11] on the following six (6) schools (collectively referred to in this Report as the "Schools"):

- High Road School of Hartford Primary/Middle
- High Road School of Hartford High School
- High Road B.E.S.T. Academy of Wallingford
- High Road School of Fairfield County
- High Road School of New London[12]
- High Road School of Windham County

During the 2021-2022 academic year, there were approximately 316 students enrolled across the High Road sites investigated by OCA/DRCT. Those 316 students came from thirty-eight (38) different districts across Connecticut.[13] The Connecticut State Department of Education ("CSDE") "approved capacity" documentation indicates that High Road sites' collective capacity is among the highest in the state.[14] Most (80%) of those 316 students are male, and more than 70% are children of color. All students are identified as students with a disability who are eligible for Special Education services. Each student has an Individualized Education Program ("IEP") that must be implemented by the High Road Schools pursuant to student-specific contracts with the local school district. Federal special education law requires that students are educated in the least restrictive environment ("LRE") appropriate to their needs, and therefore placement of a student in an "out placement" such as High Road Schools may only be considered if there is no reasonable in-district option that can meet the student's needs. Districts are required under federal law to have a continuum of supports available to meet the needs of students, including students with disabilities.

Notably, Connecticut leads all states in the placement of children with special education needs in "separate schools,"[15] including APSEPs. Connecticut also ranks second among all states for the percentage of children identified as having Emotional Disturbance who were educated in "separate

[10] Due to the COVID-19 pandemic, that investigation was paused but resumed in March of 2022 in cooperation with Disability Rights Connecticut ("DRCT").

[11] As part of its monitoring activities, DRCT also visited High Road School of Wallingford Primary School and High Road School of Wallingford High School. Although no records or data was collected from those particular schools for this Investigation, observations of Wallingford Primary School and High Road School of Wallingford High School are included in Part I of this Report.

[12] During OCA/DRCT's investigation, SESI closed its New London facility.

[13] CSDE's Approved Private Special Education Programs Evaluation Preliminary Reports lists the Approved Student Capacity for each school. Approval Student Capacity for all Connecticut High Road Schools is 286. Although the Approved Student Capacity for High Road Schools is 286, 316 students attended at some point during the PUR.

[14] Approved Student Capacity: American School for the Deaf – 215; Solterra Academy – 210; Northwest Village School – 175; Oak Hill – 170 – (9) locations; Grove School – 151; Gengras Center – 150; Grace S. Webb School – 150; Aspire – 90.

[15] Report can be found here: https://sites.ed.gov/idea/files/43rd-arc-for-idea.pdf

schools," with almost a third of these students statewide educated in separate settings.[16] A majority of public school-enrolled students in Connecticut placed into "separate schools," be they privately or publicly run, have been children of color.[17]

Despite the decision of their respective IEP Teams (Planning and Placement Teams) that students have such complex learning needs that they can only be served in a segregated out-of-district setting, the OCA/DRCT investigation found that many of these children were grossly underserved both in terms of educational planning and service delivery. Site visits, data, and records reviewed for this report overall indicate a persistent and widespread problem of student disengagement and absenteeism, lack of adequate assessments and evaluations to determine students' needs, lack of an individualized approach to student education, uneven related service delivery, and perhaps most alarmingly, significant deficiencies in the number of certified special education teachers and other credentialed educational staff along with widespread failures to document legally required background checking for staff working with children. While High Road has been working throughout the duration of the OCA/DRCT investigation to address certain concerns identified in this Report, OCA/DRCT also found that many of the concerns were the result of inadequate oversite by local and regional boards of education (referred to as local education agency or "LEA") and CSDE. **This Report serves as an administrative complaint to the CSDE outlining allegations of widespread IDEA violations.**

In addition to filing this Report as an administrative complaint with the CSDE, the Report outlines recommendations for school districts, state agencies, and the legislature to improve service delivery to students with disabilities and ensure transparency and accountability for state-funded private special education programs.

OCA and DRCT have reviewed the contents of this Report with all identified stakeholders and have made certain changes to the final draft as a result. State and local agency formal responses, where received, are included at the conclusion of this Report.

METHODOLOGY

As part of its investigation, OCA/DRCT engaged in the following activities:

- Review of demographic, enrollment, attendance, discipline and academic programming data for each student enrolled at certain High Road Schools, including, High Road School of Hartford (Primary, Middle and High School); B.E.S.T Academy; High Road School of Fairfield County, High Road School of New London, and High Road School of Windham County (collectively referred to as the "Schools" in this Report) during the 2019-2020, 2020-2021 and 2021-2022 school years. With the inconsistencies in programming due to the COVID-19 pandemic, most of the findings relative to the records reviewed, **unless otherwise indicated,** are based on the 2021-2022 school year, which will be referred to as the period under review ("PUR").

[16] "Separate schools" is defined in the report to include "students with disabilities who receive special education and related services, at public expense, for greater than 50 percent of the school day in public or private separate day schools or residential facilities."
[17] Child Count Data provided by CSDE on March 4, 2022, as reported to OSEP.

- Review of the individual educational files for thirty (30) students attending High Road schools. Dr. Michael Powers and his colleagues at The Center for Children with Special Needs, and Andrea M. Spencer, Ph.D., Associate Professor, Department of Education, University of Saint Joseph conducted the educational record reviews. All individual student educational records were provided by High Road unless the student left High Road during the PUR and the individual file was then provided by the school district in which the student attended. The sampling of students was based on the following criteria: (1) high rate of restraint and/or seclusion; (2) incidences of exclusionary discipline, including in-school and out-of-school suspensions; and/or (3) chronic absences.
- Review of information provided by eighteen (18) Connecticut school districts who placed students at High Road schools during the PUR, which information concerned the school district's monitoring and oversight of student(s)' educational programming.
- Multiple observations of High Road facilities and classrooms, which observations were conducted on different occasions by the following individuals: (1) Dr. Michael Powers and his colleagues at The Center for Children with Special Needs; (2) Andrea M. Spencer, Ph.D., Associate Professor, Department of Education, University of Saint Joseph; (3) Maria Cruz, Ph.D., MSW, OCA Investigator (retired); (4) Attorney Deborah Dorfman, Executive Director of DRCT; and (5) Tom Cosker, Advocate with DRCT and former educator.
- Review of all staff assignments, staff credentials, and background checks for administrators, instructional, educational and behavioral support staff and related services personnel employed during the 2019-2020, 2020-2021 and 2021-2022 school years at the Schools.
- Review of policies and procedures, training materials and handbooks.
- Review of communications between the Schools and LEAs concerning staffing shortages and hiring plans.
- Review of sample High Road Admissions Packet and marketing/solicitation materials distributed by the Schools during the 2019-2020, 2020-2021 and 2021-2022 school years.
- Review of CT State Department of Education Reviews of High Road Schools; High Road Schools Applications, Financial Statements and Statements of Assurance.
- Review and analyses of relevant state and federal law applicable to alternative special education programming and facilities, including programming and oversite responsibilities.
- Review and analyses of Connecticut's "Principles, Procedures and Standards for the Approval of Private Special Education Programs" recently revised in February 2021.
- Review of reports issued by the CT Auditors of Public Accounts on Private Providers of Special Education.
- Consultation with Dr. Ross Greene and Lives in the Balance.
- Discussions with representatives with the Connecticut State Department of Education.
- Discussions with representatives from High Road Schools and counsel, Berchem Moses PC.
- Interviews with administrators from several Districts who placed students at High Road schools during the PUR, including Hartford Public Schools (HPS) and HPS counsel, Berchem Moses PC.

BACKGROUND AND RELEVANT LAW

1. FEDERAL LAW. IDEA Compliance and Monitoring – Public and Non-Public Schools Contracting with Public School Districts

The Individuals with Disabilities Education Act ("IDEA") mandates that all children with disabilities receive a Free Appropriate Public Education ("FAPE") in the Least Restrictive Environment ("LRE").[18] The IDEA's monitoring and enforcement responsibilities require that the State Educational Authority (SEA) monitor the school districts' (LEAs) compliance with federal special education requirements.[19] The LEAs are responsible for ensuring that each child who is eligible for special education and related services receives FAPE. This dual system of monitoring and enforcement ensures that children with disabilities are afforded the supports and services needed to access his/her educational programming.

In Connecticut, the State Department of Education is the administrative arm for the State Board of Education and has the authority and the responsibility to ensure that LEAs are compliant with the IDEA.[20] Per federal law, CSDE must not only monitor potential noncompliance by school districts, it must ensure adequate corrective action to address individual and systemic practices that give rise to noncompliance.[21]

Recent federal guidance reinforces state monitoring and enforcement obligations,[22] and emphasizes that a "reasonably designed State general supervision system should include eight integrated components," which include: "1) Integrated monitoring activities; 2) Data on processes and results; 3) The SPP/APR; 4) Fiscal management; 5) Effective dispute resolution; 6) Targeted [technical assistance] and professional development; 7) Policies, procedures, and practices resulting in effective implementation; and 8) Improvement, correction, incentives, and sanctions."[23]

The integrated monitoring activities are further defined in the Guidance:

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[18] 20 U.S.C. §§ 1400-1490.

[19] Section 616(a) of the IDEA provides, in relevant part: Sec 20 U.S.C. 1416(a)):(a)Federal and State monitoring. (I) In general. The Secretary shall--(A) monitor implementation of this part through—(i) oversight of the exercise of general supervision by the States, as required in section 1412(a)(11); and (ii) the State performance plans, described in subsection (b); (B) enforce this part in accordance with section C: (C) require States to—(i) monitor implementation of this part by local educational agencies; and (ii) enforce this part in accordance with paragraph (3) and subsection (e).

[20] Office of Special Education and Rehabilitative Services letter to Copenhaver, October 31, 2008. As explained in a 2008 OSEP Letter, "[t]he legal authority for an SEA to require its LEAs to correct individual noncompliance is the same as the legal authority for an SEA to require its LEAs to correct systemic noncompliance--its general supervisory responsibility over all educational programs for children with disabilities administered within the State."

[21] Office of Special Education and Rehabilitative Services letter to Copenhaver, October 31, 2008.

[22] (OSEP QA 23-01) (July 24, 2023 USDE Guidance)

[23] *Id.*

> Integrated monitoring activities are a key component of a State's general supervision system. Specifically, integrated monitoring activities are a multifaceted formal process or system designed to examine and evaluate an LEA's or [Early Intervention Service (EIS)] program's or provider's implementation of IDEA with a particular emphasis on educational results, functional outcomes, and compliance with IDEA programmatic requirements. Under IDEA Part B, the SEA must monitor the LEAs located in the State in each of the following priority areas: the provision of FAPE in the least restrictive environment (LRE); general supervision, including effective monitoring; child find; a system of transition services; the use of resolution meetings; mediation; and disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification. 34 C.F.R. § 300.600(d).

Integrated monitoring activities could include the following:

- Interviewing LEA and local program staff, including specialized instructional support personnel, on-site or virtually, and reviewing local policies, procedures, and practices for compliance and improved functional outcomes and results for children with disabilities.
- Conducting interviews and listening sessions with parents of children with disabilities, children with disabilities, and other stakeholders to learn about an LEA's or EIS programs or provider's implementation of IDEA, including functional outcomes and results.[24]
- Analyzing local child find data across the State to determine if there are significant disparities in the groups or communities of children and families who are referred for evaluation or provided services.
- Reviewing information collected through the State's data systems relating to local compliance with IDEA requirements, such as compliance with individualized education program (IEP) and individualized family service plan (IFSP) meeting timelines, evaluation and reevaluation timelines, content of IEPs and IFSPs, early childhood and secondary transition, exiting, and other key IDEA provisions. This could include data collected under IDEA Section 618 and other data sources available to the State.
- Examining and evaluating performance and results data on specific IDEA requirements, such as early childhood outcomes, family outcomes and involvement, graduation and drop-out, and other key IDEA provisions. This could include data collected under IDEA Section 618 and other data sources available to the State.
- Analyzing assessment data to determine if the data represent improved results for children with disabilities on regular assessments and alternate assessments aligned with alternate academic achievement standards compared with the achievement of all children.
- Evaluating an LEA's or EIS program's or provider's policies, procedures, and practices for fiscal management, or reviewing local budget and expenditure data for

[24] 14 20 U.S.C. §§ 1412(a)(11), 1416(a), 1435(a)(10)(A) and 1442; 34 C.F.R. §§ 300.149, 300.600, 303.120(a) and 303.700; 2 C.F.R. §§ 200.329 and 200.332.

a particular year to ensure that IDEA funds are distributed and expended in accordance with Federal fiscal requirements.

- Examining information gleaned from the State's dispute resolution system, including State complaints and due process complaints. The State's complaint resolution system is a tool for States to identify and correct noncompliance as stated in Question A-7. Facts determined through the State's resolution of State complaints and by impartial hearing officers when adjudicating due process complaints can provide the State with important information about an LEA's or EIS program's or provider's implementation of IDEA requirements.[25]

The federal requirement for state oversight is even more critical when children with disabilities are placed by the school district in a separate private special education facility, notably at issue in a recent federal audit letter sent to Massachusetts regarding that state's oversight of state approved private programs. The U.S. Department of Education's Office of Special Education Programs ("OSEP") recently issued a letter to the Massachusetts Department of Elementary and Secondary Education (OSEP September 29, 2023 Letter) that included concerns with the state's oversight of state-approved special education schools and requested certain information regarding that oversight and monitoring be provided to OSEP. As summarized in the OSEP September 29, 2023 Letter:

> Under 34 C.F.R. § 300.146, each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency is provided special education and related services in conformance with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 through 300.325; and at no cost to the parents. The SEA also must ensure these children are provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of Part B of IDEA, except for 34 C.F.R. § 300.156(c), and have all of the rights of a child with a disability who is served by a public agency. In implementing 34 C.F.R. § 300.146, the SEA must: 1. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; 2. Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and 3. Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. 34 C.F.R. § 300.147. Finally, under 34 C.F.R. § 300.325(b), if the private school or facility initiates and conducts an IEP Team meeting for a child placed in the private school by a public agency, the public agency must ensure that the parents and an agency representative: 1. Are involved in any decision about the child's IEP; and 2. Agree to any proposed changes in the IEP before those changes are implemented. **Even if a private school or facility implements a child's IEP, responsibility for compliance with Part B of IDEA remains with the public agency and the SEA**. 34 C.F.R. § 300.325(c). (emphasis added.)

2. FEDERAL LAW. ADA Compliance – Non-Public Schools Contracting with Public School Districts

[25] *Id.*

The Americans with Disabilities Act (ADA) "provide[s] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."[26] Congress acknowledged prior to the ADA's passage that "then current laws were 'inadequate' to combat 'the pervasive problems of discrimination that people with disabilities are facing.'"[27]

There are several Titles to the ADA, including two that are relevant with respect to the obligations of High Road Schools: Titles II and III. Title II prohibits public entities, including school districts and other LEAs, from discriminating against individuals based upon their disabilities. Title II also applies to private contractors working with public entities, such as High Road Schools. Title III prohibits covered places of public accommodations, such as High Road Schools, from discriminating against individuals with disabilities. As explained more fully below, High Road Schools are public accommodations and covered entities under Title III and, at the same time contract with public schools and other LEAs, therefore they must comply with the requirements of both Title II and Title III of the ADA. The oversight of ADA compliance by private schools lies with the SEA. As clearly stated in 20 U.S.C. § 1412(a)(10)(B)(ii), "the State educational agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children served have all of the rights the children would have if served by such agencies."

A. Title II of the ADA: Disability Discrimination by Public Entities Prohibited

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."[28]

Title II of the ADA also requires that public entities, including public schools and school districts and their contractors, such as High Road, make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that such modifications would fundamentally alter the nature of the service, program, or activity.[29] Additionally, Title II also prohibits public entities, including public schools and their contractors such from: 1) denying students with disabilities "an opportunity to participate in or benefit from the aid, benefit, or service" that is equal to that afforded to other students;[30] 2) providing students with disabilities an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;"[31] 3) failing to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities,"[32] which the Attorney General

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[26] 42 U.S.C. § 12101(b)(1).
[27] *Helen L v. DiDario*, 46 F.3d 325, 331 (3d Cir. 1995) (quoting Senate Report at 18; House Report (Part II) at 47).
[28] 42 U.S.C. § 12132. Individuals are considered qualified persons with disabilities if they have "(A) a physical or mental impairment ... substantially limits one or more of the major life activities of such individual, (B) [there is] a record of such an impairment, or (C) [the individual is] being regarded as having such an impairment. 42 U.S.C. § 12102(2)(A)-(C) and meet the essential eligibility requirements to receive and participate in the programs, services, and activities of the public entity.
[29] 28 C.F.R. § 35.130(b)(7).
[30] 28 C.F.R. § 35.130(b)(1)(ii)
[31] 28 C.F.R. § 35.130(b)(1)(iii)
[32] 28 C.F.R. § 35.130(d)

has defined as "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible;"[33] failing to "make reasonable modifications . . . necessary to avoid discrimination;"[34] and 5) "utilizing criteria or methods of administration … [t]hat have the . . . effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities."[35]

B. Title III of the ADA: Discrimination by Covered Places of Public Accommodation Prohibited

Title III of the ADA and its implementing regulations entitle individuals with disabilities to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation.[36] This includes private schools such as High Road schools.[37]

Title III prohibits places of public accommodations from denying or affording an unequal opportunity to an individual or class of individuals with disabilities, on the basis of a disability, the opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of the entity or otherwise discriminating against them on the basis of disability.[38] Title III also provides that goods, services, facilities, privileges, advantages, and accommodations shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.[39]

Title III additionally provides that an individual or entity shall not utilize standards or criteria or methods of administration that screen out, tend to screen out, or have the effect of discriminating on the basis of disability such that persons with disabilities cannot fully and equally enjoy any goods, services, facilities, privileges, advantages, or accommodations.[40] Title III further defines discrimination to include the failure of a public accommodation to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities.[41]

3. STATE LAW. Funding for Private Special Education Programs

Special education programs are dependent on local, state and federal funding. The primary source of funding comes from local government - - generated through property taxes. Connecticut's Special Education Grant Program is administered by the State Department of Education. The special education funding system is comprised of two (2) components, the "Education Cost Sharing" grant, which provides education equalization aid and the "Excess Cost" grant for the reimbursement of extraordinary special education costs. Federal funds for special education are passed to the individual states to distribute to LEAs. In order to apply for those federal funds, LEAs must file a grant application with the State Board of Education.

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[33] 28 C.F.R. pt. 35, App. B, p. 674
[34] 28 C.F.R.§ 5.130(b)(7
[35] 28 C.F.R. § 35.130(b)(3)(ii).
[36] 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a).
[37] 42 U.S.C. § 12181(7)(J).
[38] 42 U.S.C. § 12182(b)(1)(A)(i)–(ii); 28 C.F.R. § 36.202(a)–(b).
[39] 42 U.S.C. § 12182(b)(1)(B); 28 C.F.R. § 36.203(a).
[40] 42 U.S.C. §§ 12182(b)(1)(D)(i), 12182(b)(2)(A)(i); 28 C.F.R. §§ 36.204, 36.301(a).
[41] 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).

As stated in the State Department of Education Grant Application:

> An LEA is eligible for assistance under Part B of the IDEA for a fiscal year if the LEA submits a plan that provides assurances to the State Education Agency that the LEA meets each of the conditions in the ACT (20 United States Code [USC] Section 1413(a)). Section 619 entitlement funds are provided for children with disabilities, ages 3 to 5. Section 611 entitlement funds are provided for children with disabilities, ages 3 to 21.
>
> Once approved for a Special Education Grant, the State Department of Education "may conduct site visits to grantees and subgrantees under this grant program in order to monitor a community's progress and compliance of the IDEA, and in accordance with state statutes and the purpose of this grant program as stated on Pages 3 and 4 of this application.

4. STATE LAW. Responsibility for Private Special Education Programs – State Department of Education and LEAs

The Connecticut State Board of Education is statutorily responsible for the overall structure, development and supervision of special education programs provided to children residing in or attending any facility (private or public) that receives state funds. That supervision includes overseeing the "educational aspects of all programs and instructional facilities in any day or residential child-caring agency or school which provides training for children requiring special education and which receives funding from the state under the provisions of sections 10-76a to 10-76g, inclusive."[42]

[42] *See* Conn. Gen. Stat. § 10-76b. Section 10-76b, entitled, State supervision of special education programs and services. Regulations. Coordinating agency, provides that:
(a) The State Board of Education shall provide for the development and supervision of the educational programs and services for children requiring special education and may regulate curriculum, conditions of instruction, including the use of physical restraint and seclusion pursuant to section 10-236b, physical facilities and equipment, class composition and size, admission of students, and the requirements respecting necessary special services and instruction to be provided by local and regional boards of education. The educational aspects of all programs and instructional facilities in any day or residential child-caring agency or school which provides training for children requiring special education and which receives funding from the state under the provisions of sections 10-76a to 10-76g, inclusive, shall be subject to the approval and supervision of the commissioner in accordance with regulations adopted by the State Board of Education concerning requirements for such programs and accommodations.
(b) The commissioner shall designate by regulation, subject to the approval of the State Board of Education, the procedures which shall be used to identify exceptional children.
(c) Said board shall be the agency for cooperation and consultation with federal agencies, other state agencies and private bodies on matters of public school education of children requiring special education, provided the full responsibilities for other aspects of the care of such children shall be reserved to such other agencies.
(d) The State Board of Education shall ensure that local and regional boards of education are providing the information described in subparagraph (D) of subdivision (8) of subsection (a) of section 10-76d to the parent or guardian of a child requiring special education or the surrogate parent appointed pursuant to section 10-94g and, in the case of a pupil who is an emancipated minor or eighteen years of age or older, the pupil.

A. LEA Responsibility for Private Special Education Services

While the State Board of Education is statutorily responsible for the overall structure, LEAs are responsible for providing and/or acquiring the actual special education services, the development of individualized education programs, planning and placements meetings and public agency placements.[43] An LEA must ensure that it has a continuum of supports to educate children with disabilities in the least restrictive environment appropriate to the child's needs.

B. State Board of Education and LEAs Dual Responsibilities for Private Special Education Programs

Connecticut law contemplates the need and provides the authority for the placement of a student who has been identified as needing special education services to be provided those service by a "private school or with any public or private agency or institution, including a group home" in certain circumstances.[44] Once that placement decision has been made, certain duties are the responsibility of the State Board of Education and certain duties belong to the local or regional boards of education.

C. Special Education Programs in State Approved Private Facilities

The State Board of Education is responsible for determining whether a privately operated special education program meets certain federal and state requirements. The State Board established standards to govern such programs, **most recently updated in February of 2021 - - "Principles, Procedures and Standards for the Approval of Private Special Education Programs – February 2021" (hereinafter referred to as "Standards").** The Standards set forth certain minimum requirements that must be met for a private facility to receive funding for providing special education services to students and cover the following areas:

A. Governance; B. Administration; C. Fiscal Management; D. Admissions; E. Individual Student Records; F. Program Requirements; G. Evaluation of Student Progress and Reporting Responsibilities; H. Positive Behavioral Supports, Prevention, and Intervention Strategies; I. Qualification and Requirements for Instructional, Administrative, and Support Personnel; J. Health and Safety; K. Termination of Enrollment.

D. State Approval Process

As set forth in the Standards, the approval process is conducted by the State Board of Education. It requires a written application from the facility, along with a site visit by representatives of the State Board of Education (or designee), which site visit will include, "verification of the information submitted with the application; selected classroom observation; staff interviews; review of student records; review of staff records; inspection of buildings and grounds; an exit conference with the director of education." Following its initial site visit, the State Board of Education will issue a preliminary evaluation report to the facility, followed by a final evaluation report, making one of two possible determinations; APPROVED or APPROVAL WITHHELD. A CONDITIONAL

[43] *See* Conn. Gen. Stat. § 10-76d.
[44] *See* §§ 10-76b(a) and 10-76d(d).

APPROVAL may only be given to a facility that holds a current approval by the State Board of Education but has been found "deficient in the implementation of the Standards."[45]

If the facility meets all of the Standards, a written recommendation will be provided to the Commissioner of Education to be submitted to the State Board of Education for action. Following initial approval, the State Board of Education is required to "review the approval status of the private special education facility to ensure the facility's continual compliance with the implementation of the Standards. Thereafter, a review shall take place as needed, **but no longer than once every three to five years**."

If the facility is found to be deficient in the implementation of the Standards, then it may be issued a "conditional approval." The facility will be permitted to cure the defects but may not admit any additional students until approved by the State Board of Education. When an approved facility violates the Standards, "the CSBE may seek to revoke the approval status of the facility. When a condition exists that endangers the life, health, or safety of the students, the Commissioner of Education may seek an emergency revocation of the facility's approval status." Such a revocation may be appealed. Absent an appeal, a re-approval may not be sought earlier than one-year following a revocation.

In order to remain approved, a facility must submit an annual "signed statement of assurances" no later than October 15th to the State Board of Education, and "[f]ailure to do so may result in a conditional or approval withheld status."

E. Required Records Maintained by Facility

In accordance with the Standards, the State Board of Education is responsible for ensuring that the facility has a governing body responsible for the policies and activities of the facility and an appointed "chief administrator" who hold an "intermediate administrators' certificate" and that the facility maintains the records for its programs, including policies and procedures regarding compliance with state Standards; written contracts with LEAs for each enrolled student and an accurate accounting system; and individual student records, including educational program records and incident reports.

F. Reporting Requirements

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[45] Approved – A status given to a facility by the CSBE subsequent to the program, fiscal, and on-site evaluation to characterize them as an Approved Private Special Education Program (APSEP). This status indicates that the facility meets the Standards established by the CSBE for educating students with disabilities and allows local boards of education to be reimbursed pursuant to C.G.S. Section 10-76g. This status requires one annual renewal of approval following the initial approval and then approval may be granted for a maximum of five years. RCSA, Section 10-17d-17(e)(3).
Approval Withheld – A status given to a facility when the CSBE finds on inspection, it is not in compliance with relevant federal and state laws and regulations or local requirements; or if on inspection, any condition endangering the life, health, or safety of children is discovered; or the facility fails to meet the criteria specified in this document.
Conditional Approval – A status given only to a facility that holds current approval by the CSBE but has been found deficient in the implementation of the Standards. This status is granted for a period of one year or less to correct the deficiencies noted. This status allows local school districts to be reimbursed under the state special education grant for students enrolled in the program at the time conditional approval was given but not for placements made subsequent to this action.

In accordance with the Standards, the schools are responsible for providing progress reports to the LEA and parents/guardians as required in accordance with the student's IEP. These reports must be provided to the parents/guardians "in language that is easily understood by parents/guardians."

Any use of exclusionary discipline must also be communicated to the parents/guardians and LEA.

In addition to other reporting requirements, the facility must provide immediate notification of the following events:

- Any major legal proceedings and the reporting of any suspected incident of child abuse by staff.
- Change of ownership and location.
- Change in chief administrator and director of education.
- Any other conditions that might significantly alter the program and/or health and safety of the students, which would arguably include the lack of appropriate (i.e., qualified and credentialed) staffing.

5. Auditors of Public Accounts Findings

In 2015, legislation was passed based on findings and recommendations of the Municipal Opportunities and Regional Efficiencies Commission that required the Connecticut Auditors of Public Accounts ("Auditors") to begin to conduct audits of all non-approved and approved private providers of special education. An Interim Report was issued by the Auditors on February 6, 2017, which report noted the following concerns with its audit of private providers:

1. Lack of contracts between the LEA and private provider;
2. Lack of supporting documentation showing delivery of related services;
3. Students did not receive related services that were included in contracts.

The Auditors issued subsequent reports in 2018 and 2020. In 2018, there were three (3) reports issued, and the Auditors made the following recommendations from each of those reports:

State Department of Education's Approval Process of Private Special Education Programs and Oversite of Non-Approve Programs

- The State Department of Education should annually update the directory that contains information about each approved private special education program. The directory should also include additional information, such as the school's web address.
- The State Department of Education should include a link on its website that provides the full SDE approval report for each approved private special education program, the date the APSEP received approval, and the date the school completed any necessary corrective action identified in the report.
- The State Department of Education should permit private special education schools to apply electronically for SDE approval or re-approval.

- The State Department of Education Bureau of Special Education should forward financial reports submitted by schools as part of its approval/re-approval application to the SDE Office of Internal Audit for a more comprehensive financial review.
- Each approved school providing special education programs should develop performance measures that fairly assess its outcomes. Each school should annually post its measures and outcomes on its website.

The Auditors made the following recommendation in its Report, *PERFORMANCE AUDIT The State Department of Education's Approval and Monitoring of Contracts or Other Arrangements between Local and Regional Boards of Education and Private Providers of Special Education.*

- The State Department of Education should require college-based transition/vocational service providers not currently vendors of state agencies to provide evidence of external oversight.
- The State Department of Education should inform school districts that contracts are required for excess cost grant applications, and that individualized education programs are not considered contracts.
- The State Department of Education should only approve excess cost grants when school districts provide proof of contracts.
- The State Department of Education should only approve excess cost grants when proof of all statutorily required information is contained in contracts.
- The State Department of Education should update the automated Special Education Excess Cost Grant system (SEECG) warning messages displayed to school districts when they enter application data for excess cost grants.
- The State Department of Education should provide the Auditors of Public Accounts access to the required annual audits of school districts requesting excess cost grants.
- The State Department of Education should comply with Section 10-76d (g)(2) of the General Statutes regarding excess cost grant applications for students placed in private special education programs for at least 3 years and should annually review student progress prior to approving or denying such applications.

The Auditors made the following recommendation in its Report, *Private Providers of Special Education School Year 2015 -2016*:

- The State Department of Education should consider defining allowable types of costs for private providers of special education services.
- The State Department of Education should determine whether a contract is in place between the school district and private provider prior to providing the district with an excess cost grant.
- The State Department of Education should improve communications with school districts and special education providers to clarify how they can provide and document direct and indirect service requirements contained in the individualized education program.
- The State Department of Education should consider working with private special education providers to develop and implement documentation requirements.

Reports generated by the Auditors in February and July of 2020 noted repeated concerns with missing contracts between the LEAs and the private providers and related services that were not properly documented.

PART I

INVESTIGATIVE FINDINGS - STAFFING

In April of 2022, as part of its investigation, the OCA/DRCT issued a subpoena for the following information related to staffing:

> For all High Road Schools located in Connecticut, provide a listing of all staff, including, but not limited to, administrators, instructional, educational and behavioral support staff and related services personnel by assignment, **employed during the 2019-2020, 2020-2021 and 2021-2022 school years.** Please compile data by school and school year and provide the following additional information for each staff member: (i) Date of hire; (ii) Job description; (iii) Level of education and any certifications and/or licenses; and (vi) Verification that all required background checks have been timely completed, including, but not limited to, a copy of the State of Connecticut Employee Verification Form for each staff member.

Based on a review of the data produced by SESI for that three (3) year time period,[46] the OCA/DRCT investigation identified numerous gaps in the provision of certified, trained and qualified staff to deliver special education and related services as required by individual student IEPs and contracts with LEAs. Data also revealed widespread and persistent failures to conduct statutorily required background checks of staff hired to work with children. High Road administrators did not communicate staffing gaps to LEAs despite the company's individual contracts with districts to deliver services via credentialed staff consistent with student IEPs. Data and records produced by High Road and CSDE reflect a high vacancy rate for certified special education teachers and lack of adequate documentation for substitute teachers and individuals with "durational permits." Several sites observed by OCA/DRCT relied heavily on non-certified staff.

Based on the data and records reviewed, High Road could not demonstrate that it had consistently conducted state required criminal, DCF, and employee background checks for the 2019-2020, 2020-2021 and 2021-2022 school years.[47] The problem of inadequate background checking was pervasive across sites despite the CSDE having previously mandated that High Road correct this issue, and despite the student-specific contracts between LEAs and High Road requiring that High Road ensure that services are provided by qualified staff and that all required background checks are complete.

[46] For this Section of the Report, the PUR includes the 2019-2020, 2020-2021 and 2021-2022 academic school years.

[47] Despite several opportunities provided to SESI to explain these staffing deficiencies and background checking lapses, it chose instead to make conclusory statements that the staffing findings were incorrect – without citing to any specific findings or correcting the data that it had provided as part of this investigation.

Finally, High Road provided information to investigators that identified dozens of individuals across its locations as "paraprofessionals."[48] However, OCA's review of employee documentation and additional information from High Road indicates that many of these individuals did not meet the state's established minimal criteria to be a paraprofessional in any school receiving federal Title I funds. While the High Road Schools are private, and as such, do not receive directly funds under Title I, its programs are still funded with public dollars and should be held to similar standards as public programs. While some High Road paraprofessionals were credentialed or had relevant educational experience, many others lacked any educational or experiential qualifications to be paraprofessionals and had not taken the state's Para Pro exam to be considered qualified for these positions.[49]

1. Background Checks inadequate—Failure to File Assurances with State Board of Education

State law requires that school districts and state approved private programs like High Road complete Educational Employer Verification ("EEV") forms for each prospective employee that will be working with children, and that the employer maintain relevant documentation pertaining to each employee. The EEV verification process is statutorily required pursuant to Conn. Gen. Stat. § 10-222c and addresses whether a potential employee has ever been disciplined or investigated for misconduct towards children.[50]

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[48] SESI uses the term "paraprofessionals" and "assistant teachers" interchangeably.

[49] High Road claimed to have a robust training program for paraprofessionals and provided a brief summary stating that most training takes place during the first week after hire and focuses mostly on behavior management and the CASE approach. Aside from that first week of training, paraprofessionals are provided some additional resources and professional development opportunities. Overall performance is reviewed monthly by supervisors.

[50] As provided directly on the form developed by CSDE:

> Directions for School District/Entity Considering Applicant for Employment: Each local or regional board of education, governing council of a state or local charter school or an interdistrict magnet school operator is required to obtain the information listed on this form from ALL current or former employer(s) of the applicant if such employer was a local or regional board of education, a governing council of a state or local charter school, an interdistrict magnet school operator or if the employment caused the applicant to have contact with children. Applicants are required under the law to provide a prospective employer with the name, address and telephone number of all current or former employers that meet the above criteria. Information may be collected either through a written communication or telephonically.

Employers must indicate whether they have any knowledge concerning whether the candidate for employment has: (1) Been the subject of an allegation of abuse or neglect or sexual misconduct for which there is an investigation currently pending with any current or prior employer, state agency or municipal police department or which has been substantiated? (2) Been disciplined or asked to resign from employment or resigned from or otherwise separated from any employment while an allegation of abuse or neglect or sexual misconduct was pending or under investigation, or due to a substantiation of abuse or neglect or sexual misconduct? (3) Had a professional or occupational license, certificate, authorization or permit suspended or revoked or ever surrendered such a license, certificate, authorization or permit while an allegation of abuse or neglect or sexual misconduct was pending or under investigation, or due to a substantiation of abuse or neglect or sexual misconduct?

Based on the data and records, SESI could not demonstrate that it had conducted statutorily and contractually required employment history checks on more than sixty of High Road Schools' employees during the relevant three year period.

SESI could also not demonstrate that it had consistently conducted required DCF background checks on its employees. There were multiple High Road locations where the majority of staff had not been background checked. These widespread regulatory compliance failures speak persuasively to a lack of state and local oversight of High Road and potentially similarly situated programs for vulnerable children.

Examples

- In the Windham County Program, 6 out of 8 educational staff had not had DCF background checks.
- In the New London Program, High Road failed to demonstrate that it had verified employment histories, including any concerns of prior student maltreatment, as required by state law.
- In the Fairfield County Program, High Road had not conducted a DCF or employee background check for approximately half of the staff.
- At Hartford-Primary, High Road had not conducted a DCF background check for approximately half of the staff.
- At Wallingford-BEST program, High Road conducted background checks for the majority, but not all of staff working with children.

Equally concerning is that in order to remain state-approved, a facility must submit an annual "signed statement of assurances" no later than October 15th to the State Board of Education, and "[f]ailure to do so may result in a conditional or approval withheld status."[51] The Statement of Assurance includes several important provisions, including that: "[t]his program employs or contracts with only administrators, instructional staff, and related services personnel who hold proper state certification or licensure for services performed on behalf of the program. The mix of certification endorsements for instructional staff remains the same as that most recently approved by CSDE."

Despite this requirement, CSDE could not produce annual copies of applicable Statements of Assurance for each High Road location for the years requested. Nor did CSDE demonstrate that it audited or inquired with High Road regarding the failure to provide such Assurances. CSDE provided only one (1) Statement of Assurance for 2020 (High Road Windham location) and one (1) Statement of Assurance for 2021 (High Road New London).

Notably, during CSDE's previous oversight activities, it had found that High Road had not been consistent in conducting background checks and the state directed High Road to undertake corrective action. However, state records do not indicate further follow up by CSDE to ensure that corrective actions were implemented and sustained. OCA/DRCT's investigation found that despite previous complaints, warnings, and directives and despite clear state law obligations and even contractual requirements (more on this below), SESI/High Road failed to demonstrate that it consistently conducts background checks for employees working with children.

[51] The State Department of Education supplies the appropriate form for the facility to make its statement of assurances.

2. Certified Administrators Lacking Across All Programs

In accordance with CSDE's Standards, the "governing body of a private facility shall appoint a person to act as chief administrator of the special education program and delegate sufficient authority to this person to effectively manage the affairs of the program." During an observation at High Road Windham County, OCA learned that there was no dedicated administrator at the program, and that individuals from other High Road locations rotated to the site to "cover" this role. OCA later learned from CSDE that one of the individuals covering the administrator role in Windham and who was present when OCA conducted the site visit lacked the qualifications for state certification. While the individual had identified himself to OCA as the covering school administrator, upon questioning from OCA, High Road executives identified the individual as a New London-based "operations manager," a position within the company that does not require a Connecticut administrator's certification. He had recently moved from another state and his resume included scant teaching or administrative experience. OCA contacted his previous out-of-state employer who stated that it could not offer a professional recommendation as the individual had not been employed with the program for a long enough time (the individual's resume listed their tenure with the program as years).

High Road executives also told OCA/DRCT that they were splitting one of the company's certified administrators across the two Hartford sites and the Windham County site, and that they considered the Windham County site to be a "satellite" of the Hartford program. High Road later assigned a full time administrator for the Windham County program.

3. High Road Relied Heavily on Durational Shortage Area Permits ("DSAP") --Not All Appropriately Credentialed—lack Of Communication with Districts

Almost half of the teachers employed at High Road for the period of time OCA/DRCT sought staff data lacked teacher certification from the state of Connecticut. High Road asserted to OCA/DRCT that many uncertified teachers were in fact authorized to teach under a state-issued Durational Shortage Area Permit ("DSAP"), which allows staff without certification to teach after meeting certain conditions.[52] Those conditions include a completed application filed with the CSDE indicating that the candidate holds a bachelor's degree and is enrolled in a special education program and has completed at least 12 credits shown by an attestation from the college/university attending. Upon

Examples

- High Road Fairfield County listed one individual as a Special Education Teacher and indicated s/he had a "DSAP Pending" with CSDE. OCA's follow up with CSDE and examination of the certification database indicates that there was no DSAP application pending with CSDE. The individual was approved as a substitute teacher.
- High Road Hartford High School listed one individual as a Special Education teacher, designation "unknown." CSDE indicated it had an application for him/her, but a review of the certification database showed no authorizations or approvals.
- High Road Hartford High School listed another individual as a Special Education teacher with a DSAP authorization. CSDE records indicate that the individual did have a previous application approved but for another school.

[52] Regulations of Connecticut State Agency § 10-145d-421.

further review by OCA/DRCT, several of the teachers purportedly teaching at High Road under a DSAP did not have the appropriate paperwork filed with CSDE. For example, one teacher's DSAP application on file with CSDE was from a different school. There must be a new application for each teacher employed at a school teaching with a durational shortage permit. There were also instances where applications were missing attestations from the college/university. One uncertified teacher did not have any application filed with the CSDE. Another individual was listed by High Road as having a DSAP application "pending." However, OCA's review of corresponding CSDE documents and discussion with CSDE staff indicated that High Road's application for the DSAP approval was incomplete, and that the program had not been responsive to CSDE's requests for additional information. (More on this example below.) High Road could not demonstrate that either the LEA or CSDE was aware of the instances in which staff were not credentialed to teach the students.

4. High Road Relied Heavily on Long-Term Substitute Teachers—Not All Appropriately Credentialed—Lack of Communication With Districts About Staffing Shortages

High Road sites relied on long-term substitute teachers during the PUR. Pursuant to state law such teachers must file an application with the CSDE indicating that they hold a bachelor's degree and have completed at least 12 credits in special education.[53] In some instances, a waiver may be sought for employees who do not hold a bachelor's degree. There were at least seven (7) High Road employees identified as special education teachers/long-term substitutes and for whom CSDE had no record of an LTS application.

Examples

- High Road Fairfield County listed an individual as a Special Education teacher and indicated s/he was authorized as a Long-Term Sub. CSDE stated they had no such application on file.
- High Road Hartford High School listed an individual as a Special Education teacher and a Long-Term Sub. The SDE certification database indicates that the only authorization, active or expired, the individual has is a temporary coaching permit.
- High Road Hartford High School listed another individual as a Special Education teacher and a Long-Term Sub. CSDE indicated that had a DSAP form for this individual but pertaining to a different school. There was no Long-Term sub authorization.

Neither the LEAs nor CSDE were aware that these staff were not properly authorized to teach the students.

During an early 2022 site visit to a High Road location, OCA/DRCT observed a classroom identified by the New England Executive Director as the "Autism Classroom," though High Road executives later disputed that designation in a meeting with OCA/DRCT. The classroom teacher reported to investigators during the site visit that s/he was not a certified special education teacher, and a review of the SDE certification database indicates that the individual had only an expired Long Term Substitute authorization. OCA/DRCT later determined that at the time of the site visit (February 3, 2022) the teacher did not have any certification or other state authorization to qualify them to provide

[53] Regulations of Connecticut State Agencies § 10-145d-420

special education instruction to the students. S/he had been previously approved by CSDE as a Long-Term Substitute for another private special education program. In part due to the applicant's lack of prior credits in special education, the previous program had certified to CSDE that it would provide the individual a mentor and ensure close supervision. The LTS authorization is site specific and is not transferrable from one program to another. The state requires program-specific documentation that the individual is appropriately experienced for the position and that the program has conducted due diligence to fill the position with a certified teacher.

In May of 2022, several months after OCA/DRCT's site visit, and in response to a subpoena from OCA, High Road provided detailed staff credentials for all its locations. These documents identified that there was now a pending DSAP application for the teacher of the "autism classroom."[54] OCA's subsequent review of all records maintained by CSDE applicable to staff at High Road indicated that the DSAP application had just been submitted by High Road and had not yet been approved. The undergraduate record attached to the DSAP application reflected only one class that the individual had taken pertaining directly to special education. As of the date of this report, the DSAP application was not approved, and CSDE staff reported to OCA that the program had not responded to requests for additional information.

In a meeting with High Road corporate executives, and prior to OCA's subpoena for the staff credentials and accompanying documentation, OCA and DRCT expressed concern regarding the staffing deficiencies observed during site visits. In addition to noting that three classrooms observed lacked a certified special education teacher at the time of the visit, OCA/DRCT referenced the so-called "autism classroom," as an example of students with complex and likely unmet educational needs. High Road executives disputed the site administrator's designation of the classroom and denied that the students in the classroom, other than one child, had Autism. They referenced the statewide special education labor shortages and recounted several recent efforts they were making to recruit and retain qualified staff, including having recently raised starting salaries to match the median of public-school teacher salary scales in Connecticut. Executives repeatedly stated that they would not accept any student whose IEP could not be implemented. When OCA questioned why High Road would admit a student with Autism when the Hartford program had no certified special education teacher in the student's classroom, an executive responded that students are really at the High Road program because of behavior concerns and that the program is able to meet that need.

OCA subpoenaed from the local school districts individual contracts applicable to various students attending High Road schools during the PUR. A review of the contract pertaining to the student with Autism in the disputed "autism classroom" indicates that the child's school district enrolled the student in High Road "in accordance with the terms of the Student's Individualized Education Program," and that High Road agreed to comply with all applicable laws and regulations governing

[54]The State of Connecticut Education Department identifies personnel shortage areas each year based on teacher vacancies reported by school districts. Special Education has been designated a shortage area for a period of several years. Minimally, a bachelor's degree from a regionally accredited higher education institution is required and 12 semester hours of credit must be completed in the area to be taught. Enrollment in an approved preparation program is required when an approved program of preparation is required to obtain the actual certificate. The requesting school district is required to attest that the individual teaching under a DSAP will be given special attention in the form of supervision and other assistance, as appropriate. The shortage area may also be addressed by assignment of a "long-term substitute." For any positions over 40 days a Bachelor's degree and 12 credits in content/subject area are required.

the IEP services, including ensuring that all employees "have the requisite skill, expertise and knowledge necessary to perform the Services required under the terms of this Agreement," and that all employees "assigned to perform the Services set forth in this Agreement meet the hiring requirements for school-based employees" as required by state law. The district agreed to pay the daily tuition rate of $270.75.

In September 2022, the student's school district sent its pupil services director and a BCBA to conduct a site observation of the child's classroom at High Road. The district's record of the observation was provided to the OCA in accordance with a subpoena. The notes from the district included the following:

> There were six other male students in the room, seated at cubicles that lined either side of the classroom. One student was laying on the floor.... Social worker (?) told the other students they were going to play Zones of Regulation Bingo. One student started throwing pencils out of his shirt sleeve, one student was yelling out "If you're bored and you know it, clap your hands" with other students clapping their hands. One student asked, "what is a laxative?" and another student started talking about bowel movements. Very little/no redirection from the staff in the room. Several times vulgar language was heard. Student appeared to be engrossed in her computer and ignored the actions of the other students. After 15 minutes, para[professional] told Student it was time to put the computer away and work on a social studies worksheet. Student was still sitting at the table in the back of the room with headphones on, social worker was attempting to have the other students play bingo, classroom was very noisy and active. Student began to write on a worksheet. [LEA] asked para[professional] if she does [Discrete Trial Instruction—a research-based method of education/skills development for students with Autism]. Para did not know what DTI was.

The student was subsequently unenrolled in High Road by the LEA.

In sum, OCA/DRCT's review of student records, staff credentials, and background checking compliance, raises serious concerns not only as to whether the terms of the student-specific contracts have been fulfilled but whether, in one or more instances, High Road entered a contract knowing it could not meet its terms or did not meet terms.

5. No Communication Between LEAs and High Road Regarding Widespread Staffing Deficiencies

In response to OCA's subpoena for all written, including electronic, communications between High Road and contracting LEAs regarding staff deficiencies and any remedial strategies implemented during the PUR, OCA/DRCT learned that there were no written communications sent by High Road to LEAs regarding systemic, cross-site staff deficiencies, including High Road's lack of full-time special education certified teachers or what High Road's strategies were to address such shortages. Notably the Hartford sites, which during the PUR, were under a multi-million-dollar contract with Hartford Public Schools to educate close to eighty students,[55] had significant staffing deficiencies as described

[55]Among the students attending Hartford High Road Schools, 44 Students from Hartford were attending Hartford High Road Primary School and 30 students from Hartford were attending Hartford High Road High School.

herein, and High Road's document submission to OCA revealed no written communications with the district regarding these staffing deficiencies or the plans to address them. Despite the statewide education labor shortages, and the significant investment of public funds by the district, Hartford Public Schools acknowledged to OCA that it did not ask about any staffing deficiencies at High Road during the PUR.

The lack of staffing and background check verifications, and the absence of documentation between the two contracting entities raise serious concerns regarding High Road's compliance with state law and applicable standards for operation of an APSEP, and High Road's compliance with contractual requirements with the school districts regarding the provision of individualized special education services by qualified staff. The findings also implicate LEA and CSDE oversight of staffing and service delivery for some of the state's highest need students, and the adequacy of educational programming for students—disproportionately low-income children of color--who have a civil right to special education under state and federal law.

6. No Indication of Certified Physical Education, Art, or Music Teachers

High Road staff documentation included no certified physical education teachers, art teachers, or music teachers. It was not clear that such programming was being provided to students. Connecticut law requires that public schools offer instruction in physical education, the arts, as well as "health and safety, including, but not limited to, human growth and development, [and] nutrition." While High Road is not a public school subject to those legal requirements, the LEAs should ensure that such services are being provided to its students who they outplace at High Road schools.[56]

7. Nurses Not Employed at All Buildings

In addition to educational staff deficiencies described above, documentation provided by High Road indicates that the High Road Windham County program did not have a nurse on staff. High Road had previously been directed by CSDE to "provide assurances that "skilled nursing functions are not being delegated to unlicensed personnel" following a student-centered complaint made by the OCA.

[56] Conn. Gen. Stat. Sec. 10-16b.Multiple High Road locations visited by OCA/DRCT lacked typical school environments and activities. For example, despite serving children of all ages, including young children, multiple sites (New London, Norwalk, Danielson sites) lacked recess and out-door play equipment. The New London site was housed in a church that had a playground, but High Road staff told investigators that their students were not able to access that play equipment. In the Norwalk location, staff reported kids would play in the parking lot and teachers/aides would try to play ball with them. The Danielson location was sited in an industrial park with no outdoor play space. Multiple sites lacked a gym or other infrastructure for physical education, a music room, or an art room. School infrastructure varied by location, with High Road Wallingford-BEST program having the most typical and developmentally appropriate school environment. Schools lacked cafeterias and at least one school lacked any evidence of a kitchen/nutrition program to provide appropriate food and snacks to children. While classrooms varied considerably across High Road locations, many classrooms observed by OCA/DRCT lacked typical educational materials and learning supports such as evidence of project-based learning, manipulatives, and in several observations, even books. Multiple classrooms—though not all-- did not have any examples of posted work from students or other evidence of student projects. There was scant indication of any experiential learning.

While there are no federal and/or state laws or regulations requiring that there be one nurse at each building, there is considerable authority on the importance of such a practice (American Academy of Pediatrics, National Association of School Nurses). In facilities such as the Schools that educate only children with disabilities – and mostly children with emotional and/or behavioral issues, this practice is even more critical.

In 2016, the American Academy of Pediatrics ("AAP") released a policy statement commenting on the need for a nurse in every school building and laws to enforce that practice.[57] As aptly reasoned by the AAP, "[s]ocial attitudes that promote inclusion, as well as state and federal laws such as the [IDEA and Section 504] specify disability rights and access to education, resulting in more children requiring and receiving nursing care and other health-related services in school"[58] **The AAP acknowledges that schools may use "delegated, unlicensed assistive personnel" who are properly trained and supervised, such as schools in Connecticut. However, "[d]elegation does not obviate the need for continued advocacy for full-time professional nurses in each school building . . . to fill the increasing complex health needs of students." Its recommendations include, "a minimum of 1 full-time professional school nurse in every school with medical oversight from a school physician in every school district as the optimal staffing to ensure the health and safety of students during the school day."[59]**

PART II

INVESTIGATIVE FINDINGS – INDIVIDUALIZED EDUCATIONAL PROGRAMMING

OCA/DRCT's investigation found serious and widespread deficiencies in all aspects of educational service delivery across multiple High Road locations. Concerns included inadequate staffing, inconsistent related service delivery, missing evaluations, inadequate assessments, lack of individualized service delivery, and persistent concerns regarding student absenteeism and disengagement.

High Road serves children with varying disabilities, predominantly Black and Hispanic boys from low-income communities. During the PUR, there were 316 students enrolled in High Road Schools. More than 70% of students are children of color. Eighty percent of students are boys. High Road's student population is consistent with state data indicating that most students educated in "separate schools," are Black, Brown, or Bi-Racial. Further, most High Road enrolled students are from school districts that serve predominantly lower-income students and families. The most frequent student disability classifications for students at High Road were: Emotional Disability ("ED"), Autism, and Other Health Impairment ("OHI").

[57] AAP Council on School Health, *Role of the School Nurse in Providing School Health Services*, Policy Statement, *Pediatrics*, 2016.137(6).e20160852.
[58] *Id.*
[59] *Id.*

Findings concerning the deficiencies with the individualized educational programming provided to students attending High Road schools were made based on several components of this OCA/DRCT investigation, including, but not limited to:

- Review of demographic, enrollment, attendance, discipline and academic programming data for each student enrolled at certain High Road Schools, including, High Road School of Hartford (Primary, Middle and High School); B.E.S.T Academy; High Road School of Fairfield County, High Road School of New London, and High Road School of Windham County (collectively referred to as the "Schools" in this Report) during the 2019-2020, 2020-2021 and 2021-2022 school years. With the inconsistencies in programming due to the COVID-19 pandemic, most of the findings relative to the records reviewed, **unless otherwise indicated,** are based on the 2021-2022 school year, which will be referred to as the period under review ("PUR").
- Review of the individual educational files for thirty (30) students attending various High Road schools. Dr. Michael Powers and his colleagues at The Center for Children with Special Needs and Andrea M. Spencer, Ph.D., Associate Professor, Department of Education, University of Saint Joseph conducted the educational record reviews. **Included in the review were the educational records of seven (7) students from Hartford Public Schools placed at High Road schools through the 2021-22 school year**.[60] All individual student educational records were provided by High Road unless the student left High Road during the PUR and the individual file was then provided by the school district in which the student attended.
- Review of information provided by eighteen (18) Connecticut school districts who placed students at High Road schools during the PUR, which information concerned the school district's monitoring and oversight of student(s)' educational programming.
- Multiple observations of High Road facilities and classrooms conducted on different occasions by the following individuals: (1) Dr. Michael Powers and his colleagues at The Center for Children with Special Needs; (2) Andrea M. Spencer, Ph.D., Associate Professor, Department of Education, University of Saint Joseph; (3) Maria Cruz, Ph.D., MSW, OCA Investigator; (4) Attorney Deborah Dorfman, Executive Director of DRCT; and (5) Tom Cosker, Advocate with DRCT and former educator.
- Consultation with Dr. Ross Greene and his colleagues with Lives in the Balance; Dr. Michael Powers and his colleagues at The Center for Children with Special Needs, and Andrea M. Spencer, Ph.D., Associate Professor, Department of Education, University of Saint Joseph.
- Interviews with administrators from several Districts who placed students at High Road schools during the PUR, including Hartford Public Schools. Interviews were conducted by OCA and DRCT staff.

1. Overreliance on Restraint and Seclusion

As Connecticut's data shows, a highly disproportionate percentage of restraint and seclusion are used on students with disabilities placed in "separate schools," such as Approved Private Special Education Programs (APSEP).

There are 84 APSEPs in Connecticut currently educating 2,767 students. Though the APSEP students make up just 0.54% of statewide enrollment, they are the subject of 36% of all restraints and seclusions

[60] Student initials will not be provided in final issued report.

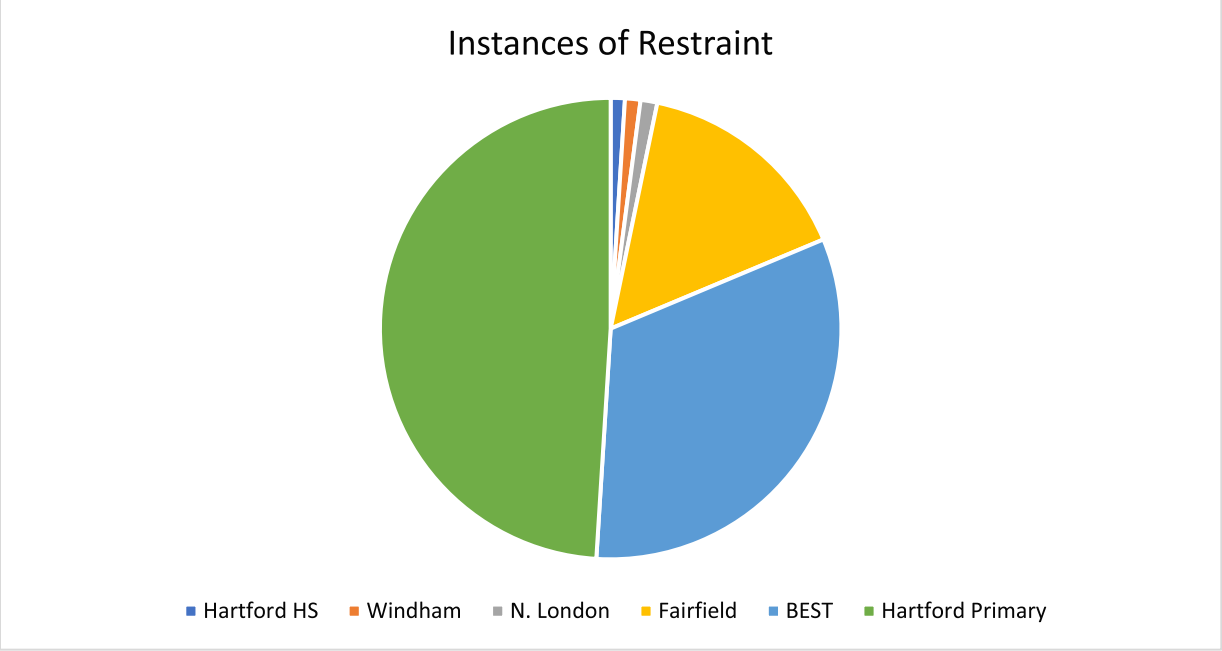
(inclusive of physical restraint, seclusion, and forcible escort) for the entire state (14,073/38,758).[61] In Connecticut, the majority of children who are restrained or secluded are elementary school age children with disabilities, disproportionately children with Autism.

Restraint and seclusion are widely determined to be dangerous for students and staff, worsening challenging behaviors, and increasing staff and student risk of injury. As summarized in the National Guidelines for Child and Youth Behavioral Health Crisis, produced for the Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Department of Health and Human Services:

> [physical restraint and seclusion] can be traumatizing for both youth and families, and they are associated with frequent injuries to youth, deaths, and injuries to staff. **SAMHSA is committed to reducing and ultimately eliminating the use of seclusion and restraint, with the goal of creating care environments that are free of coercion and violence.** (internal citations omitted; emphasis in original.)[62]

Based on data provided by High Road, during the PUR, there were a total of 1,108 instances of Restraint and 95 instances of Seclusion reported at the Schools. High Road School of Hartford Primary/Middle had a total of 543 instances of Restraint.

The below chart highlights those instances of Restraint during the PUR.



[61] Connecticut State Department of Education, Annual Report on the Use of Physical Restraint and Seclusion in Connecticut, School Year 2021-22, available at: https://edsight.ct.gov/relatedreports/RS%20Report%20to%20Legislature%202021-22.pdf

[62] Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, National Guidelines for Child and Youth Behavioral Health Crisis Care (Released 2022). Found on the web at: https://store.samhsa.gov/sites/default/files/pep-22-01-02-001.pdf.

All locations had time-out/seclusion rooms. Most all these rooms were small (approximately 10' x 10') rooms with an open doorway (no door). The number of these types of rooms varied by school but ranged from 3 or 4 to 8 or 10. At Hartford Primary school, there were three (3) of these rooms located off a small hallway that was connected to the main hallway by a doorway with a door. The three (3) individual rooms had open doorways with no door but there was a door where this smaller hallway connected to the main hallway.[63]

A letter sent by DRCT to High Road counsel on February 14, 2022, detailed concerns about the lack of observed appropriate behavioral interventions and over-reliance on the use of seclusion in the "autism" classroom at High Road school during an investigative site visit. The letter detailed an observation by DRCT of a K-Second Grade classroom where children were becoming disruptive while dancing to You Tube videos. A staff person from outside the classroom was observed entering the area and removing one of the young children to a "time out" room. DRCT observed multiple students in "time out" rooms where staff were seen sitting or standing in front of the doors to block the children from leaving, effectively converting the "time out" to a seclusion, a reportable event which may compel a school district to convene a Planning and Placement team meeting.[64]

Improperly referring to these rooms as "time-out" as opposed to "seclusion" eliminates the statutorily-required reporting requirements and safeguards that ensure that students are not being denied FAPE under the IDEA and/or being denied the appropriate behavioral interventions such as a Functional Behavioral Assessment ("FBA") and Behavior Intervention Plan ("BIP"). Connecticut defines Seclusion as "the involuntary confinement of a student in a room from which the student is physically prevented from leaving. 'Seclusion' does not include an exclusionary time out"',[65] and Exclusionary Time-out is defined as "a temporary, continuously monitored separation of a student from an ongoing activity in a non-locked setting, for the purpose of calming such student or deescalating such student's behavior."[66] Exclusionary time-out becomes a seclusion when the child is physically preventing from leaving the area.

Underreporting of seclusion aside, it is concerning that students would be isolated in such a manner and with such frequency. Isolation without adequate and required efforts to address students' needs also raise serious legal questions under the ADA (equal access to education), Section 504 (FAPE in the LRE), IDEA (FAPE in the LRE), and state tort claims (false imprisonment, negligence).

2. **Student Educational Records Reflect Lack of Adequate Individualized Evaluation and Significant Educational Deficiencies**

[63] At several High Road Schools, children as young as 5 or 6 years old are subject to security wands as they enter school.

[64] High Road contends in its Response to this Report that certain students in time-out rooms do not appear to be trying to leave the room - those "sitting calmly" - and, therefore, they are there voluntarily and free to leave. However, what is objectively clear and observed on multiple occasions is a student, in a small room, with an adult standing in the only exit - it is more likely than not that the student would not feel free to leave and are physically prevented from doing so - therefore, that time should be recorded as seclusion.

[65] Conn. Gen. Stat. § 10-236b(a)(5)

[66] Conn. Gen. Stat. § 10-236b(a)(7).

OCA/DRCT experts reviewed thirty (30) student educational records obtained from multiple High Road locations.[67] Records review identified several common concerns. First, while investigators requested complete educational files for selected enrolled students, the contents of files provided by High Road were inconsistent and incomplete. There did not appear to be any common format. Although psychological, academic, and other evaluations may be recommended or referenced in IEP notes, such evaluations were not included in most files unless they had been completed *prior* to the student's admission to a High Road school. Records frequently lack psychoeducational or psychiatric evaluations even when there was evidence of a child's psychiatric hospitalization and psychiatric diagnoses.

There is little evidence in the records of individualized instruction, and general program descriptions refer only to a curriculum comprised of "four instructional rotations during which students are assessed academically, gain self-regulation skills, learn with district-aligned academic curriculums and utilize integrated technology." Reading and mathematics diagnostic assessments are rare, and, when present, do not indicate specific, individualized, evidence-based interventions or follow-up data and analysis of improvement of identified academic weaknesses. Classroom observations at Hartford High Road Primary, for example, as well as website information, indicate that students are expected to complete academic tasks based on an "academic rotational model" which is conducted primarily by instructional aides using paper and pencil exercises without adaptations for individual variations in vocabulary, working memory, or speed of information processing. While conducting a site visit at one site, the school administrator stated that the program has no remedial reading specialist to conduct evaluations or drive program instruction/modifications, though investigators were told that the school had an occupational therapist who helps with reading evaluations. Students with behavioral issues commonly have undiagnosed language deficits. Yet, this is an area that is often overlooked:

> Careful consideration of language development is one aspect of a comprehensive evaluation that is frequently overlooked. . . . Research indicates that the comorbid relationship of language deficits with behavior problems can have a profound impact on a child's ability to function socially and academically in school. In the context of understandable school concerns about classroom management and school wide discipline, the focus of assessment and interventions has been primarily on classroom behavior management. Studies indicate that the prevalence of language deficits among children with antisocial behaviors is 10 times higher than the general population, with serious negative effects on the development of social relationships and successful learning outcomes. . . . Further, children with unsuspected language impairment have been found to have the most severe externalizing behaviorsi (e.g. non-compliance, aggression, disruptive behavior).[68]

[67]Dr. Michael Powers and his colleagues at The Center for Children with Special Needs and Adrian M. Spencer, Ph.D., Associate Professor, Department of Education, University of Saint Joseph conducted the educational record reviews. All individual student educational records were provided by High Road unless the student left High Road during the PUR and the individual file was then provided by the school district in which the student attended.

[68] *A Closer Look at the Relationship between Language and Emotional and Behavioral Disorders,* Andrea M. Spencer, Associate Professor, The University of Saint Joseph (August 2021).

Overall, records examined included inconsistent information, lacked evidence of comprehensive evaluations, individualized or personalized instructional or behavioral strategies, and did not indicate that progress or failure to progress were regularly reviewed within programs. Across sites there was an apparent lack of access to related services such as clinical/psychological consultation or service. Multiple sites did not provide students with occupational and speech language therapy consistent with descriptions of students' previous developmental, social/emotional, or educational histories. At multiple sites, almost none of the students received Functional Behavioral Assessments (FBAs) or Behavior Intervention Plans (BIPs). Given the relative rarity of FBAs and BIPs despite consistently documented student behavioral issues, the access to a Board-Certified Behavior Analyst (BCBA) is critical for this population, though most High Road sites lacked a BCBA on staff and no High Road students received direct support from a BCBA.

Finally, given the high frequency of reading deficits among students, access to reading specialists and instruction based on evidence-based strategies for improving reading skills that engage students as well as provide intensive reading intervention is a serious need. For older students whose records were reviewed, access to special education until age 22 was terminated without clear transition plans or individualized programs that would provide options for post-secondary education or realistic development of vocational options and experiences, with appropriate social and mental health supports that could lead to successful transitions to adult life.

3. Student Records Reviewed by Investigators Included Almost No FBAs/BIPs Despite Children with Complex Behavioral Presentations

High Road locations all employ school social workers and offer individual and/or group counseling. However, out of 30 student records reviewed by investigators, there were only two (2) BIPs. Student data and individual student records also indicate frequent use of restraint and seclusion without adequate evaluation and response. Physical restraint and/or seclusion may constitute a violation of FAPE under the IDEA, and if physical restraint and/or seclusion is used on a student four or more times within twenty (20) school days, the following steps must be taken in accordance with Conn. Gen. Stat. § 10-236b(g).

> (1) An administrator, one or more of such student's teachers, a parent or guardian of such student and, if any, a mental health professional, as defined in section 10-76t, shall convene for the purpose of (A) conducting or revising a behavioral assessment of the student, (B) creating or revising any applicable behavioral intervention plan, and (C) determining whether such student may require special education pursuant to section 10-76ff; or (2) If such student is a child requiring special education, as described in subparagraph (A) of subdivision (5) of section 10-76a, or a child being evaluated for eligibility for special education pursuant to section 10-76d and awaiting a determination, such student's planning and placement team shall convene for the purpose of (A) conducting or revising a behavioral assessment of the student, and (B) creating or revising any applicable behavioral intervention plan, including, but not limited to, such student's individualized education plan.

It is unclear whether such actions were taken with respect to students who had multiple seclusions. Moreover, improperly calling a room in which a children cannot leave a "time-out" eliminates the reporting requirement and safeguards of Connecticut's seclusion laws.

Examples

- Students A, B, and C's records indicate they have histories of psychiatric hospitalization. Yet services provided at High Road were limited to individual and small group counseling by a social worker without evidence of ongoing collaboration or consultation with psychiatric or clinical service providers.
- Record reviews of two other high school age students indicate a greater degree of severity of mental health issues including (for Student F) school suspension related to a psychotic break and hospitalization for major depressive disorder, suicidal ideation, ADHD conduct and emotional disorder, mixed; and (Student G) multiple hospitalizations and acute respite treatment associated with significant externalizing problems, anxiety and depression. Despite indications of severe mental health issues for both students, services were limited to 29 hours of special education and 1 hr/wk of social work—which is the same level of service that most students receive, with little to no individualization. Notably, High Road offers no onsite or consultation-based psychiatric or psychological observation, assessment or intervention.

Examples

- Student A was placed at the Hartford Primary-Middle School program in Grade 3, at age 10, with a BIP created at his previous public school. Yet a program review later that year indicated he was performing below grade level due to a lack of access to education based on extended timeouts, raising questions about the degree to which his BIP was reflective of his current needs. In additional, Student A had multiple absences, slept for the whole day on multiple days waking only to eat lunch, and had significant academic delays. Despite a psychological evaluation (prior to enrollment) indicating "unusually poor expressive and receptive communication skills" no language evaluation or therapy was provided. Complex academic/behavioral/disengagement issues persisted from enrollment at High Road for 7 years without his needs being properly addressed.
- Student B's record showed multiple timeouts most days ranging from 4-49 minutes. Upon placement, a safety plan recommended that she be searched daily to ensure that she had not brought anything to school which could be used to self-harm and that she receive adult supervision at all times. A social work summary a year after her placement at High Road noted a history of 70 timeouts and 7 restraints during her first year in the placement. No Functional Behavioral Assessment or BIP was included in her records.
- Student C, whose record indicated 69 restraints over a period of 15 months also had no BIP or BIP included in his record.
- Student D's record referenced a BIP and 1:1 support although neither an FBA nor BIP was present in the record.
- Finally, the record of Student E, with a record of high frequency aggression toward staff, did include an FBA and BIP, although data on implementation or evaluation of effectiveness was not available.
- For 9-year-old Student M, a psychiatric evaluation and an occupational therapy screen for sensory issues were recommended following a visit to the hospital, as well as a referral to IICAPS—an intensive, home based, clinical service-- and a requirement that a safety plan be developed. The education record provided by High Road contained no evidence the psychiatric evaluation or the Occupational therapy screen had been carried out. The child's record includes a Conners 3 scale which produced elevated levels of executive functioning, inattention, learning problems, defiance and aggression. He was also described as having internalizing issues including anxiety, depression, worry and nervousness. Over the course of 15 months, his record contains reports of 44 episodes of restraint, seclusion and timeouts, without any evidence that an FBA or BIP had been carried out. Academic assessments were apparently carried out but there was no comparative assessment in the available records describing academic progress.
- Student T's annual summary makes note of very high frequency challenging behaviors (e.g., yelling occurring <100 times daily) and access to soda as reinforcement, however no FBA or BIP was contained in the record;
- FBA was present for student X but confusing as 2 reports were completed (9.2021 and 11.4.2021) with 2 topographies added in the 11.4.2021 report but all summary and recommendation statements remaining unchanged. No direct ABC data were collected to support the development of functional summary statements.

4. Inadequate Progress Monitoring

During an OCA/DRCT site visit to Hartford High Road Primary, the school administrator reported that the program and instruction is data driven. When asked how the program collects and manages data, administration stated that "aides" collect data on the number of reinforcements earned in each

classroom and enter the information to provide a digital record at the end of the day. The program reportedly collects a lot of data including using a proprietary data management system. Administration further reported that staff and administrators review data "all of the time," looking for trends. If the trends are going in the wrong direction behaviorally, they make changes; if academically, they adjust the level [of the packets].

Full academic records provided for review however contained no raw data to support progress monitoring. Additionally, no data summarization was provided as rationale for student scoring. High Road's system for report cards was unclear, particularly given the variability to student profiles. Progress IEPs were not always updated within the one-year window and progress was occasionally marked for expired IEPs. Across the files reviewed, inconsistencies were noted across measurement systems, particularly regarding report card grades and IEP progress. Additionally, the progress noted in the IEPs in the present levels of performance often did not reflect the progress noted in the progress reports. Further, gaps identified in present levels of performance were frequently not captured within the goals and objectives.

Examples

- Student B, non-vocal 10th grader (ASD, ID) at BEST in Wallingford has a "B" in language arts. However, "Limited Progress" frequently scored on BT's progress reports despite passing grades on report cards. Many goals and objectives were indicated as "not mastered" each year.
- Student R received an "A" in basic math despite the majority of IEP objectives receiving a score of "limited progress" (including math objectives).

5. Inappropriate Goals and Objectives

Reviewers had questions regarding the appropriateness of goals and objectives selected for instruction. For non-BEST academy students, the goals and objectives appeared to be curriculum/common core driven. For high school aged students, many of the goals and objectives lacked criteria related to functional applications. Across all programs, IEPs reviewed frequently lacked goals and objectives related to daily living skills, vocational, pre-vocational, and community-based skills.

Example

- Student P's IEP/Progress monitoring documents highlight skill instruction and acquisition regarding shapes/numbers/colors despite him being a high school aged learner with ASD/ID and no functional communication system.

6. Inadequate Assessments and Evaluations in Records

Use of criterion-based assessment was noted for students at the BEST Academy; however, the assessments selected were not age appropriate. Across all programs, FUTURES and/or MAPS assessments were not available for review and not discussed within the IEP minutes provided. Records lack consistent clinical/psychological assessments upon which to base the comprehensive approach

to special education required by law. Only one record includes an assessment of general intellectual functioning, including subscale scores on the WISC V. A failure to identify and analyze intellectual profiles can be critically important in addressing instructional, emotional, and behavioral concerns, yet there is little evidence of such analysis or application in student records.

Multiple emotional and behavioral concerns are described for each student, commonly including significant externalizing problems of disruptive behavior, and attentional difficulties, but clinical assessments, when present, also frequently indicate significant internalizing issues of depression and anxiety. Social, emotional, and cognitive impairment, engaging in high-risk behaviors, disability, and social problems are associated with Adverse Childhood Experiences (ACEs), including trauma, and school-based academic and behavioral challenges. There was no evidence of trauma-informed training, trauma informed screening or psychological/clinical support for traumatized students. It is likely that students with multiple restraints and time-outs are being triggered based on his/her earlier (or perhaps ongoing) experiences. There was no consideration or assessment of this possibility.

Examples

- Student B's record included evidence of programmatic disruption, severe trauma, and involvement with the juvenile justice system, including placement in a juvenile justice facility prior to admission to High Road. However, there is no evidence that her trauma history was evaluated or assessed following her placement.
- Student F also had a history of multiple absences and was labeled "habitually truant." Although he was said to have "solid average intellectual ability" the record does not contain a detailed educational, academic, or psychological evaluation. Despite the general statement in the 2022.05.19 IEP that "evaluations were not needed" the record notes that Student F needed to improve comprehension strategies and increase vocabulary.

7. Lack of Individualized Programming/Transition Services for Older Students

Records reviewed from the now closed High Road New London (this program was closed during OCA/DRCT's investigation) indicated that despite classifications of emotional disturbance including a history of anxiety and/or PTSD for certain students, all the students whose records were reviewed received the same routine services – 29 hours of special education and 1 hour of social work. There is little information in the students' educational records concerning academic achievement profiles, or transition planning. Three of the four students whose records were reviewed exited the program with plans to enroll in Adult Education. Graduation requirements were waived for the fourth, and he was granted a high school diploma and exited special education.

Examples

- Student F had been diagnosed with PTSD and an adjustment disorder, had a Full Scale IQ in the average range and was described as "working below potential" as a "credit deficient 12th grader." However, she was not able to participate in job exploration in the community because she was "not on the correct level" of the contingency management levels system. She withdrew from the program to enroll in Adult Education with an F in all grades.
- Student I was another 12th grader, with a developmental and social history significant for ongoing trauma and mental health concerns, likely exacerbated by frequent changes in living arrangements between relatives, foster homes and group homes. His transition plan was revised, requirements for a public high school diploma waived, and he was graduated from high school with no grades higher than a D-. Notes indicate that his DCF social worker planned to set up a virtual orientation to Job Corps.
- Finally, Student K, whose previous special education records noted a Full-Scale IQ in the average range, was described as displaying noncompliant and off task behaviors with many AWOL's and time-outs initially followed by ongoing attendance and motivational problems. He was retained in Grade 12, and he transferred to Adult Education.
- Student K was enrolled at a High Road school in 2014 and withdrew from the program in 2021, at the end of an academic year in which he accumulated 128 absences, 1 F, 4 D's and 1 C.
- Student N had a complex history of hospitalizations with multiple diagnoses (conduct disorder, depressive disorder, anxiety disorders, cannabis and alcohol disorders) with the last hospitalization discharge diagnosis of "unspecified schizophrenia syndrome". He was on probation and lived in a foster home, which "deteriorated" at one point causing concerns about his becoming a danger to himself or others. The record notes that a WAIS could not be calculated due to extremely low Processing Speed Index (PSI) of 62 and Working Memory Index of 74. Reading and mathematics skills were well below average. His participation at High Road Fairfield County was characterized by increasing disengagement and many episodes of prolonged sleeping during class, which was said to have adverse effects on academic progress. Student N was exited from special education despite having accumulated only 13 high school credits.

8. **Access to Related Services**

Data regarding more than 300 students across High Road locations during the PUR showed that in some programs students had access to and received, where recommended on their IEPS, related services such as occupational therapy and speech and language therapy.

Only 1 student across locations received physical therapy.

No students received direct BCBA services despite having students with complex behavioral support needs, intellectual disabilities, or Autism.

Records reflected students with extensive need for language supports who did not receive intervention. Four of the five records provided for students at Hartford High Road Primary/Middle for example reference poor expressive and receptive language skills without evidence of a language evaluation except for indications. A language evaluation may have been completed for Student E but

was not included in the record. Given the high frequency of underlying language disorders among children identified as having behavior disorders (70%-90% across multiple research studies)[69] the lack of data and data-based interventions to consistently evaluate and address language disorders is a serious limitation in terms of the ability to plan appropriate instructional and social-behavioral interventions.

9. Site Visits Frequently Saw Unengaged Students, Limited Teacher Interaction, and Staffing Deficiencies

Review of attendance data for the PUR found that just under 40% of students across High Road locations had 18 or more absences from school. More than a quarter of all students missed 25 or more days of school for excused and unexcused reasons. Ten percent of all students missed 50 or more days of school.

OCA and DRCT conducted more than a dozen site visits to High Road school locations between February and November 2022. Some of these visits were conducted jointly and others independently.[70] Each visit ranged between two and three hours. At each of the visits investigators spoke with school level and/or state/regional High Road/SESI administrators, classroom teachers, teaching assistants, paraprofessionals, related services support staff, and/or students. Visits often included a brief meeting with school/state/regional administrators. Investigators visited classrooms and other locations in the buildings that students visit such as school stores, related service delivery rooms, "time-out rooms,"[71] "break rooms," and other areas of the schools.

While investigators' visits to High Road locations varied in terms of impressions, including strengths and challenges across sites, most site visits saw multiple students who were sleeping for prolonged periods during class and students who were completely disengaged from classroom activities. Investigators consistently saw students who were left entirely to themselves during a 30 minute or even 45-minute class period, alone in a cubicle or at a computer, without any or only the briefest of interactions with a teacher or an aide.

While a review of records of a sample of students who were chronically absent showed that High Road would call students' families to inquire after missing students, the records also consistently reflected a lack of individualized programming and interventions to students who have significant learning and support needs, often resulting in worsening student disengagement and withdrawal.

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[69] *A Closer Look at the Relationship between Language and Emotional and Behavioral Disorders,* Andrea M. Spencer, Associate Professor, The University of Saint Joseph (August 2021).

[70] OCA conducted site visits pursuant to its authority under state law to investigate and access information regarding publicly funded services for children. Conn. Gen. Stat. Sec. 46a-13l *et seq.* DRCT conducted site visits pursuant to its monitoring and investigative authority under the federal DD Act, 42 U.S.C. § 10541, *et seq*. and the Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act, 42 U.S.C. §10801 *et seq*., and their respective implementing regulations. The purpose of these monitoring visits and subsequent investigation was to respond to concerns about the administration, education programs, and behavioral supports and services at the schools.

[71] These time-out rooms were also referred to as "break rooms" "voluntary time-out rooms" and "de-escalation rooms." Exclusionary Time Out: A temporary, continuously monitored separation of a student from an ongoing activity in a non-locked setting for the purpose of calming such student or deescalating such student's behavior. CT Public Act 18-51.

As outlined above, multiple site visits as well as data reviewed by investigators revealed significant staffing concerns across locations. For example, an investigative visit to High Road Fairfield County revealed four (4) classrooms with a total of one (1) certified special education teacher, two long-term substitutes, and one short-term substitute. There were two (2) full time school workers and sixteen (16) "paraprofessionals." A regionally based instructional specialist reportedly supported program staff and psychological services were provided through helping families seek outside clinical resources and the program having occasional conversations with district psychologists. An early 2022 visit to Hartford High Road Primary School showed that at least three classrooms lacked a full-time certified special education teacher.

Multiple observations, though not all, by OCA/DRCT saw limited interaction between students and staff, including teachers. Although classroom numbers were small, it was common for investigators to see students sleeping, and students spending a prolonged period unattended, with their heads down. During one observation, investigators observed a student sitting in a cubicle starting at the wall. The teacher approached him and spoke to him once during a 45-minute observation. He did not respond and no one else attempted to engage him during class. During an observation at the Fairfield High Road School, several students were observed sleeping, with investigators told that one of the students sleeps all the way up until the last period of the day to participate in Science class.

Staff at some of the programs (Hartford) seemed to be knowledgeable only about the framework of behavioral reinforcements, with questionable background, experience or knowledge about the learning and social challenges characteristic of the student population. There was virtually no effort to engage students in conversation, in verbal problem-solving, self-regulation or other critical abilities required for success in less restrictive settings. For students who characteristically have underlying language disorders, regular verbal engagement and encouragement of students to communicate their thoughts and feelings verbally (or through any other medium) is very important.

Observations at some of the elementary school classrooms at the Wallingford location were more favorable, though still with significant concerns. Credentialed staffing appeared more robust at the Wallingford site, and there were no staff teaching under a durational permit. There was reportedly a full-time School Nurse and Speech-Language Pathologist and Occupational Therapist on site during the week. There was no BCBA on staff during site observations. The Wallingford high school had two assigned social workers and the primary-middle school had one. While some student disengagement was observed in the younger classrooms, investigators noted teachers giving frequent, informal positive feedback to children—a high five, or "I love it! Good job honey!" when a student completed work. Unlike other High Road site observations, there were no obvious references to earning tokens; rather, reinforcement during this period was focused on personal recognition of student work.

The Wallingford middle school observations, however, revealed a number of disengaged students. During an entire observation, one child remained asleep at one of the cubicles and no staff approached or attempted to engage the student. Another child remained at a cubicle throughout the observation, apparently doing nothing, with her head on her arms. No one attempted to redirect or engage her. A student at a laptop attended only sporadically to the computer.

Overall, the Wallingford school observations showed evidence of age-appropriate instructional material and positive interactions, where they occurred, between and among students and staff. Feedback to students was done in a natural way that served to emphasize the importance of learning

as opposed to simply completing a task in order to earn a reward. Based on these observations, aspects of a research-based curriculum (presenting material in small steps with practice opportunities and scaffolded tasks) appear to be incorporated into the reading and math curriculum. However, the observations did not provide evidence that materials or methods were individualized to meet student needs other than in terms of the rate at which students progressed from one task to another. All learning experiences, with two exceptions, were in workbook format, providing only a text-based, pencil-paper option for taking in or responding to information.

An observation in Windham County showed that the site lacked a full-time administrator and that various individuals, including one who was not certified as a principal, covered "leadership" of the school for a period of many months. There was no nurse on site and no BCBA on staff. There were two certified teachers and a licensed clinical social worker on staff. There were no on-site psychological services, and no consistent psychologist consultant. Investigators were told that students' progress is monitored daily, but the covering administrator (who was not certified as an administrator) told OCA that "**students don't have academic goals; they are here because of behavior**." This was the underlying theme throughout observations at multiple High Road sites. The emphasis is entirely on compliance. Individualized academic, social-emotional, or behavioral support strategies are limited or non-existent. Many of the environmental cues are focused not on growth or development but rather on "how much are you going to earn today." During a Hartford High Road observation, the teacher prompted the students "if we have no behaviors, what do we get?" Students did not respond, and she described earning a "C-note" that would lead to access to the CAVE, or reinforcement store. "Who is going to get a C-note for doing morning work."

The curriculum in Windham County was unclear in both classrooms. There were references to a change of rotation, but students came and went without any apparent schedule. Both classes were disrupted by the covering administrator, who arrived to take lunch orders for adolescents and entered the primary classroom to engage with the youngest student, leave the classroom with him, and return with him at a later point. There was no clear purpose for this interruption, and it did not appear to be planned.

Primary students at Windham appeared to represent a broad age and developmental span and worked individually on workbook pages or other paper and pencil tasks with a teacher, aide or social worker. There was no indication of physical education, recess, active indoor or outdoor activities except "break rooms" equipped with shag carpet pieces, a beanbag chair or two, an indoor trampoline. While these rooms did not have doors, there was a timeout room in use with one of the primary students, which did have a door. The door was being held shut by a teaching assistant when observed. There was little evidence of student work, no books, no library, and no observable art materials. Investigators observed packaged curriculum with no evidence of project-based or interactive opportunities for learning. There was no evidence of individualized instruction other than different children on different pages in the workbooks. The kitchen appeared to be poorly equipped and there appeared no system for planned nutrition--the director ordered take-out of pizza and/or wings for the children.

10. Lack of Individualized Behavioral Strategies and Multidisciplinary Supports to Support Students

High Road relies on a universal behavior support framework, utilizing a contingency management system. However, implementation of the Positive Behavioral Interventions and Support (PBIS) approach requires significantly more than a contingency reward system particularly at Tier 3. The PBIS

organization notes essential components of its Tier 3 level supports. These include a multidisciplinary team, behavior support expertise, formal fidelity and outcome data collection to support data-based decision making and identification of needed adjustments to individual behavior plans or interventions.

An essential component of Tier 3 support lies in multidisciplinary teams. designed to include members with different types of expertise who can focus on more intense, complex, and individual-specific needs, and include administrators, teachers, social workers, psychologists, behavior analysts, etc., as well as the student and family members. In particular, there is a need for individuals who have applied behavioral expertise and can carry out FBAs and BIPs (e.g. Board Certified Behavior Analyst (BCBA's). Representative activities of multidisciplinary teams include identifying strengths as well as needs through person-centered planning, monitoring design, implementation and management of behavior support plans, and assisting with transition to less intensive interventions.

The PBIS organization also specifies three key practices as part of the PBIS approach. These include FBAs to focus on and address the underlying reasons for problem behavior. *Wraparound* is a second key practice - a comprehensive, holistic youth and family-driven way of understanding, and responding to children or youth with serious mental health or behavioral challenges like those exhibited by most students at High Road schools. The third key practice at Tier 3 is *Person-centered Planning* which advocates for and implements a circle of support and a long-range plan that will help the individual to envision and fulfill a vision of a positive future. All three practices are to be implemented in the context of the individual's culture, language and community context. Family members should be engaged with schools in meaningful ways beyond receiving calls about student absences, injuries or incidents.

The October 2, 2022 SESI letter to OCA/DRCT includes an attachment (Attachment D) from Brandi Simonsen, Ph.D. of the Department of Educational Psychology of the University of Connecticut in support of the PBIS approach to supporting students with disabilities. Unfortunately, as Dr. Simonsen states in the first paragraph, Dr. Simonsen has not worked with or visited any of the SESI sites. She quotes Diane Myers (a SESI employee) as sharing that "SESI staff explicitly teach, prompt, and acknowledge CASE expectations as part of their CASE approach." That statement, if accurately conveyed, is inconsistent with multiple observations in High Road schools. While CASE is referenced frequently during on-site observations, it is frequently in the context of a prompt to "earn cash", or "remember 'consideration'" without attempts by staff to model or explain the concept, relate it to a particular situation, or otherwise to teach the meaning and application of each component.

Dr. Simonsen emphasizes the need to *teach* specific behavioral expectations and lists other important skills to be developed, noting specifically the need that skills are taught in a contextually and culturally relevant manner using instructional, restorative and consistent response to help a student be more successful in the future. Data collection and analysis to make decisions about student support as well as training, coaching and teaming are all important elements of an approach to supporting students with disabilities through PBIS as an appropriate and evidence-based framework for students in educational setting like SESI, as Dr. Simonsen appropriately notes. In summary, Dr. Simonsen's description of PBIS would be appropriate for students in High Road Schools, but does not describe the reality of the limited supports and services currently available to the children and youth with severe emotional, behavioral, mental health, and learning disabilities who currently make up the student population at these SESI schools.

Furthermore, classic PBIS is not always the optimal for each student. As the name suggests, PBIS is focused on student *behavior* – the idea being that you can replace concerning behavior with positive behavior through use of PBIS, a multi-tiered approach. In focusing primarily on student behavior, these approaches may not always lend themselves to intervention that is truly proactive. A student's concerning behavior is best understood as a frustration response that occurs after a student is already having difficulty meeting a particular expectation. As such, the concerning behavior is *late*; the unmet expectation or problem causing the behavior is *early*. For intervention to be truly proactive – true crisis prevention - then we must focus primarily on identifying the expectations that a student is having difficulty meeting.

For schools working with children who have more complex learning needs, including behavioral/emotional disabilities or neurodevelopmental disabilities, solutions to problem behavior will require examination of underlying programmatic expectations. Programmatic improvements, including skill building in the child, will often be successful at reducing challenging student behavior. For example, ample research shows a strong link between unidentified or unaddressed expressive language disorders in younger children, often boys, and explosive behavior. Managing the behavior through a contingency management approach, without attention to evaluating and addressing the underlying language disorder, will not ultimately improve the student's academic or behavioral trajectory.

PART III
INVESTIGATIVE FINDINGS – LEA MONITORING

1. LEA Monitoring Inadequate to Protect and Ensure Children's Right to Special Education and to be Free From Discrimination

The approval, endorsement and monitoring of programs like High Road rests with the State Department of Education (CSDE), as does the responsibility to continuously monitor and enforce the provisions of federal special education law.

As outlined above, responsibility for developing a child's Individual Education Program (IEP) lies with the LEA. Responsibility for ensuring a child's IEP is implemented lies with both High Road and the LEA. Ensuring compliance with the student-specific education contracts rests with both entities as well.

As this report outlines below, OCA/DRCT found inadequate oversight by both CSDE and the LEAs, and neither school districts nor the state were aware of or responsive to the grave and widespread regulatory noncompliance by High Road Schools.

Many Connecticut LEAs contracted with High Road Schools to provide out-of-district services students to students whom the LEAs feel they cannot serve. In July 2022, DRCT and OCA wrote letters to eighteen (18) sending LEAs to make them aware of the pending investigation and monitoring of the High Road Schools, raise preliminary issues identified by investigators, and request that the LEAs take immediate remedial action.[72] Specifically, the letters outlined OCA/DRCT observations

[72] *Excerpt from the letters sent to LEAs:*

regarding the dearth of certified special education teachers and assigned school-based administrators, as well as a lack of on-site clinical staff or BCBAs to support students with complex multidisciplinary needs. The letter requested that LEAs conduct a program review/site visit/PPT to ensure adequate delivery of services to the student/s in the program; and determine whether compensatory education is owed to the student.[73]

The responses from the LEAs varied widely ranging from no response or a simple acknowledgement of receipt to a few LEAs that provided more detailed responses. Most LEAs sent an acknowledgment of the receipt of the letter and/or a simple email response indicating they had no concerns at this time with High Road Schools.[74] A few districts indicated they would follow up or "look into" the concerns, but no further follow up was received.

After sending the letters of concern to the LEAs, DRCT and/or OCA staff participated in phone calls with a sample of LEA administrators. These conversations are summarized immediately below:

- **District A:** The Director of Pupil Services had positive things to say about High Road Schools and expressed no concerns. He shared that he trusts the schools to provide the appropriate services to students. He stated that other programs are worse. In written correspondence, the Director stated that the District was "pleased" with High Road, and "to date, [the District has] not experienced any red flags around service hours not being met by appropriate staff. Investigators note that this District had thirteen students at the High Road programs during the PUR, and that five of the students were significantly chronically absent with a combined number of absences of 306 days, and none of these students had a behavior intervention plan in place.

DRCT and OCA began monitoring High Road School locations. That monitoring and investigation is in process and will result in publicly issued findings and recommendations. While our offices continue their respective work, we write to make the LEA aware of observed issues across multiple High Road School locations and request the LEA take immediate action.

- *A lack of certified special education teachers and an attendant reliance on substitute teachers to provide specialized instruction to students with disabilities.*
- *A lack of clinical staff and dedicated Board-Certified Behavioral Analyst ("BCBA") staff on site.*
- *A lack of dedicated, certified administrators at every High Road location.*

Given the complex learning needs of students at High Road School and the issues observed, DRCT and OCA request the LEA do the following:

1. *Confirm receipt of this correspondence.*
2. *Conduct a program review of the High Road School, which may include a site visit, and monitor the delivery of programs and services to the LEA's students.*
3. *Hold a Planning and Placement Team ("PPT") meeting to review whether each student is receiving an appropriate education in accordance with their IEP in the least restrictive setting (LRE).*
4. *If, after the PPT meeting described above, the team determines any LEA student has not been receiving the special education, related services, and interventions in their IEP and/or BIP or has otherwise not been receiving a FAPE, determine whether compensatory education is owed to the student and if so, how much.*
5. *Confirm to DRCT and OCA the results of your student specific and programmatic review by August 15.*

[73] The letters were sent *via* email to 18 LEAs that had students at the following High Road schools as of the winter of 2022: High Road School of Hartford: Primary & Middle School and High Road School of Hartford: High School; High Road School of Windham County; and High Road School of Fairfield County.

[74] Other than Hartford Public Schools, all other public-school districts will be de-identified in published Report.

- **District B:** Director of Student Services for District B expressed concern about the issues raised in the OCA/DRCT letter and stated the District would follow up. The Director did state that they rely on High Road as "no one will take these students," but indicated that school administrators would follow up with parents and a program review for each student.
  This District had 9 students enrolled at its local High Road program in the 21-22 school year. Six (6) of these students were chronically absent, with a combined 333 absences. None of the students were identified as receiving related services or having a behavior intervention plan.

- **District C:** Superintendent of Schools for District C, in a phone call with DRCT, expressed concern about the issues raised. She stated the District would check into the concerns raised by DRCT and OCA. OCA/DRCT received no further follow-up. District C had 4 students enrolled at the local High Road program in the 21-22 school year. One of the students was chronically absent. All the students received related services (OT/PT and/or SLP). Notably two of the students are classified as having Autism, though the High Road site does not employe a BCBA.

Other LEAs sent written responses to DRCT's and OCA's letters. District D responded that they had two students attending High Road. After receiving the OCA/DRCT letters the District immediately conducted an observation and held PPTs, during which it was determined that both students could return to the public school. District E also committed to conducting PPTs for the nine students it had enrolled in the local High Road program, and indicated they were assessing the location's staffing levels. The District did not provide the results of its review or indicate what concerns, if any, it found. District F indicated that it conducted site visits to the Hartford High Road schools following receipt of OCA/DRCT's letter, communicated with families, and completed PPTs for students in July 2022. The District inquired about staffing shortages but was satisfied with High Road's responses in that classes were led by a "certified teacher pursuing a special education certificate or a teacher working under a DSAP and supported by a certified teacher." Likewise, District G sent a written response indicating it conducted a site visit to the Windham County High Road site after receiving the OCA/DRCT letter, reviewed IEPs and "supporting data." The District expressed no specific concerns in the letter and indicated that compensatory services were not required.

In sum, most LEAs expressed no concerns in response to the issues raised by DRCT and OCA in the July 2022 letters, and several districts did not provide any substantive response at all. Although certain districts indicated they conducted site visits and records review following the letter, the incongruity between the districts' stated satisfaction with the provision of services and OCA/DRCT investigative findings regarding staffing irregularities, lack of background checking, inadequate records, lack of related service delivery and individualized behavioral intervention plans, and chronic absenteeism is difficult to reconcile. OCA/DRCT conducted additional follow up to further examine the LEAs' oversight and monitoring of student service delivery and district contracts.

Most districts conduct no ongoing site visits/program reviews and do not inquire about staffing.

On September 19, 2022, the OCA issued subpoenas to eighteen (18) Districts to gather more information about how the Districts, each of which has individual student-specific contracts with High

Road, conducted monitoring activities specific to the student's IEP and student-contract.[75] Multiple districts also participated in interviews to discuss oversight and monitoring activities more specifically, including Hartford Public Schools.

In response to questions about whether the districts conducted any observations of its students enrolled at the Schools, only 3/18 Districts responded affirmatively. Most districts were unable to provide the "names, positions, qualifications and/or any certification of all personnel providing instruction, including special education and related services, to the Students while attending High Road." One district maintained that CSDE is responsible for ensuring that High Road schools have qualified staff employed.

OCA/DRCT conducted joint interviews of several LEAs who outplaced students to High Road during the PUR. In general, districts reported that they typically exhaust all programming in district before recommending outplacement for a particular student with a disability. This includes mainstream classrooms, self-contained special education classrooms and a variety of related services offered to provide support to the student. Reasons expressed by the districts for the outplacement (and differences noted between the in-district program verses the outplacement) included:

- Smaller classrooms and staff to student ratio.
- More disciplinary measures, including time-out rooms.
- Therapeutic approaches, including full-time social workers on staff and BCBAs involved in programming.
- Lack of capacity and/or staff for in-district special education programs.

This investigation showed that when questioned, it appeared that districts often could offer more related services than what is generally offered to students during an outplacement at certain High Road locations. One district described its special education program as rivaling that of any outplacement. Districts interviewed were not proactive about returning students to in-district programs from outplacements. Rather, they relied on requests from parents/guardians and then applied strict standards to determine whether the student could meet the expectations of the in-district program based on attendance, completing tasks and no behavioral issues. One District stated that some students will "never be brought back" because their needs are so great.

Districts interviewed varied on observations and monitoring of its students that were outplaced. Observations were not typically conducted as part of program monitoring. Despite some districts assigning caseworkers to the students, all relied almost exclusively on information, including written progress reports, provided by High Road personnel at PPTs as the only monitoring mechanism. One district stated that it "trusted" High Road to implement the IEP of the student attending the School. However, after the student's guardian requested that the student be returned to the district, the district conducted an observation that identified several classroom-based concerns, including a chaotic environment, unqualified staff, and minimal academic instruction. The district took immediately steps to remove the student from the School – stating that it no longer "trusted" the program. In contrast, another district stated that it conducted observations of the School in July of 2021 during Extended School Year (ESY) and noted no concerns and that students were quietly working on various tasks.

[75] OCA/DRCT sought information from eighteen additional districts.

Overall, the districts surveyed seemed unaware of the concerns identified in this investigation. Monitoring of students' IEPs consisted of receipt of progress reports, updates provided at PPTs and sometimes photos provided by the School. There were few opportunities for direct observation of students in his/her program, no critical review of the actual programming itself, and inadequate quality assurance measures to ensure that High Road was providing the appropriate educational programming, along with related services, that the student needed to make progress toward a return to an in-district program.

2. LEAs' Practices Raise Concerns of Systemic Violations of Title II of the ADA, Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act and Connecticut Special Education Law

OCA and DRCT's investigation found extensive problems with respect to the LEAs' administration of their special education programs that raise concerns of systemic violations of Title II of the ADA (Title II) and Section 504 of the Rehabilitation Act of 1973 (Section 504), the IDEA and corresponding Connecticut special education law. These violations are discussed below.

A. Systemic Violations of Title II and Section 504

Many of the LEAs, by placing and maintaining students with behavioral health and other disabilities at High Road rather than serving them in-district in the most integrated setting to meet their needs have, and continue to violate Title II and Section 504. Specifically, these violations, as discussed more below, include: 1) failure of LEAs to provide students with behavioral health needs with services in the most integrated setting to meet their needs as required by Title II's integration mandate; 2) failure of LEAs to ensure that students with behavioral health and/or developmental disabilities have an equal educational opportunity to students without disabilities, and 3) the LEAs use of discriminatory methods of administration.

1. Failure to Provide Services in the Most Integrated Setting-*Olmstead* Violations

Many of the LEAs sending students to High Road violate Title II and Section 504 by routinely unnecessarily segregating students with behavioral health disabilities by failing to provide them with their educational services in the most integrated settings to meet their needs as required by Title II's integration mandate. The integration mandate is core to the ADA:

> In an attempt to remedy society's history of discriminating against the disabled—discrimination that included isolating, institutionalizing, and segregating them—the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." [42 U.S.C.] § 12132; *accord* 29 U.S.C. § 794(a). The Department of Justice has promulgated regulations implementing the ADA. *See* 42 U.S.C. § 12134(a). One of the regulations is the so-called "integration mandate," providing that "[a] public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). The "most

integrated setting" is the one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible."[76]

The Supreme Court applied the integration mandate in *Olmstead v. L.C. ex rel. Zimring*,[77] holding that "unjustified institutional isolation of persons with disabilities is a form of discrimination."

OCA's and DRCT's investigation found that although most of the LEAs sending students to High Road provide services to students with behavioral health disabilities within the district, they reported routinely sending the students with behavioral health and intellectual disabilities to segregated out-of-district private programs such as High Road due to lack of capacity within the district. Once placed at schools such as High Road, students may be left by their LEAs in these segregated placements indefinitely. At least one district admitted that it predetermined that some of the students will "never be brought back" because their needs are so great." These acts and omissions violate the integration mandate of Title II of the ADA.[78]

2. Failure to Provide Equal Educational Opportunity

Numerous LEAs sending students to High Road also violate Title II's requirements that students with disabilities be provided with equal educational opportunity as required by the equality guarantee of the ADA.[79] Unlawful discrimination under the ADA includes "[a]fford[ing] a qualified individual with a disability an opportunity . . . that is not equal to that afforded others" or "[p]roviding a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others."[80]

The results of OCA's and DRCT's investigation also show that many LEAs who send their students to High Road violate the equality guarantee of Title II by failing to provide, and failing to ensure that their contractor, High Road, provide students with behavioral health disabilities with the same educational opportunities provided to students receiving their educational services at their neighborhood schools within their respective LEAs. These services include, but are not limited to, necessary and adequate evaluations and assessments, individualized service delivery, and services to ensure student engagement. Many of the LEAs sending students to High Road even admitted that the services that they provide more related services within their districts than what is generally offered to students during an outplacement at certain High Road locations.

3. Discriminatory Methods of Administration

As discussed above, a public entity such as an LEA, violates Title II of the ADA when it unnecessarily segregates people with disabilities, including students, in public or private programs or promotes the segregation of people with disabilities in such programs through its planning, system design, funding choices, or service implementation.[81] In addition, "[a] public entity may not, directly or through

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[76] *M.R. v. Dreyfus*, 697 F.3d 706, 733 (9th Cir. 2012) quoting 28 C.F.R. Part 35, App. B pt. 35 (2011).
[77] 527 U.S. 581, 600–01 (1999).
[78] 42 U.S.C § 12132; 28 C.F.R. § 35.130(d).
[79] 42 U.S.C § 12132; 28 C.F.R. §§ 35.130(b)(1).
[80] 28 C.F.R. § 35.130(b)(1)(ii) - (iii).
[81] *See, e.g.*, 28 C.F.R. § 35.130(d); *Steimel v. Wernert*, 823 F.3d 902, 911 (7th Cir. 2016) (explaining that a state may "violate the integration mandate if it operates programs that segregate individuals with disabilities or through

contractual or other arrangements, utilize criteria or methods of administration: (i) have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability," including unnecessary institutionalization. [82]

The results of OCA's and DRCT's investigation show that certain LEAs engage in unlawful methods of administration in violation of Title II and Section 504 by failing to provide and plan for sufficient capacity to serve qualified students with disabilities in the most integrated settings within the district and at their neighborhood schools even though many of the LEAs have such programs. Further, many of the LEAs sending students to High Road employ discriminatory methods of administration in violation of Title II and Section 504 by systemically failing to plan for, and adopting and implementing policies and practices that limit the ability of, students with behavioral health support and treatment needs to transition from High Road to a more integrated setting in their neighborhood schools.[83]

B. Violations of the IDEA

The investigation also revealed that the LEAs are also systemically failing to ensure that students placed in High Road's programs are receiving a free appropriate public education (FAPE) in the least restrictive environment (LRE)[84] and that LEAs fail to adequately monitor the educational programs provided to the students whom they send out of district to High Road for their special education services as they are required to do.

1. Failure to Provide FAPE & FAPE in the LRE

Under federal special education law, school districts are legally obligated to provide students eligible for special education services with a free appropriate public education (FAPE).[85] This requires that the student's individualized education plan (IEP) to be "reasonably calculated to enable the child to make progress in light of the child's circumstances."[86] Although the "IEP need not bring the child to grade-level achievement" it "must aspire to provide more than *de minimus* educational progress.[87] In order to develop an IEP that is designed to provide FAPE, it must be developed based upon individualized adequate assessments of the student's needs. As the findings in this report illustrate,

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its planning, service system design, funding choices, or service implementation practices, promotes or relies upon the segregation of individuals with disabilities in private facilities or programs") (internal quotation marks and alterations omitted); *Disability Advocates, Inc. v. Paterson*, 598 F. Supp. 2d 289, 316-19(E.D.N.Y. 2009)(finding that defendants' planning, funding, and administration of a service system was sufficient to support an *Olmstead* claim and rejecting the argument that public entities could not be held liable when services were provided in privately-operated facilities).

[82] 28 C.F.R. § 35.130(b)(3), (d); 28 C.F.R. § 41.51(b)(3), (d); 45 C.F.R. § 84.4(b)(2), (4); *see also Conn. Office of Prot. & Advocacy for Persons with Disabilities v. Conn.*, 706 F. Supp. 2d 266, 277-78 (D. Conn. 2010) (plaintiffs stated a violation of the ADA where defendants' methods of administration failed to adequately assess and identify the long-term needs of people with disabilities in nursing facilities, in order to determine whether they could be served in the community, and to provide them with information regarding the availability of alternatives to nursing facility care, thereby denying them the right to choose to live in the community instead of an institution).

[83] 42 U.S.C. § 12132, 28 C.F.R. § 35.130(b)(3) and (d), and *Olmstead*, 527 U.S. at 607.

[84] 20 U.S.C. § 1412(5).

[85] 20 U.S.C. § 1414(d).

[86] *Endrew F ex rel. Joseph F. v. Douglas Co. School Dist. RE-1.,* 580 U.S. 386, 402; 137 S.Ct. 988, 1001; 197 L.Ed. 2d. 335 (2017).

[87] 137 S.Ct. at 1000-01.

many of the LEAs failed to ensure that the students placed at High Road Schools receive adequate assessments and education tailored to meet their individualized needs, in violation of the FAPE requirements of the IDEA and relevant state law.

The IDEA also requires that a student in special education receive their education and related services in the least restrictive environment ("LRE") to meet their needs.[88] Where an LEA fails to provide students with education in the LRE based upon the student's individual needs and instead provide such education in the setting that it chooses to provide violates the IDEA's LRE requirements.[89] Districts must offer a continuum of services to meet the needs of its students.[90] OCA and DRCT's investigation found that certain LEAs that place and maintain students at High Road do so because they lack the resources to serve students within their home districts either because they have not developed the capacity that they already have in place to provide such services or do not provide such services at all—in violation of the LRE provisions of IDEA.

2. Failure to Monitor and Ensure Compliance with the IDEA and Relevant State Special Education Law

As explained above, the IDEA and relevant Connecticut special education law, require LEAs to be responsible for the overall structure and provision of special education to the students for whom they are responsible for serving. As such, LEAs are responsible for providing and/or acquiring the actual special education services, the development of individualized education programs, planning and placements meetings and public agency placements.[91] By failing to regularly monitor and ensure the provision of adequate and appropriate services for the students whom they placed at High Road, and the sufficiency of the credentials of the teachers and paraprofessionals at High Road to provide the students with their education services, the LEAs violated the IDEA and Conn. Gen. Stat. § 10-76d. Additionally, CSDE and the LEAs did not meet their monitoring requirements by failing to monitor to ensure that High Road completed background checks on their employees as required by Connecticut state law.[92]

PART IV

CSDE REGULATORY OVERSIGHT & IDEA MONITORING AND ENFORCEMENT

1. OCA/DRCT Found CSDE Regulatory Oversight Inadequate to Ensure Appropriate Provision of Education by Qualified Staff

[88] 20 U.S.C. § 1412(a)(5)(A).
[89] T.*M. ex rel. A.M. v. Cromwell Centr. Sch. Dist.*, 752 F.3d 145, 165 (2d Cir. 2014)("A school district therefore cannot avoid the LRE requirement just by deciding not to operate certain types of educational environments; instead, it must provide a continuum of alternative placements that meet the needs of the disabled children that it serves.").
[90] 34 C.F.R. § 300.115(a).
[91] *See* Conn. Gen. Stat. § 10-76d.
[92] *See* Conn. Gen. Stat. § 10-222c.

As part of its investigation, the OCA requested specific information from CSDE concerning its **regulatory oversight and monitoring activities of ALL High Road schools operating in the state for the last five (5) years, including**, (1) all records related to approvals and/or re-certifications of all High Road schools; (2) all records of site visits to High Road schools conducted by CSDE; (3) all complaints of High Road schools received by CSDE; (4) steps taken to implement CSDE recommendations at High Road schools (SDE/Program/LEAs); and (5) any updated principles/procedures/standards for approval of APSEPS generally.

OCA and DRCT met with CSDE's Commissioner on December 19, of 2022 to discuss preliminary concerns identified with this investigation. At that meeting, the OCA and DRCT detailed its concerns with the inadequacy of the individualized programing being provided to students placed at High Road schools, including the following areas of deficiency: progress monitoring, behavior support planning, appropriateness of goals and objectives and criterion-based assessments. OCA and DRCT also expressed serious concerns with staffing credentials, inadequate related services, failure to conduct background checks on all employees, over-reliance on restrain and seclusion, unnecessary segregation of students with behavioral health needs, and lack of effective CSDE oversight and IDEA monitoring.

As with all approved private special education programs, CSDE takes certain steps upon initial approval, including, a two-day site visit, which includes a personnel and student document review (day 1) and classroom observations, teacher and related service providers interviews, education director interview and discussion of Standards (day 2). A preliminary report is sent to the APSEP which includes program commendations, standard deficiencies with corrective actions, and program recommendations. The program has fifteen (15) days to accept or reject the preliminary report in writing to CSDE. *If there are any corrective actions needed, the program is not approved until corrective actions are met by a specified date within the preliminary report.* Once approved, the Commissioner's approval letter is sent to the program.

In accordance with its Standards, once a facility meets all the requirements for approval by the CSDE, the State Board of Education is required to "review the approval status of the private special education facility to ensure the facility's continual compliance with the implementation of the Standards. Thereafter, a review shall take place as needed, *but no longer than once every three to five years.*"

In order to remain approved, a facility must submit an annual "signed statement of assurances" no later than October 15th to the State Board of Education, and "[f]ailure to do so may result in a conditional or approval withheld status."[93] The Statement of Assurance includes several important provisions, including that: "[t]his program employs or contracts with only administrators, instructional staff, and related services personnel who hold proper state certification or licensure for services performed on behalf of the program. The mix of certification endorsements for instructional staff remains the same as that most recently approved by CSDE."

With respect to future program re-approval(s) and steps taken to implement CSDE recommendations, CSDE reviews the preliminary evaluation report from previous approval, including CSDE recommendations to determine "steps taken to implement CSDE recommendations." Status of recommendation implementation is an informal process in which information is shared by the program through an interview and observation process (not a part of the formal approval process). If

[93] The State Department of Education supplies the appropriate form for the facility to make its statement of assurances.

the CSDE receives a complaint and/or concern regarding an APSEP, it may conduct an "off-cycle" review, which encompasses many of the steps taken during its regular cycle review.

CSDE provided information concerning the program approvals/re-approvals it conducted from 2019 – 2022:

June 8, 2020: B.E.S.T. Academy in Wallingford (RE-APPROVAL)
Standard Deficiencies ("SD") needing Corrective Action.
SD Admin: Missing State of Connecticut Educational Employee Verification Forms
SD: Program: Related services not broken down on IEP to show 1:1, small group or other means

May 31, 2019: High Road/Hartford High (RE-APPROVAL)
Commendations include average length of stay is 24 months; restorative practice; rotation model
SD Admin: Missing State of Connecticut Educational Employee Verification Forms
SD: Program: Related services not broken down on IEP to show 1:1, small group or other means
SD Health and Safety: emergency drills

May 23, 2019: High Road of Norwalk (RE-APPROVAL)
Commendations include trauma informed care.
SD Admin: Missing State of Connecticut Educational Employee Verification Forms
SD: Program: Related services not broken down on IEP to show 1;1, small group or other means
SD Program: Specialized instruction limited to special education instructor
SD Health & Safety: Drills

May 22, 2019: High Road of Wallingford (RE-APPROVAL)
Commendations include average length of stay is 24 months.
SD Admin: Missing State of Connecticut Educational Employee Verification Forms
SD: Program: Related services not broken down on IEP to show 1;1, small group or other means
SD Qualifications & Requirements for Staff: durational shortage area permit had expired for staff member.

March 15, 2019: High Road/Hartford Primary (CONTINUOUS APPROVAL)
SD Admin: Missing State of Connecticut Educational Employee Verification Forms
SD Program: Related services not broken down on IEP to show 1:1, small group or other means
SD Program: Missing language and communication plan on IEP of student who was hard of hearing

March 14, 2019: High Road/New London Middle/High (CONTINUOUS APPROVAL)
SD Admin: Missing State of Connecticut Educational Employee Verification Forms
SD Program: No agreement w/ LEA for provided related services
SD Program: Counseling services not clearly identified; group, individual, etc.
SD Program: IEPs not accurately reflecting service implementers
SD Program: Staff and his/her roles not properly identified in PPT
SD Program: Documentation of behavioral supports not complete or accurately identified

Documentation reviewed above raised several concerns:

- **Sites not visited frequently by the state—Lack of documentation of follow up to identified "standard deficiencies."**

State law only requires that the state approved private schools be visited every three to five years. As CSDE sits as the regulator for these programs, these infrequent visits, absent a complaint that may trigger an off-cycle review are concerning. Child-serving programs licensed by other state agencies are visited more frequently, such as child-care centers (OEC- yearly unannounced), and child treatment settings (DCF—at least yearly if not more often, typically announced). Given the vulnerability of the students attending High Road schools, and the nature of concerns OCA/DRCT identified, it is clear that the frequency of state review is not enough. While all site visit/approval records produced by CSDE indicated that multiple "standard deficiencies" were found, no record of follow up or correction was provided. CSDE stated however that "corrective actions were met—determination for final CSDE approval is contingent upon the programs' ability to do so."[94] However, the nature of the deficiencies identified by CSDE, including concerns about inadequate background checking, inadequate documentation in students' IEPs and educational records, and lack of specialized or credentialed instruction, were all found to be pervasive problems by OCA/DRCT investigators in the years following CSDE's initial findings, confirming that these issues were not sustainably resolved, if they were resolved at all, following approval/re-approval visits by the state.

- **High Road Windham County program.**

Perhaps the most concerning site visit that OCA/DRCT investigators conducted during the PUR was of the Windham County High Road site located in Danielson. Windham County High Road sits in an industrial park in Danielson and served 19 students as of March 2023. At the time of investigators' site visit in early 2023, the school had no on-site credentialed administrator, no onsite nursing, and investigators' observation of the school and classrooms raised serious concerns about the lack of adequate curriculum, individualized instruction, and deficient physical infrastructure of the school and lack of nutrition program for the children. High Road executives describe the Windham County site as a "satellite" of its Hartford program. Although CSDE did eventually produce records pertaining to this site, there was no documentation that CSDE visited or assessed this site.

- **Yearly assurances of compliance with APSEP requirements not provided to CSDE—lack of follow up.**

Programs are required to submit yearly assurances that they are compliant with state standards for utilization of credentialed staff. In December of 2021, CSDE was asked to provide "[a]ll records related to approvals and/or re-certifications of all High Road Schools" for the past five (5) years (2017, 2018, 2019, 2020, 2021), which would include an annual statement of assurance. While CSDE provided the assurances for 2017-2019, it did not produce requisite assurances for 2020 and 2021 for most of the schools.[95] Nor did CSDE produce any documentation that it had followed up with High Road programs regarding the missing assurances.

[94] Email from CSDE Legal Director to OCA, March 3, 2022.

[95] CSDE only provided one (1) statement of assurance for 2020 (Windham) and one (1) statement of assurance for 2021 (New London).

After reviewing a Draft of this Report, CSDE provided additional assurances for 2022, but was unable to provide any additional statements of assurance for 2020 and 2021 for the remaining schools requested.

Lack of monitoring to ensure implementation of corrective actions after complaints made.

Despite the numerous deficiencies noted in this investigation, CSDE stated that there have been no *complaints* made to CSDE about High Road Schools operating in Connecticut.[96] Notwithstanding that CSDE had not received any *complaints,* the agency conducted three (3) targeted off-cycle reviews of High Road schools within the last five (5) years; in two instances based on concerns brought forward by the OCA regarding the suspected use of unlicensed personnel to perform nursing duties (August 2017)[97] and the inconsistency in background checking (November 2019). There was also a concern brought to the attention of CSDE concerning the discharge of a student from High Road School of Fairfield with insufficient communication to a surrogate parent of a USDII student (November 2021).

Notably both issues outlined in previous concerns transmitted by OCA to CSDE required some corrective action. In November 2019, High Road agreed to conduct an internal audit of its background checking activities. The CSDE file requested by OCA, however, contained no such audit or any other follow up activities to ascertain whether the background checking deficiencies had been remedied. Further investigation by OCA/DRCT confirmed that such problems persisted and were widespread across High Road locations. Likewise, High Road was directed by CSDE in 2017 to providing assurance to CSDE that "skilled nursing functions are not being delegated to unlicensed personnel." However, no such written assurance was produced by CSDE.

2. CSDE Failed to Properly Monitor and Ensure Compliance with the IDEA and Relevant State Special Education Law

It is important to take note of the important role that CSDE has in the monitoring and enforcement of the IDEA and ensuring that all children with disabilities in the state (whether in-district or an approved private special education program) are receiving FAPE in the LRE. That critical role as detailed more fully earlier in this Report cannot be satisfied by relying solely on data reported in the annual SPP/APR submission.[98]

Specifically, as stated in the July 24, 2023 USDE Guidance:

> [A]n effective general supervision system should, at a minimum, include the eight components identified above, only one of which is the SPP/APR.[99] **Thus, solely**

[96]Despite the OCA meeting with CSDE and alerting them to some preliminary concerns with SESI, there has been no activity by CSDE to conduct an off-cycle review at any of the High Road schools included in this Report.

[97] This concern was brought to the attention of CSDE by the OCA.

[98] July 24, 2023 USDE Guidance.

[99] "The Individuals with Disabilities Education Act (IDEA) requires each state to develop a state performance plan/annual performance report (SPP/APR) that evaluates the state's efforts to implement the requirements and purposes of the IDEA and describes how the state will improve its implementation. The SPP/APRs include indicators that measure child and family outcomes and other indicators that measure compliance with the requirements of the IDEA. A state is required to submit a state performance plan (SPP) at least every six years.

> **relying on an LEA's or EIS program's performance on the SPP/APR indicators would not constitute a reasonably designed general supervision system.** While the SPP/APR indicators were designed to measure important aspects of State compliance with, and performance under, IDEA, some requirements related to the fundamental rights of children with disabilities and their families are not represented in the indicators. For example, the SPP/APR does not measure the extent to which children with disabilities are receiving the IDEA services as prescribed in their IEPs or IFSPs, or the provision of IDEA services for children with disabilities residing in nursing homes or correctional facilities. Additionally, under Part C, the State is responsible for monitoring all EIS providers as well as activities to implement Part C, and not just EIS programs. Thus, solely relying on an LEA's or EIS program's performance on SPP/APR indicators would not constitute a reasonably designed general supervision system.[100]

It does not appear that CSDE conducts reasonably designed supervision of education provided in APSEPs as contemplated by federal guidance. For example, although OCA/DRCT briefed CSDE in 2022 on preliminary findings of this investigation, there has not been any indication that this briefing led to a timely inquiry by the state into the High Road programs or the contracting districts" compliance with IDEA. CSDE did not adequately ensure that High Road utilized appropriately credentialed staff and completed background checks on their employees as required by Connecticut state law and state standards for operation of an APSEP.[101]

Given the vast sums of public money allocated to pay for highly specialized instruction to some of the state's most vulnerable students with disabilities, it is imperative that there be rigorous oversight by both LEAs and CSDE to ensure that state-approved private educational programs provide safe, high quality, and developmentally appropriate education to children. Conversations between investigators and state/local agencies often involve assignment of such responsibilities to the other entity, and indeed even the private programs themselves have stated that the LEA and the Planning and Placement Team are responsible for the IEP and what services the student needs. Yet OCA and DRCT's investigation reveals sweeping concerns about education provided to these students, predominantly low-income children of color with disabilities, who have a right to receive a free appropriate public education in the least restrictive environment in accordance with their individual needs by staff trained and credentialed to provide such services. As detailed in this Report, it is clear to investigators that state and local agencies provide remote and limited oversight of such service delivery, and the result is that too many children and families are poorly served. OCA/DRCT issue this Report as a call to action on behalf of these children and their families.

Each year, states must report against the targets in its SPP in an annual performance report (APR)." U.S. Department of Education, available at sites.ed.gov/idea/spp-apr.

[100] (Emphasis added). *Id.*

[101] Conn. Gen. Stat. § 10-222c.

RECOMMENDATIONS

Any recommendations that include proposed legislative changes are made solely on behalf of OCA. DRCT does not propose legislative changes. However, DRCT does believe that such legislative changes proposed by OCA in these recommendations would be beneficial to students with disabilities.

CSDE/SEA Oversight and Resources

1. Amend state law to require strengthened CSDE oversight of state-approved private special education programs including determinations by LEAs of an APSEP as the Least Restrictive Environment (LRE); annual inspections and site visits to ensure IDEA and regulatory compliance; mandatory follow up where corrective actions are mandated by CSDE; periodic audits of required statements of assurances regarding employee credentials and background checks; and parent questionnaires as contemplated by the September 29 2023 federal guidance for states.

2. Amend state law to mandate transparency for CSDE's federally required monitoring and enforcement with regard to placement of children with disabilities in "separate schools," including APSEPS, and the provision of FAPE to children in separate schools. While CSDE has created guidelines and/or standards for education of children in alternative education settings and APSEPS, a framework for enhanced monitoring and enforcement of programs' adherence to these standards is warranted.

3. CSDE should enhance monitoring and enforcement of restraint/seclusion laws pertaining to students with disabilities, inclusive of site visits to seclusion spaces used by "separate schools"/APSEPS, audits of restraint and seclusion and "time out" incident reports and parental notifications, and establish criteria for mandatory staff and administrator professional development to reduce reliance on isolation and restraint.

4. CSDE should ensure all monitoring and enforcement activities related to APSEPS and public "separate schools" are included on its website and that the CSDE website include a compliant form/link for members of the public to alert CSDE to concerns around such programs.

5. CSDE should house an "inclusion" page on their website with resources for schools and families. One such resource is *A Summary of Evidence on Inclusion Education* from August 2016 showing the benefits of inclusion to both students with disabilities and without.[102] The page should include technical assistance resources to assist school districts' in educating children in the least restrictive environment. CSDE should consider development of a statewide "support team" model (see Ohio State Support Team Model) to assist districts struggling to meet the needs of all their students.[103]

[102] Available at: https://alana.org.br/wp-content/uploads/2016/12/A_Summary_of_the_evidence_on_inclusive_education.pdf

[103] State of Ohio, Department of Education, available at: https://education.ohio.gov/Topics/School-and-District-Improvement/State-Support-Teams

6. CSDE should consider providing technical assistance to LEAs on the option of time-limited IEPs to 'separate schools', for a given amount of time with stay-put in the regular education setting to incentivize access to regular education, oversight, and treatment of separate schools as specialized, temporary placements. The IEP teams could always agree to shorter or longer placements, but with the legal presumption of stay-put in the regular education setting at the beginning of each semester, for example.

7. CSDE should consider rulemaking regarding the use of restraint and seclusion to protect students from these ineffective and dangerous practices, especially students segregated due to their disabilities. CSDE and state law should mandate professional development to reduce or eliminate restraint and seclusion. Programs around the country that have implemented school wide changes to how staff handle challenging behavior have seen marked reduction and in some cases, elimination of the use of restraint and seclusion.[104]

8. At least one state's Medicaid officials have clarified that there is no Medicaid reimbursement available for during the time that staff use restraint on a child in outpatient behavioral health settings, including school settings. CSDE should request the Connecticut Medicaid office clarify if their interpretation is the same.[105]

LEA Oversight

1. State law should require additional monitoring by LEAs of students placed in "separate schools," including APSEPs. Just as the state provided assistance with the Auditors of Public Accounts' recommendation for individual student contracts between LEAs and APSEPS (now required by state law) CSDE should work with LEAs to provide a template for monitoring the provision of special education and related services by credentialed staff in APSEPs. Such a template could require periodic site visits and observation of educational service delivery, review of onsite educational records, review of assigned staff's credentials, review of whether placement in such program remains the least restrictive and most appropriate environment for student, and maintenance of programs' annual statements of assurance to CSDE regarding the provision of education by credentialed and background checked staff.

2. Ensure resources for special education services are adequate to support LEAs' provision of services to students with disabilities in the least restrictive environment and the most integrated setting and to enable these students to have an equal educational opportunity to that of their nondisabled peers.

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[104] Craig, J., Sanders, K., Evaluation of a Program Model for Minimizing Restraint and Seclusion Advances in Neurodevelopmental Disorders (Aug. 2018) 2:344–352; see also Not all School Use Restraint and Seclusion on Students: Here is a Look at Some Alternatives, by Alex Putterman, CT Insider (Hearst Media), October 27, 2022, available at: https://www.ctinsider.com/news/article/school-restraint-seclusion-solutions-alternatives-17474960.php.

[105] State of Maine, *Notice to MaineCare Providers Regarding MaineCare Reimbursement when Restraint is Utilized in Outpatient Behavioral Health Settings, Including Schools*, March 6, 2023, available at: https://www.maine.gov/dhhs/oms/providers/provider-bulletins/notice-mainecare-providers-regarding-mainecare-reimbursement-when-restraint-utilized-0

3. Require LEAs to provide services to students with behavioral health and related disabilities so that they can remain and be served in both the LRE (as required by the IDEA) and in the most integrated setting and can avoid unnecessary segregation as required by Title II of the ADA and Olmstead.

4. It is unclear if the 38 LEAs that placed students at the High Road schools consider those students as part of their legal reporting requirements to state and federal government, including the reporting of the use of restraint and seclusion. Given that Connecticut schools reported 40,897 restraints and seclusions to the State for the 2017-2018 school year,[106] but just 18,235 to the federal government for the same year[107] – it is not possible that each LEA reported accurately. LEAs should review their data reporting for restraint and seclusion for the past 10 years to ensure accuracy – if there are any discrepancies, LEAs should update the State and U.S. DOE.

5. LEAs should ensure that they are contracting with High Road schools for services required for children attending public schools, including physical education, the arts, and health and safety. Connecticut law requires that public schools offer instruction in physical education, the arts, as well as "health and safety, including, but not limited to, human growth and development, [and] nutrition." While High Road is not a public school subject to those legal requirements, the LEAs should ensure that such services are being provided to its students who they outplace at High Road schools.

APSEPS – Student Supports

1. APSEPs should be required to utilize evidence based behavioral health strategies that are truly proactive interventions and highly individualized. A student's concerning behavior is best understood as a frustration response that occurs after a student is already having difficulty meeting a particular expectation. As such, the concerning behavior is late; the unmet expectation or problem causing the behavior is early. For intervention to be truly proactive – true crisis prevention - then assessment must focus primarily on identifying the expectations that a student is having difficulty meeting. We recommend an instrument such as the Assessment of Lagging Skills and Unsolved Problems (ALSUP) for this purpose.

2. We recommend training staff in evidence-based models that emphasize problem solving as the primary treatment component.[108]

3. Many staff have been trained to believe that crisis prevention begins once a student starts becoming escalated, which explains the popularity of de-escalation strategies. In fact, de-escalating is much better understood as a crisis management strategy, for it occurs very late in

[106] Connecticut State Department of Education, Annual Report on the Use of Physical Restraint and Seclusion in Connecticut, School Year 2017-18, available at: https://edsight.ct.gov/relatedreports/RS%20Report%20to%20Legislature%202017-18.pdf

[107] U.S. Dept. of Education Office for Civil Rights, Civil Rights Data Collection, 2017-2018 School Year, available at https://ocrdata.ed.gov/

[108] If BIPs are used, they should be written with an emphasis on problem-solving rather than behavior modification.

a sequence of events that begins with an expectation a student is having difficulty meeting. The emphasis on de-escalating has actually fueled the use of restraint and seclusion (which occur when attempts at de-escalating have failed). Staff will need to be re-trained to understand that true crisis prevention involves identifying and solving problems proactively, and will need to be trained in the methodologies that support their new understanding.

4. APSEP should ensure that each school building has a minimum of 1 full-time professional school nurse in every school building.

5. APSEPs should add cameras to the time out/seclusion rooms and include weekly viewing of those video recordings to ensure compliance with all state and federal laws and best practices with respect to time out/seclusion of students.

6. State law should require that APSEPs notify parents and school districts of changes in staffing or vacancies that impact the delivery of educational services to students.

7. State law should require that APSEPs routinely conduct audits to ensure that all staff are properly qualified, trained, and have gone through the proper background checking process.

EXHIBIT C

HARTFORD
PUBLIC SCHOOLS

Leslie Torres-Rodriguez, Ed.D.
Superintendent

Jennifer Hoffman
Asst. Superintendent for Special Education
and Pupil Services

February 27, 2024

Dear Attorneys Brown & Eagan,

Thank you for taking the time to meet with the Hartford Public Schools administration to review the OCA/DRCT Investigative Report. In an effort to work collaboratively with OCA, a brainstorming session was held on February 8th, 2024 to determine potential next steps to address concerns from OCA's investigative report, but to also determine ways for HPS to continue to grow in-district programming in order to ensure our most vulnerable students have access to LRE in their community, with providers who understand their unique learning needs. Below is a summary of the ongoing collaborative meetings held between HPS and OCA/DRCT, to not only discuss concerns but to brainstorm ideas to provide equitable access for all students.

- Beginning July 15, 2022, HPS has been responsive to the subpoena and subsequent conversations about students attending various High Roads programs.
- In December of 2022, OCA launched the investigation.
- In December 2022, HPS provided a response.
- On February 2, 2023, HPS district leaders met with you to discuss observations conducted at HR programs.
- Unrelated, but in May 2023, OCA asked HPS to share with parents the ability to request parent training under related services. HPS responded that this information is posted on the new website.
- On October 26, 2023, HPS received the Draft Investigative Report.
- On November 13, 2023, HPS provided a response to the Investigative Report.
- The District and OCA/DRCT met on January 10th, 2024 to review initial findings.
- On January 31, 2024, following receipt of information from OCA regarding the specific students referenced in the investigation report, the District provided additional clarification of the initial report and to provide records not initially captured in the November 2023 response.

- On February 8th, the Superintendent, Assistant Superintendent, and Attorney Eagan met to discuss big picture points the district could leverage in order to best meet the needs of all HPS students.

    1. Our continued efforts towards becoming a trauma-responsive system.
        - Continued focus and training with all schools in the areas of Restorative Practices and Trauma-informed Practices.
        - During and since the pandemic (2022-present), all paraeducators have engaged in professional learning designed to target Adult Social and Emotional Learning (SEL). This has been provided through a book study in the school year 2022-2023, *Permission to Feel*, by Dr. Marc Brackett as well as 2023-2024 with *Educator Wellness* by Kanold. This intense work, coupled with the Crisis Prevention Institute, has provided a framework for our paraeducators to use with students in their everyday work.
        - Paraeducators are trained in CPI, most importantly, which focuses on de-escalation strategies.

    2. The need for additional/external funding in order to pilot a strategic talent initiative to meet our Special Education staffing needs. This focused on paraeducators as part of the pipeline.
        - While the District and the Nation continue to face vacancies, HPS is committed to ensuring that in-person staff is available for every student.
        - Potential workforce development focused on identifying potential graduates to become paraeducators, and also identifying paraeducators to enter into the district's RELAY program.
        - In order to accomplish this, we look to build capacity and grow in-district programming
        - There has to be comparable salary and work conditions to open additional in-district programming in addition to teachers, paraeducators, administrators, BCBA and BT's.

    3. Collective acknowledgement that more work needs to be done, between external systems, to reduce the stressors for families that are sending students to school and need support regulating behavior responses.

- Next Steps:
    - Expanding capacity in district special education program offerings:
        - RISE: Potential for adding classrooms (elementary, middle and high school)
    - Equitable practices

- The District to work with the Mayor and his team on preventative measures for Tier 1 strategies.
    - Ensuring that students have access to activities everyday.
- The District has worked to ensure that in each zone, there are in-district programs for students to attend.
- New K-5 and 6-12 ELA curriculum, in line with the State's initiative, Right to Read. The special education team has been engaged in planning, learning and implementing the new curriculum.
- Continued focus on the districts MTSS process and providing strategic interventions for students at Tier 2 and 3
    - Grant funded work to support this initiative.
    - Potential work in-district to enhance de-escalation strategies to reduce the use of Restraint/Seclusion.

- Monitoring/oversight of outplaced students:
    - Observation of students
        - HPS will commit to quarterly Central Office observations of programming.
    - Qualifications of outplacement staff
        - HPS will continue to meet with APSEP Directors to ensure certified staff are providing services.
    - Progress monitoring/data review
        - HPS Special Education Director and team will request IEP progress monitoring data, in addition to FBA and BIP data.
    - Setting criteria for return to less restrictive programs
        - HPS Special Education team will begin discussion for setting criteria to be in place for 2024-2025.
    - Monitoring student engagement/attendance
        - HPS Special Education team has a process to monitor, however, it can be reviewed.
    - Requiring FBA/BIP development
        - HPS will work with APSEP Directors to ensure implementation as well as revisions occur.
    - Response to use of seclusion/restraint
        - HPS will work with APSEP Directors to discuss at quarterly meetings, as well ensuring constant communication with HPS.
    - Ensuring access to related services required in the IEP
    - Ensuring access to special areas such as art, music, PE, health

HPS is committed to ensuring our students receive the services they require as described in their respective IEPs and under FAPE.

Thank you,

Jennifer Hoffman
Assistant Superintendent for Special Education and Pupil Services
Hartford Public Schools
hoffj001@hartfordschools.org
860-695-8732

EXHIBIT D

Disability Rights Connecticut
"Connecticut's protection and advocacy system"
846 Wethersfield Avenue
Hartford, CT 06114

Sent via EMAIL

July 7, 2022

Michael Testani
Bridgeport Public Schools Superintendent
45 Lyon Terrace
Bridgeport, CT 06604
mtestani@bridgeportedu.net

Re: Monitoring at High Road School

Dear Mr. Testani:

I write to inform you of recent and ongoing monitoring of High Road School by Disability Rights Connecticut ("DRCT") and the Office of the Child Advocate ("OCA"). As you may already know, DRCT is the protection and advocacy system ("P&A") in Connecticut. Accordingly, DRCT's mission is to advocate, educate, investigate and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities in Connecticut. The Office of the Child Advocate ("OCA") monitors and evaluates public and private agencies that are charged with the protection of children, and reviews state agency policies and procedures to ensure they protect children's rights and promote their best interest. You are receiving this letter because the information provided to our offices indicates that your local education agency ("LEA") has one or more students attending High Road School.

DRCT and OCA began monitoring High Road School locations. **That monitoring and investigation is in process and will result in publicly issued findings and recommendations**. While our offices continue their respective work, we write to make the LEA aware of observed issues across multiple High Road School locations and request the LEA take immediate action.

- A lack of certified special education teachers and an attendant reliance on substitute teachers to provide specialized instruction to students with disabilities.
- A lack of clinical staff and dedicated Board-Certified Behavioral Analyst ("BCBA") staff on site.
- A lack of dedicated, certified administrators at every High Road location.

Given the complex learning needs of students at High Road School and the issues observed, DRCT and OCA request the LEA do the following:

1. Confirm receipt of this correspondence.
2. Conduct a program review of the High Road School, which may include a site visit, and monitor the delivery of programs and services to the LEA's students.
3. Hold a Planning and Placement Team ("PPT") meeting to review whether each student is receiving an appropriate education in accordance with their IEP in the least restrictive setting (LRE).
4. If, after the PPT meeting described above, the team determines any LEA student has not been receiving the special education, related services, and interventions in their IEP and/or BIP or has otherwise not been receiving a FAPE, determine whether compensatory education is owed to the student and if so, how much.
5. Confirm to DRCT and OCA the results of your student specific and programmatic review by August 15.

If you have any questions or would like to discuss the issues raised in this letter, please feel free to contact us at the phone numbers and email addresses below.

Sincerely,

/s/
Deborah A. Dorfman
Executive Director/Attorney
Disability Rights Connecticut
846 Wethersfield Avenue
Hartford, CT 06114
(860) 469-4463
Deborah.Dorfman@disrightsct.org

/s/
Sarah H. Eagan, J.D.
Child Advocate
The Office of the Child Advocate
999 Asylum Avenue, #1
Hartford, CT 06105
(860) 566-2106
Sarah.Eagan@ct.gov

Disability Rights Connecticut
"Connecticut's protection and advocacy system"
846 Wethersfield Avenue
Hartford, CT 06114

Sent via EMAIL

July 6, 2022

Dr. Leslie Torres-Rodriguez
Hartford Public Schools Superintendent
330 Wethersfield Avenue – 4th Floor
Hartford, CT 06114
Superintendent@hartfordschools.org

Re: Monitoring at High Road School

Dear Dr. Torres-Rodriguez:

I write to inform you of recent and ongoing monitoring of High Road School by Disability Rights Connecticut ("DRCT") and the Office of the Child Advocate ("OCA"). As you may already know, DRCT is the protection and advocacy system ("P&A") in Connecticut. Accordingly, DRCT's mission is to advocate, educate, investigate and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities in Connecticut. The Office of the Child Advocate ("OCA") monitors and evaluates public and private agencies that are charged with the protection of children, and reviews state agency policies and procedures to ensure they protect children's rights and promote their best interest. You are receiving this letter because the information provided to our offices indicates that your local education agency ("LEA") has one or more students attending High Road School.

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Deborah A. Dorfman
Executive Director/Attorney
Disability Rights Connecticut
846 Wethersfield Avenue
Hartford, CT 06114
(860) 469-4463
Deborah.Dorfman@disrightsct.org

/s/
Sarah H. Eagan, J.D.
Child Advocate
The Office of the Child Advocate
999 Asylum Avenue, #1
Hartford, CT 06105
(860) 566-2106
Sarah.Eagan@ct.gov

Disability Rights Connecticut
"Connecticut's protection and advocacy system"
846 Wethersfield Avenue
Hartford, CT 06114

Sent via EMAIL

July 7, 2022

Dr. Uyi E. Osunde
Stratford Public Schools Superintendent
1000 East Broadway
Stratford, CT 06615
osundeu@stratk12.org

Re: Monitoring at High Road School

Dear Dr. Uyi E. Osunde:

I write to inform you of recent and ongoing monitoring of High Road School by Disability Rights Connecticut ("DRCT") and the Office of the Child Advocate ("OCA"). As you may already know, DRCT is the protection and advocacy system ("P&A") in Connecticut. Accordingly, DRCT's mission is to advocate, educate, investigate and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities in Connecticut. The Office of the Child Advocate ("OCA") monitors and evaluates public and private agencies that are charged with the protection of children, and reviews state agency policies and procedures to ensure they protect children's rights and promote their best interest. You are receiving this letter because the information provided to our offices indicates that your local education agency ("LEA") has one or more students attending High Road School.

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If you have any questions or would like to discuss the issues raised in this letter, please feel free to contact us at the phone numbers and email addresses below.

Sincerely,

/s/
Deborah A. Dorfman
Executive Director/Attorney
Disability Rights Connecticut
846 Wethersfield Avenue
Hartford, CT 06114
(860) 469-4463
Deborah.Dorfman@disrightsct.org

/s/
Sarah H. Eagan, J.D.
Child Advocate
The Office of the Child Advocate
999 Asylum Avenue, #1
Hartford, CT 06105
(860) 566-2106
Sarah.Eagan@ct.gov

Disability Rights Connecticut
"Connecticut's protection and advocacy system"
846 Wethersfield Avenue
Hartford, CT 06114

Sent via EMAIL

July 7, 2022

Dr. Verna D. Ruffin
Waterbury Public Schools Superintendent
236 Grand Street
Waterbury, CT 06702
vruffin@waterbury.k12.ct.us

Re: Monitoring at High Road School

Dear Dr. Ruffin:

I write to inform you of recent and ongoing monitoring of High Road School by Disability Rights Connecticut ("DRCT") and the Office of the Child Advocate ("OCA"). As you may already know, DRCT is the protection and advocacy system ("P&A") in Connecticut. Accordingly, DRCT's mission is to advocate, educate, investigate and pursue legal, administrative, and other appropriate remedies to advance and protect the civil rights of individuals with disabilities in Connecticut. The Office of the Child Advocate ("OCA") monitors and evaluates public and private agencies that are charged with the protection of children, and reviews state agency policies and procedures to ensure they protect children's rights and promote their best interest. You are receiving this letter because the information provided to our offices indicates that your local education agency ("LEA") has one or more students attending High Road School.

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Sincerely,

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Deborah A. Dorfman
Executive Director/Attorney
Disability Rights Connecticut
846 Wethersfield Avenue
Hartford, CT 06114
(860) 469-4463
Deborah.Dorfman@disrightsct.org

/s/
Sarah H. Eagan, J.D.
Child Advocate
The Office of the Child Advocate
999 Asylum Avenue, #1
Hartford, CT 06105
(860) 566-2106
Sarah.Eagan@ct.gov

EXHIBIT E

STATE OF CONNECTICUT
OFFICE OF THE CHILD ADVOCATE

SUBPOENA DUCES TECUM

Upon receipt please call the Office of the Child Advocate at 860-500-4610.

TO: **Michael J. Testani, Superintendent**
Bridgeport Public Schools
45 Lyon Terrace 63
Bridgeport, CT 06604

GREETINGS:

County of: HARTFORD **State of Connecticut**

BY AUTHORITY OF THE STATE OF CONNECTICUT and pursuant to Connecticut General Statutes § 46a-13m (a) & (c), you are hereby commanded to produce the documents listed herein to the Child Advocate, or her designee to the **Office of the Child Advocate, 165 Capitol Avenue, Hartford, CT 06106** of **Hartford County**, on **Monday, October 3, 2022**, or on such other date and time as may be continued thereafter.

DEFINITIONS AND INSTRUCTIONS

A. Please pay careful attention to all of the definitions and instructions in the subpoena. All documents should be produced in un-redacted form, along with all notes, stamps or markings on the documents.

B. "And" or "or" shall be construed conjunctively or disjunctively as necessary to be inclusive rather than exclusive.

C. "Any" and "all" means each and every.

D. This subpoena requires that you submit and provide originals or legible, complete, true and accurate copies of the *original* and non-identical copy (which is different from the original because of notations on such copy or otherwise) of all documentary material by the document request number in response to which the material is submitted.

E. If any documentary material requested is no longer in existence, state whether it is missing or lost, has been destroyed, or has been otherwise disposed of, and, if destroyed or otherwise disposed of, explain the circumstances surrounding, the reason and authorization for, and the manner of such destruction or disposition. State also the date or approximate date thereof and identify the person authorizing the destruction or disposition and the person carrying out the destruction or disposition.

F. If, subsequent to compliance with this subpoena, you or anyone under your supervision discover additional or new information previously requested by this subpoena, or discover that prior compliance was partially or totally incorrect or, though correct when made, is no longer true you are promptly to deliver a supplemental or amended response to the subpoena to the Office of the Child Advocate at the address stated above.

G. Documents produced pursuant to this subpoena shall be produced as they are kept in the normal course of business, or in separately marked files or containers according to the specific paragraphs as listed in this subpoena to which they respond and according to the individual who was in possession of such documents and within such containers in the order in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that, if in their original condition, were stapled, clipped, or otherwise fastened together, shall be produced in such form.

The Office of the Child Advocate ("OCA") is conducting a systemic educational programming investigation of certain High Road schools located throughout the state of Connecticut, including schools in which students in your District are attending.

Such an investigation falls squarely within the jurisdiction of OCA 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-13*l*. To fulfill that mandate Connecticut law grants the Child Advocate unfettered "access to, including the right to inspect and copy, any records necessary to carry out the responsibilities of the Child Advocate." Conn. Gen. Stat. § 46a-13m(a). If denied access, the Child Advocate "may issue a subpoena for the production of such records." Id.

In conjunction with our investigation, the OCA is requesting the following records/ documents/information for each of the following students in your District attending a High Road school: (1) [redacted] and (2) [redacted]

1. **The contract between the District and High Road for the educational programming being provided to the Student.**
2. **All dates that representatives from the District observed the educational programming being provided to the Student during his enrollment at High Road. Provide the names of the observers, positions of the observers, and all notes from such observations.**
3. **The names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related services, to the Student while attending High Road.**
4. **All documents concerning behavioral health needs of the Student.**
5. **All documents concerning the return of the Student to District school.**
6. **All communications between the District and High Road concerning the educational programming being provided to the Student, including, but not limited to: (1) names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related**

services, to the Student while attending High Road; (2) behavioral health needs of the Student; and (3) the return of the Student to District school.

7. **All communications between the District and the Student's family concerning the Student's educational programming at High Road, including, but not limited to: (1) names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related service, to the Student while attending High Road; (2) behavioral health needs of the Student; and (3) the return of the Student to District school.**

HEREOF FAIL NOT, UNDER PENALTY OF THE LAW.

Dated at Hartford, Connecticut, this 19th day of September, 2022.

Virginia Brown

_____

Virginia Brown, Esq.
Staff Attorney
Office of the Child Advocate
165 Capitol Avenue
Hartford, CT 06106
Tel: (860) 500-4610

NOTICE TO THE PERSON SUMMONED:

If you do not produce the requested documents to the Office of the Child Advocate as directed on the date and the time stated, or on the day and the time to which production may have been postponed or continued by Order of the Office of the Child Advocate, or an officer thereof, the Child Advocate may seek an appropriate court order to compel your obedience hereto under penalty of law.

Include this subpoena when you produce the requested documents. If you have any questions and/or concerns regarding this subpoena, please contact Virginia Brown, Esq., at (860) 500-4610.

STATE OF CONNECTICUT
OFFICE OF THE CHILD ADVOCATE

SUBPOENA DUCES TECUM

Upon receipt please call the Office of the Child Advocate at 860-500-4610.

TO: **Dr. Leslie Torros-Rodriguez, Superintendent**
Hartford Public Schools
330 Wethersfield Avenue, 4th Floor
Hartford CT 06114

GREETINGS:

County of: HARTFORD **State of Connecticut**

BY AUTHORITY OF THE STATE OF CONNECTICUT and pursuant to Connecticut General Statutes § 46a-13m (a) & (c), you are hereby commanded to produce the documents listed herein to the Child Advocate, or her designee to the **Office of the Child Advocate, 165 Capitol Avenue, Hartford, CT 06106** of **Hartford County**, on **Monday, October 3, 2022**, or on such other date and time as may be continued thereafter.

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E. If any documentary material requested is no longer in existence, state whether it is missing or lost, has been destroyed, or has been otherwise disposed of, and, if destroyed or otherwise disposed of, explain the circumstances surrounding, the reason and authorization for, and the manner of such destruction or disposition. State also the date or approximate date thereof and identify the person authorizing the destruction or disposition and the person carrying out the destruction or disposition.

F. If, subsequent to compliance with this subpoena, you or anyone under your supervision discover additional or new information previously requested by this subpoena, or discover that prior compliance was partially or totally incorrect or, though correct when made, is no longer true you are promptly to deliver a supplemental or amended response to the subpoena to the Office of the Child Advocate at the address stated above.

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personnel providing instruction, including special education and related services, to the Student while attending High Road; (2) behavioral health needs of the Student; and (3) the return of the Student to District school.

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HEREOF FAIL NOT, UNDER PENALTY OF THE LAW.

Dated at Hartford, Connecticut, this 19th day of September, 2022.

Virginia Brown

_____

Virginia Brown, Esq.
Staff Attorney
Office of the Child Advocate
165 Capitol Avenue
Hartford, CT 06106
Tel: (860) 500-4610

NOTICE TO THE PERSON SUMMONED:

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Include this subpoena when you produce the requested documents. If you have any questions and/or concerns regarding this subpoena, please contact Virginia Brown, Esq., at (860) 500-4610.

STATE OF CONNECTICUT
OFFICE OF THE CHILD ADVOCATE

SUBPOENA DUCES TECUM

Upon receipt please call the Office of the Child Advocate at 860-500-4610.

TO: **Dr. Uyi E. Osunde, Superintendent**
Stratford Public Schools
1000 East Broadway
Stratford, CT 06615

GREETINGS:

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BY AUTHORITY OF THE STATE OF CONNECTICUT and pursuant to Connecticut General Statutes § 46a-13m (a) & (c), you are hereby commanded to produce the documents listed herein to the Child Advocate, or her designee to the **Office of the Child Advocate, 165 Capitol Avenue, Hartford, CT 06106** of **Hartford County**, on **Monday, October 3, 2022**, or on such other date and time as may be continued thereafter.

DEFINITIONS AND INSTRUCTIONS

A. Please pay careful attention to all of the definitions and instructions in the subpoena. All documents should be produced in un-redacted form, along with all notes, stamps or markings on the documents.

B. "And" or "or" shall be construed conjunctively or disjunctively as necessary to be inclusive rather than exclusive.

C. "Any" and "all" means each and every.

D. This subpoena requires that you submit and provide originals or legible, complete, true and accurate copies of the *original* and non-identical copy (which is different from the original because of notations on such copy or otherwise) of all documentary material by the document request number in response to which the material is submitted.

E. If any documentary material requested is no longer in existence, state whether it is missing or lost, has been destroyed, or has been otherwise disposed of, and, if destroyed or otherwise disposed of, explain the circumstances surrounding, the reason and authorization for, and the manner of such destruction or disposition. State also the date or approximate date thereof and identify the person authorizing the destruction or disposition and the person carrying out the destruction or disposition.

F. If, subsequent to compliance with this subpoena, you or anyone under your supervision discover additional or new information previously requested by this subpoena, or discover that prior compliance was partially or totally incorrect or, though correct when made, is no longer true you are promptly to deliver a supplemental or amended response to the subpoena to the Office of the Child Advocate at the address stated above.

G. Documents produced pursuant to this subpoena shall be produced as they are kept in the normal course of business, or in separately marked files or containers according to the specific paragraphs as listed in this subpoena to which they respond and according to the individual who was in possession of such documents and within such containers in the order in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that, if in their original condition, were stapled, clipped, or otherwise fastened together, shall be produced in such form.

The Office of the Child Advocate ("OCA") is conducting a systemic educational programming investigation of certain High Road schools located throughout the state of Connecticut, including schools in which students in your District are attending.

Such an investigation falls squarely within the jurisdiction of OCA 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-13*l*. To fulfill that mandate Connecticut law grants the Child Advocate unfettered "access to, including the right to inspect and copy, any records necessary to carry out the responsibilities of the Child Advocate." Conn. Gen. Stat. § 46a-13m(a). If denied access, the Child Advocate "may issue a subpoena for the production of such records." Id.

In conjunction with our investigation, the OCA is requesting the following records/ documents/information for [redacted] ([redacted] [redacted] (the "Student"), who is a student in your District attending a High Road school.

1. **The contract between the District and High Road for the educational programming being provided to the Student.**
2. **All dates that representatives from the District observed the educational programming being provided to the Student during his enrollment at High Road. Provide the names of the observers, positions of the observers, and all notes from such observations.**
3. **The names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related services, to the Student while attending High Road.**
4. **All documents concerning behavioral health needs of the Student.**
5. **All documents concerning the return of the Student to District school.**
6. **All communications between the District and High Road concerning the educational programming being provided to the Student, including, but not limited to: (1) names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related**

services, to the Student while attending High Road; (2) behavioral health needs of the Student; and (3) the return of the Student to District school.

7. **All communications between the District and the Student's family concerning the Student's educational programming at High Road, including, but not limited to: (1) names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related service, to the Student while attending High Road; (2) behavioral health needs of the Student; and (3) the return of the Student to District school.**

HEREOF FAIL NOT, UNDER PENALTY OF THE LAW.

Dated at Hartford, Connecticut, this 19th day of September, 2022.

Virginia Brown

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Virginia Brown, Esq.
Staff Attorney
Office of the Child Advocate
165 Capitol Avenue
Hartford, CT 06106
Tel: (860) 500-4610

NOTICE TO THE PERSON SUMMONED:

If you do not produce the requested documents to the Office of the Child Advocate as directed on the date and the time stated, or on the day and the time to which production may have been postponed or continued by Order of the Office of the Child Advocate, or an officer thereof, the Child Advocate may seek an appropriate court order to compel your obedience hereto under penalty of law.

Include this subpoena when you produce the requested documents. If you have any questions and/or concerns regarding this subpoena, please contact Virginia Brown, Esq., at (860) 500-4610.

STATE OF CONNECTICUT
OFFICE OF THE CHILD ADVOCATE

SUBPOENA DUCES TECUM

Upon receipt please call the Office of the Child Advocate at 860-500-4610.

TO: **Dr. Verna D. Ruffin, Superintendent**
Waterbury Public Schools
236 Grand Street
Waterbury, CT 06702

GREETINGS:

County of: HARTFORD **State of Connecticut**

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In conjunction with our investigation, the OCA is requesting the following records/ documents/information for each of the following students in your District attending a High Road school: (1) [redacted] and (2) [redacted]

1. **The contract between the District and High Road for the educational programming being provided to the Student.**
2. **All dates that representatives from the District observed the educational programming being provided to the Student during his enrollment at High Road. Provide the names of the observers, positions of the observers, and all notes from such observations.**
3. **The names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related services, to the Student while attending High Road.**
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5. **All documents concerning the return of the Student to District school.**
6. **All communications between the District and High Road concerning the educational programming being provided to the Student, including, but not limited to: (1) names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related**

services, to the Student while attending High Road; (2) behavioral health needs of the Student; and (3) the return of the Student to District school.

7. **All communications between the District and the Student's family concerning the Student's educational programming at High Road, including, but not limited to: (1) names, positions, qualifications, and/or any certification of all personnel providing instruction, including special education and related service, to the Student while attending High Road; (2) behavioral health needs of the Student; and (3) the return of the Student to District school.**

HEREOF FAIL NOT, UNDER PENALTY OF THE LAW.

Dated at Hartford, Connecticut, this 19th day of September, 2022.

Virginia Brown

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Virginia Brown, Esq.
Staff Attorney
Office of the Child Advocate
165 Capitol Avenue
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