

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

- COMPLAINT INVESTIGATION FINDINGS LETTER-



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Child Advocate

October 6, 2021

VIA E-MAIL DELIVERY

Charlene Russell-Tucker, Commissioner
CT State Department of Education
450 Columbus Boulevard
Hartford, CT 06103

Mark D. Benigni, Ed.D., Superintendent
Meriden Public Schools
22 Liberty Street
Meriden, CT 06450

RE: OCA Complaint Investigation Findings Letter: Systemic Educational Programming Review - Children with Disabilities Denied In-person Instruction Due to Inability to Tolerate Wearing a Mask

Dear Commissioner Russell-Tucker and Superintendent Benigni:

The Office of the Child Advocate (“OCA”) is an independent government agency that is statutorily required to “review 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, make appropriate referrals and 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.”¹ 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.”²

The OCA is issuing this Complaint Investigation Findings Letter (“Findings Letter”) to the State Department of Education (“SDE”) and Meriden Public Schools (the “District”) in response to complaints made to the OCA regarding the denial of in-person instruction for certain Meriden children with disabilities for the 2020-2021 academic year due to the child’s inability to tolerate wearing a mask and to formally request that the SDE take all necessary fact-finding and corrective actions, including, but not limited to, enhanced differential monitoring, to ensure that students with disabilities who were denied in-person instruction receive the appropriate compensatory education to make up for the lost educational opportunities and to work to ensure that Meriden (and other school districts)

¹ See Conn. Gen. Stat. § 46a-13/.

² Ibid.

is in compliance with all state and federal special education laws and that local policies and practices with regard to mask exemptions and access-to-education policies are consistent with state and federal anti-discrimination laws.

In October of 2020, the OCA received a series of complaints from families whose children attended Meriden Public Schools during the 2020-2021 academic year and who were not permitted to receive their educational programming in-person due to the inability of the children to tolerate continued mask-wearing in the classroom, and other reasons related to their disabilities. All of the impacted children were diagnosed with or otherwise identified as having a disability, and each received special education and related supports and services in accordance with an Individualized Education Program (“IEP”). In lieu of in-person instruction, the children, all of whom were developmentally disabled, were offered remote/distance learning options by the District, resulting in the parents/ guardians functioning as facilitators and educators.

In response to these individual complaints, and in accordance with statutory requirements outlined above, the OCA began a Child-Specific Educational Review (CEPR) on each reported case. CEPRs may include reviewing the educational files for each student; engaging in discussions with the District and the families, participating in Planning and Placement Team (“PPT”) meetings in support of the families and making recommendations to ensure compliance with state and federal law and best practices. While conducting its CEPRs, the OCA became concerned about possible policy and practice issues in the Meriden Public School District. Specifically, the OCA learned that some children under review were being denied in-person learning despite their parent having requested a mask exemption or accommodation based on the child’s disability and despite the parent having provided information or requests for accommodation from a clinical provider. OCA also learned that there were other students with disabilities in the District who were involuntarily placed out of school on remote status due to the child’s inability to tolerate wearing a mask.³ Finally, OCA learned that in November 2020, the District sent out a letter notifying all families that due to a rise in local COVID-19 cases, students who were unable to wear a mask while inside school buildings could not come to school, regardless of requests for medical or disability-related mask exemptions.

OCA notes at the outset of this Findings Letter that mask-wearing is an accepted and recommended public health prevention strategy for the spread of COVID-19, and OCA supports Connecticut’s public health guidelines and requirements. As aptly summarized by one state’s Disability Rights organization:

The use of face coverings is an important health and safety measure. Each and every individual who can wear a face covering should do so ... The vast majority of students in school will be able to comply with general requirements to wear a face mask. This

³ In response to a draft copy of this Findings Letter, the District stated that “limitations on the ability to provide in-person learning opportunities were a product of multiple factors related to the health and safety of students given the COVID-19 pandemic, not just an inability to tolerate mask-wearing. For example, in some cases student behaviors, such as spitting, were particularly dangerous given that transmission of the virus occurs through droplets in the air.” The OCA notes that of the group of children that were involuntarily removed from in-person school in the 2020-2021 school year, five (5) students, age five to twelve, were put on remote in part due to “dangerous behavior,” which included the child’s refusal to wear a mask, spitting, biting, and drooling behaviors. OCA has documentation for 4 out of the 5 children indicating that only one of those children had an IEP with a Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) prior to being placed out of school.

includes some students whose families may initially believe they cannot or will not wear a mask...But for the relatively few students who will be unable to wear a face covering of any kind or will be unable to do so consistently for reasons related to their disabilities, this must not be a reason to deny them access to a free and appropriate public education in the least restrictive environment.⁴

Per the report of educators and parents that OCA has spoken with throughout the pandemic, many children in schools and other settings have adapted or learned to wear masks and to participate in other disease mitigation strategies. Concurrently, State and federal law require individual determinations of needed accommodations and exemptions for persons whose disability requires additional supports or prevents the person from maintaining consistent mask wearing. Such individual determinations and accommodations are particularly important to facilitate a person's access to an essential service such as school. National and international bodies, including the U.S. Centers for Disease Control and the World Health Organization, acknowledge the difficulties that people with certain disabilities may have with mask-wearing.

OCA alerted the SDE, beginning in September 2020, to its concern that certain children with significant disabilities and support needs in the Meriden Public Schools were being denied access to in-person learning without timely or appropriate accommodation. Consistent with statutory requirements that the OCA conduct investigations where a complaint gives rise to a pattern or practice concern regarding a publicly funded program for children, the OCA began a more extensive Educational Programming Investigation to determine whether the District's policies and practices ran afoul of state and federal laws and/or best practices regarding the provision of educational services to children with disabilities. As part of OCA's Investigation, Meriden Public Schools was asked to produce the following information through the issuance of a subpoena:

1. Information for each student in your district with a disability who was eligible to receive special education and related services and who was/is receiving instruction remotely during the 2020-2021 school year for reasons other than parent/guardian request.⁵
2. The number of students in your district with a disability who were eligible to receive special education and related services, and who were withdrawn from the district during the 2020-2021 school year. Provide the letter of withdrawal/form provided by parent/guardian of each identified student for each identified student.⁶

⁴ Disability Rights Maine, *Face Covering Requirements and the Rights of Students with Disabilities*, Updated September 18, 2020.

⁵ Student name, primary disability, age, grade, gender and ethnicity and reason for the remote instruction, including the inability of the student to wear a mask; The period of time that each student was learning remotely during the 2020-2021 school year; All Notices of Planning and Placement Team Meetings for each student for the 2020-2021 school year; All IEPs for each student for the 2020-2021 school year; All Learning Model IEP Implementation Plan forms for each student for the 2020-2021 school year; and All communications related to remote learning sent to the family of each student by the District during the 2020-2021 school year.

⁶ Student name, primary disability, age, grade, gender and ethnicity; All Notices of Planning and Placement Team Meetings for each student for the 2020-2021 school year; All IEPs for each student for the 2020-2021 school year; All Learning Model IEP Implementation Plan forms for each student for the 2020-2021 school year; and All communications related to remote learning sent to the family of each student by the District during the 2020-2021 school year.

3. The number of students in your district with a disability who were eligible to receive special education and related services, and who were/are receiving homebound instruction during the 2020-2021 school year.⁷

OCA appreciates Meriden Public Schools' timely and professional cooperation with this review, and District administrators' candid recounting of fast-moving events that assisted or hampered their ability to maintain open schools for the 2020-2021 school year. OCA also acknowledges that state and local officials continue to navigate an extraordinary global pandemic, with frequent shifts in data and scientific recommendations regarding best public health prevention practices for children and adults. OCA recognizes the commitment that the District made at the outset of the 2020-2021 school year to provide safe in-person instruction for its school community. Notwithstanding that acknowledgement, OCA's responsibility remains to respond to the complaints lodged with this agency regarding the rights of specific children, including allegations that certain children may have been denied access to essential services as a result of the pandemic and due to reasons related to their disabilities. While cognizant of the challenges facing local and state decision-makers, OCA must emphasize the importance of a clear and public record regarding the impact of various decisions on our communities' most vulnerable children.⁸

Based on the information produced by the District in response to the OCA's requests for information, the OCA learned that there were at least twenty-one (21) students with disabilities attending Meriden Public Schools during the 2020-2021 academic year, and who received special education and related supports and services, who were involuntarily placed on remote status primarily due to the inability to wear a mask.⁹ In that group of twenty-one students were several children who are autistic or multiply disabled, including students who are visually and hearing impaired.¹⁰ OCA also learned that in November 2020, a District-wide letter was sent out notifying parents that due to the rising COVID-19 case rate in Meriden that any student who could not wear a mask, regardless of disability or request for accommodation, could not come to school. The District stated that it issued the November directive due to the increased number of infections in Meriden and advice from the local Department of Health and Human Services ("Meriden Public Health") that mitigation strategies to accommodate children who could not sustain mask wearing were not appropriate.

⁷ Student name, primary disability, age, grade, gender, and ethnicity and reason for the homebound instruction; The period of time that each student was receiving homebound instruction during the 2020-2021 school year; All Notices of Planning and Placement Team Meetings for each student for the 2020-2021 school year; All IEPs for each student for the 2020-2021 school year; All Learning Model IEP Implementation Plan forms for each student for the 2020-2021 school year; and All communications related to remote learning sent to the family of each student by the District during the 2020-2021 school year.

⁸ In response to a draft of this Findings Letter, the Meriden Superintendent expressed concern that the Findings Letter "unfairly targeted the Meriden Public Schools," and that the "number of [Planning and Placement Team Meetings] OCA representatives have attended in Meriden also calls into question whether the OCA is acting here as an advocate for certain parents rather than an independent fact-finding body." In response to those concerns, the OCA notes that it is statutorily obligated to conduct both individual and systemic advocacy in that state statute directs the OCA to review complaints made to this agency regarding the denial of services to a child, evaluate the delivery of state-funded services to children, and "pursuant to an investigation, 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."

⁹ Based on its initial review of the records produced, the OCA also submitted supplemental questions to be provided by the District followed by clarifying questions based on inaccurate and/or incomplete responses. Responses to those questions are incorporated into this Findings Letter where appropriate.

¹⁰ There were an additional fourteen (14) students who were receiving remote instruction and whose parents withdrew them to homeschool during the 2020-2021 academic year (or prior to the start of the school year).

The OCA contends that the practices and protocols by which the District denied certain children with disabilities access to essential instruction and support, particularly the November 2020 letter to parents requiring universal mask-wearing regardless of a child's need for accommodation, denied these children their right to a Free and Appropriate Public Education in the Least Restrictive environment as guaranteed by the Individuals with Disabilities Education Act (IDEA) and their right to seek reasonable accommodations in accordance with the Americans with Disabilities Act (ADA). The two laws require an individualized determination of a student's need for accommodations and modifications, and the ADA does not permit a blanket determination that modifications and accommodations to disabled individuals are not feasible. The District's actions in denying in-person learning to these students, some for several months, due to the students' inability to tolerate wearing a mask and other reasons related to their disabilities warrant further review by the State Department of Education and civil rights enforcement agencies and the potential development of a corrective action plan.¹¹ The OCA is also requesting that SDE engage in targeted state-wide monitoring and enforcement activities to ensure that all school districts' policies and protocols going forward provide students with disabilities access to a free, appropriate, public education in the least restrictive environment, and that students denied in-person special education and related services receive adequate compensatory education.

This Findings Letter provides the SDE and the District with the results of OCA's investigation and serves to put the SDE on notice of the alleged violations of IDEA, and as such is intended to be received and reviewed by the SDE as an administrative complaint on behalf of certain children and a request for IDEA-required differential monitoring for the entire cohort of children described herein.

¹¹ In response to the draft Findings Letter, the District provided the OCA with a recent administrative decision from the SDE concerning a complaint filed by the parent of one of the students referenced in this Findings Letter, which decision found, according to the District, "no violation and require[d] no corrective action." The OCA notes that the complaint filed on behalf of the student, drafted by the child's parent, conveyed concerns that 1) the child's mental health and developmental disabilities rendered him unable to safely wear a mask during school; 2) multiple providers working with the family offered letters noting the child's difficulty in wearing a mask; 3) the District did not permit the child to attend school unless he would learn to wear a mask; and 4) the remote instruction provided through the school year did not provide him an education consistent with his IEP. The SDE resolution letter did not analyze the majority of the parent's claims. Rather, the SDE observed that the child had been denied a mask exemption "pursuant to District policy." Declining implicitly to adjudicate the appropriateness of the District's decision under state and federal anti-discrimination laws, the SDE found that the parent, in continuing to assert that her child could not wear a mask, had in effect *chosen* a home placement for her child and the District did its best to provide programming, "given the impracticality and limitations presented by the remote setting." OCA disagrees with the SDE finding in this individual case as the parent was clearly attempting to maintain her young child in school, and it was the District's decision to deny the parent's request for a mask exemption request that ultimately denied the child access to in-person learning and the full range of supports and services recommended by his IEP. Though the SDE did not comment on this question, the OCA maintains that the SDE has authority pursuant to IDEA's general anti-discrimination framework and SDE's monitoring and enforcement authority, to adjudicate the predicate issue of whether the child, and other children referenced here-in, were unlawfully denied access to in-person learning due to the district's lack of a clear, articulated and disseminated policy for providing disability-related accommodations to students and the District's November 2020 letter directing that certain students, regardless of a need for accommodation, could not come to school.

IDEA COMPLIANCE - FEDERAL AND STATE LAW

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”).¹² Those core principles of the IDEA were not in any way paused during the COVID-19 pandemic as stated by the U.S. Department of Education:

If an LEA continues to provide educational opportunities to the general student population during a school closure, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of FAPE. (34 CFR §§ 104.4, 104.33 (Section 504) and 28 CFR § 35.130 (Title II of the ADA)). SEAs, LEAs, and schools must ensure that, to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under IDEA, or a plan developed under Section 504. (34 CFR §§ 300.101 and 300.201 (IDEA), and 34 CFR § 104.33 (Section 504)).¹³

The U.S. Department of Education acknowledged that during this time it was even more critical that children with disabilities receive the appropriate educational programming and necessary supports and services, which guidance was also echoed by the Connecticut State Department of Education: “Students with disabilities should be prioritized for receiving instruction in school during the 2020–21 school year, even if schools are operating in a Hybrid or Remote model.”¹⁴

The U.S. Office of Special Education Programs (OSEP), which is within the Office of Special Education and Rehabilitative Services (OSERS), has the responsibility for ensuring that states comply with the IDEA. State Educational Agencies (SEAs) are responsible for ensuring that Local Educational Agencies (LEAs) are complying with the IDEA. The IDEA’s monitoring and enforcement responsibilities refer to OSEP and SEAs. OSEP monitors the SEA for IDEA compliance, and the SEA monitors the LEAs for compliance with the IDEA.¹⁵ This dual system of monitoring and enforcement ensures that children with disabilities are afforded the supports and services needed to access their educational programming.

In Connecticut, the State Department of Education is the administrative arm for the State Board of Education (SEA) and has the authority and the responsibility to ensure that LEAs are compliant with the IDEA. When a SEA becomes aware of individual noncompliance and/or systemic noncompliance, it must investigate and put corrective measures into place. Corrective measures apply equally to individual compliance as they do for systemic compliance. 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**

¹² 20 U.S.C. §§ 1400-1490.

¹³ U.S. Department of Education, available at Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak. March 2020 (PDF) (ed.gov).

¹⁴ Addendum 3 and 6 in the Adapt, Advance, Achieve: Connecticut’s Plan to Learn and Grow Together

¹⁵ 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).

correct systemic noncompliance--its general supervisory responsibility over all educational programs for children with disabilities administered within the State.”¹⁶

Because “[e]ach State and its public agencies must ensure that a free appropriate public education (FAPE) is available to all children with disabilities residing in the State in mandatory age ranges,”¹⁷ then “if an SEA identifies noncompliance with individual student IEPs when it monitors an LEA, the SEA must require the LEA to correct the individual noncompliance as well as systemic practices that gave rise to the individual noncompliance.”¹⁸

In accordance with 34 CFR § 300.151, states must adopt written complaint procedures, which procedures include the resolution of complaints filed by an individual or an organization, such as the Office of the Child Advocate.¹⁹ At a minimum, the SEA must take the certain proscribed steps within 60 days of receiving a complaint, including carrying out “an independent on-site investigation, if the SEA determines that an investigation is necessary” and “review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part” and “issue a written decision to the complainant that addresses each allegation in the complaint and contains - (i) Findings of fact and conclusions; and (ii) The reasons for the SEA’s final decision.”²⁰ In concluding, the SEA must also include procedures “for effective implementation of the SEA’s final decision, if needed, including - (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance.”²¹

The OCA is an investigatory oversight agency only and does not have enforcement authority over the LEAs. Its investigatory reporting, in addition to being conducted consistent with state law requirements, is also a vehicle in which to alert SDE of individual and/or systemic noncompliance with the IDEA.

¹⁶ Office of Special Education and Rehabilitative Services letter to Copenhaver, October 31, 2008.

¹⁷ 34 CFR §§300.101, 300.201, and 300.17.

¹⁸ Office of Special Education and Rehabilitative Services letter to Copenhaver, October 31, 2008.

¹⁹ 34 CFR § 300.151 Adoption of State complaint procedures, provides, that:

(a) *General.* Each SEA must adopt written procedures for -

(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by -

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA’s discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency’s decision on the complaint; and

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§ 300.151 through 300.153.

(b) *Remedies for denial of appropriate services.* In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address -

(1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all children with disabilities.

²⁰ See 34 CFR § 300.152.

²¹ *Id.*

IDEA COMPLIANCE – BEST PRACTICES DURING COVID

As stated earlier, IDEA compliance was not paused during the COVID-19 pandemic, and Connecticut public school districts across the state offered a variety of learning models for students during the 2020-2021 academic school year. The models being utilized by districts and supported by the SDE included a full in-person model, hybrid model, and full remote model of learning. The Hybrid programs typically included a combination of in-person and remote learning for all students. Children with certain disabilities may have difficulty accessing or benefitting from remote learning, including children who rely on one-to-one support and a team of related service providers such as speech and language, occupational, and physical therapists. Parents, even if provided robust and frequent parental training, may have difficulty facilitating or substituting for the child's Individual Education Program and teachers.

As emphasized by the CDC, “the lack of in-person educational options disproportionately harms low-income and minority children and those living with disabilities. These students are far less likely to have access to private instruction and care and far more likely to rely on key school-supported resources like food programs, special education services, counseling, and after-school programs to meet basic developmental needs.”²² Recognizing this disparity, the SDE recommended that students with disabilities **“should be prioritized for receiving instruction in school during the 2020-2021 school year, even if schools are operating in Hybrid or Remote model”** consistent with public health and safety protocols.²³ If students with disabilities cannot be provided with a full week of in-person learning, then the “maximum frequency which may be more days per week than what the Hybrid Model schedule generally allows for the full school population.”²⁴ .

A national concern is that children with disabilities are losing critical supports and services during school closures, and that remote learning cannot replace **in-person** supports and services that children with disabilities need to access education. Per the John Hopkins Bloomberg School of Public Health:

Certain students, such as those who are marginalized, vulnerable, or have special needs, are likely to suffer the most from school closures given that, in many cases, these students may have required additional in-person support to meet academic standards before the arrival of COVID-19. Schools serving populations of students with greater needs may also have fewer resources and greater challenges than other schools, making the transition to remote or online learning even more difficult. Because of these inequities, COVID-19-related school closures may increase the likelihood of a widening learning loss among our most vulnerable students as the pandemic extends through the end of the academic year and potentially into next year.²⁵

²²CDC. *The Importance of Reopening America's Schools this Fall* (July 23, 2020); Available on-line at: <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html#fn4>

²³ Addendum 3 in the Adapt, Advance, Achieve: Connecticut's Plan to Learn and Grow Together

²⁴ SDE Learning Model IEP Implementation Plans.

²⁵ John Hopkins Bloomberg School of Public Health, *Filling in the Blanks: National Research Needs to Guide Decisions about Reopening Schools in the US* (May 15, 2020)

FEDERAL AND STATE MASKING REQUIREMENTS/GUIDANCE

Connecticut State Department of Education (SDE): A child should not be denied in-person learning solely due to inability to tolerate a mask. In fact, a representative for the SDE said specifically that: “As far as students with disabilities who may not be able to tolerate wearing a mask in school, our guidance states that that alone should not be a basis for their exclusion.”

Centers for Disease Control (CDC): CDC recognizes there are specific instances when wearing a mask may not be feasible. In these instances, consider adaptations and alternatives. The following categories of people are exempt from the requirement to wear a mask: “A person with a disability who cannot wear a mask, or cannot safely wear a mask, for reasons related to the disability”

World Health Organization (WHO): “No child should be denied access to an education if a mask is unavailable.” The use of masks for children of any age with developmental disorders, disabilities or other specific health conditions should not be mandatory and be assessed on a case-by-case basis by the child’s parent, guardian, educator and/or medical provider. In any case, children with severe cognitive or respiratory impairments with difficulties tolerating a mask should not be required to wear masks.

During the height of the pandemic, the CDC’s guidance acknowledged the difficulty that persons with disabilities may have with mask wearing, providing that “[a]ppropriate and consistent use of masks may be challenging for some children and for people of any age with certain disabilities, including cognitive, intellectual, developmental, sensory, and behavioral disorders,” and that “Masks should not be worn by . . . People who are deaf or hard of hearing, and those who will interact with people who are hearing impaired.²⁶ The CDC provided exemptions to mask wearing, including for “[a] person with a disability who cannot wear a mask, or cannot safely wear a mask, for reasons related to the disability.”²⁷

Connecticut’s Commission on Human Rights and Opportunities (CHRO) issued a Dear Colleague Letter in September of 2020 addressing the importance of accommodating persons with disabilities who because of his/her disability are unable to tolerate wearing a mask and civil rights implications, including school children:

While public health is of utmost importance during a pandemic, **a blanket policy regarding wearing masks may violate the state or federal civil rights of an individual with a disability.** Thus, if an individual has expressed that they are unable to wear a face covering and need a reasonable accommodation, the school, administrator, district, etc. should engage in the interactive process with that individual and discuss alternatives to wearing a mask or face covering that will allow for equal participation while simultaneously protecting those who have compromised immunity. There is no one-size-fits-all solution to this problem which is why discussion, thoughtfulness and innovation are required.²⁸

In accordance with federal guidance, and in advance of the 2020-2021 academic year, SDE advised districts to have masking requirements for students in order to mitigate the risk of infection for the 2020-2021 academic school year. In line with its guidance on mask wearing for students, the SDE followed the federal guidance on mask exemptions and also allowed for such exemptions to that mask requirement in certain circumstances – (i) medical exemption and (ii) disability exemption.²⁹

²⁶ CDC website viewed on March 17, 2020 archived at <https://tools.cdc.gov/api/v2/resources/media/407486/content.htm>

²⁷ Id. Archived at [COVID-19: Considerations for Wearing Masks | CDC](#)

²⁸ CHRO Dear Colleague Letter, available at: [2020-09-15-Dear-Colleague-Letter.pdf \(ct.gov\)](#).

²⁹ SDE Addendum No. 11 dated August 30, 2020

Aside from medical contraindications, there may be individuals or situations where exemptions to mask wearing should be considered. For example, those with developmental disabilities may not tolerate or be able to comply well with mask wearing in schools, *but this alone should not be a basis for their exclusion*. Schools must assess, on an individualized basis, the appropriate accommodations for students with disabilities who are unable to wear a mask. In addition, students and staff involved with certain special education activities like speech therapy or where lip reading is required may need to be exempted from wearing a face covering mask intermittently. In cases where an exception is requested based upon a disability, a planning and placement team (PPT) or Section 504 meeting as appropriate should be held to consider possible programming revisions or appropriate accommodations. **In those cases where face covering masks will not be in use, the effective use of other key mitigation strategies such as maximizing distancing, moving activities outdoors or to a well-ventilated space, and/or the use of face shields or other physical barriers will be extremely important to the protection of the students and staff involved.**

(Emphasis added). The guidance from SDE was clear, “[i]ndividual school districts should develop specific board approved policies regarding mask wearing, which should include what the school will consider as acceptable exemptions from the wearing of face coverings by students or staff while inside the school building.” The SDE maintained that position when asked by the Hartford Courant about the situation in Meriden with respect to students being denied in-person instruction due to his/her disability and the resulting inability to tolerate wearing a mask:

Peter Yazbak, the Department of Education’s spokesperson, underlined one particular piece of the guidance: Students should not be kicked out of class just because they can’t wear a mask. ‘As far as students with disabilities who may not be able to tolerate wearing a mask in school, our guidance states that that alone should not be a basis for their exclusion,’ Yazbak said. Yazbak said that the department is and has been available to help school districts craft their plans for the coronavirus in general and for related accommodations in particular.³⁰

OCA found similar guidance and directives from other states’ education agencies. Maine’s school reopening guidance from September 2020 provided that “*alternatives to mask-face covering requirements must be made for those for whom it is not possible due to medical conditions, disability impact, or other health and safety factors.*”³¹ Massachusetts’ guidance contained similar language.³² Oregon issued comprehensive guidance on this issue, updated in September 2021, stating:

Where an IEP/IFSP or 504 team is working with a student and family and determines that requirement(s) related to face coverings cannot be met because of the student’s disability, the IEP/IFSP or 504 team should update the student’s IEP/IFSP or 504

³⁰ *When COVID-19 spiked in Meriden, the school district forced 13 kids into fully remote learning — including a kindergartner with disabilities; he regressed almost immediately*, By Emily Brindley, Hartford Courant, February 4, 2021.

³¹ Maine Department of Education, *PK-12 And Adult Education Public Health Guidance* (Sept. 15, 2020). (emphasis added.)

³² Initial Fall School Reopening Guidance, June 25, 2020 (mass.edu)

plan (as required by [state protocols]). The school or district should: *Ensure the child is not excluded because of their medical condition or disability.*

Review the 504/IEP/IFSP to ensure continued access to instruction given the inability to wear a face covering. In this scenario, a district may choose to adapt, accommodate, and/or modify the face covering requirements to address the individual student needs that arise from their disability, condition, and/or medical condition, in line with CDC recommendations that cloth facial coverings should not be worn by anyone who is unable to remove the face covering without assistance or who cannot safely wear a face covering due to a disability.³³

OCA also notes that a blanket requirement that children with disabilities must wear a mask in order to go to school may constitute not only discrimination under state law but also discrimination under the Americans with Disabilities Act (ADA) and similar provisions in Section 504 of the federal Rehabilitation Act of 1973. Where a child's disability gives rise to a difficulty or an inability to wear a face mask, the ADA requires that schools engage in an interactive and individualized process to determine whether reasonable accommodations can be implemented to enable the student to safely access their education.

For students unable to wear a face covering, some of the following alternatives might be considered in the context of mitigating any related risk:

- Enhanced symptom screening, including entry and regular temperature checks;
- Increased social distancing in areas where the student will be receiving instruction;
- Organizing the room to increase space between desks and/or using a plastic or other clear barrier between the student and the rest of the classroom; Exploring the use of rapid testing for COVID-19 at regular intervals;
- Working with the family to document and minimize any contacts outside the school;
- Ensuring that those working closely with the student take additional precautions when warranted; or
- Any other steps that could mitigate any risk while still providing access to the programs and activities of the school and a free and appropriate public education in the least restrictive environment.³⁴

The ADA also requires that persons with disabilities must receive notice of the protections the statute affords them, and that covered entities must “make available to ... beneficiaries, and other interested persons information regarding the ... protections against discrimination as assured them by the Act and this part.”³⁵

³³ Oregon Department of Education, *Considering Reasonable Accommodation of Face Covering Requirements 2021-22 School Year* (Sept. 2021). (emphasis added.)

³⁴ Disability Rights Maine, *Face Covering Requirements and the Rights of Students with Disabilities* (Sept. 18, 2020).

³⁵ 28 C.F.R. § 35.106.

CONNECTICUT SCHOOL DISTRICTS VARIED IN APPROACHES TO IN-PERSON LEARNING DURING THE 2020-21 SCHOOL YEAR

Due to the absence of a state-wide mandate regarding whether and how often schools should be open during the pandemic, Connecticut school districts made varying decisions regarding the provision of educational services during the 2020-2021 school year, with some districts, like New Haven and Danbury, remaining closed to in-person learning for many months (including for children with disabilities)—a decision with significant implications for vulnerable learners. OCA has continued to urge SDE to make a clear and public record of the impact of such decisions on students with disabilities and closely monitor compensatory and recovery services for such children going forward.

In contrast, Meriden brought back most of its students to the classroom for in-person learning, reporting that “[a]t no time during the 2020-2021 school year were [its] schools closed to in person learning.”³⁶ However, as outlined below, through our complaint investigation process, OCA found that there was a cohort of students who, because they were not able to tolerate wearing a mask due to a disability, were not permitted to access their educational programming in-person. Given the nature of these students’ disabilities and their individual and collective need for comprehensive, multi-disciplinary, and expert-driven supports and services, OCA was concerned about the denial of in-person learning for these students, many of whom remained home for months. OCA was particularly concerned about the District-wide letter in November 2020 notifying families that children who could not wear a mask could no longer come to school, regardless of disability status or requested accommodations.

OCA acknowledges that many children in remote-only districts were also denied access to needed services, and as stated above, these concerns continue to be addressed by the OCA with state officials. The scope of this Findings Letter is to resolve individual and pattern and practice concerns arising out of specific complaints made to the OCA regarding children in Meriden Public Schools.³⁷

MASKING DIRECTIVES IN MERIDEN

Beginning in March of 2020, the Meriden Public Health officials met regularly with the SDE and DPH, along with other local public health and educational representatives to receive COVID-19 updates and ask questions.

The District provided information to OCA that in September of 2020, it sent a communication to families with preschool children enrolled in the District that all children would be required to wear a mask in order to receive in-person instruction. This communication included tips for parents on how to encourage their children to wear masks, and links to American Academy of Pediatrics and CT Office of Early Childhood guidelines on mask-wearing. The September letter to parents did not

³⁶ Meriden Public Schools Supplemental Response to OCA, dated July 23, 2021.

³⁷ The OCA contacted six (6) other Connecticut school districts (New Haven; Milford, East Hartford; Farmington; Rocky Hill and Manchester) to determine whether other districts had similar policies and procedures with respect to mask wearing exemptions. Several districts used similar forms to determine medical exemptions as Meriden. One other district (East Hartford) provided information that it required remote learning for two (2) students with disabilities who could not tolerate wearing a mask. It took more than two months for New Haven to provide a substantive response to OCA’s subpoena and that district ultimately stated that it did not, once open for in-person instruction in the Spring of 2021, involuntarily place any children with disabilities on remote status.

include specific information regarding the availability of medical or disability related exemptions and accommodations. No corresponding letter for children in Kindergarten through twelfth grade was provided to the OCA.

On October 27, 2020, the District finalized its board policies regarding mask requirements and exemptions. The policy stated:

in accordance with requirements and guidelines issued by the Connecticut State Department of Education (“SDE”), the Board requires that all individuals entering a school building, a Meriden Public Schools (“District”) facility, or a District transportation vehicle wear an appropriate face covering. An appropriate face covering shall consist of a cloth mask or disposable procedure-style mask that completely covers the individual’s nose and mouth. An appropriate face covering shall not include “neck gaiters,” bandanas, or exhalation valve masks. Any individual who presents for entrance into a school building, District facility or District transportation vehicle who is not wearing an appropriate face covering shall be provided an appropriate face covering by the District. Compliance with this policy shall be mandatory for all individuals while in a school building, District facility, and/or District transportation vehicle, *unless an applicable exception applies.* (emphasis added.)

However, the policy section did not address what constituted an “applicable exception.” Other materials provided to the OCA by the District included a form for parents and their medical provider/s to utilize if they were seeking a “**medical**” exemption from required mask-wearing for their child. Nothing in the Board policy or the corresponding medical exemption forms specifically addressed a child’s right under state and federal anti-discrimination laws to request a **disability-related** accommodation or exemption regarding mask-wearing, or how such accommodations or exemptions must be sought and reviewed. This stands in contrast to SDE’s guidance that “[i]ndividual school districts should develop specific board-approved policies regarding mask wearing, *which should include what the school will consider as acceptable exemptions from the wearing of face coverings by students or staff while inside the school building.*” (emphasis added.)

In response to a draft copy of this Findings Letter, the District stated that it “provided information regarding mask exemptions, in accordance with state guidance, to families of all students in Meriden, pre-kindergarten through 12th grade, inclusive, through dissemination of the Meriden Public Schools Reopening Plan both via website and ParentSquare messaging, as well as through videos.” The District also stated that “Disability related exemptions and accommodations were addressed on an individual basis by individual student PPTs.” OCA is concerned that without specific and disseminated policies regarding the rights of students with disabilities to seek accommodation, that parents would not know they could request such accommodation or what the process would be to resolve such requests.³⁸

In response to written questions from OCA, District administrators stated that they received no requests for *medical* exemptions from parents and therefore did not deny any such requests. During meetings, OCA inquired about the numerous examples of letters from doctors regarding children’s difficulty or inability to sustain mask-wearing, most often due to a developmental disability. District

³⁸ Title II of the ADA and the federal Rehabilitation Act Section 504 requires covered entities to maintain policies to provide aides and services and to have procedures in place by which to evaluate requests for reasonable accommodations. *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 277 (2d Cir. 2009) (noting that “obvious shortcomings in the [hospital’s] policy and the [entity’s] conduct” prohibited summary judgment).

officials, and separately, local public health officials, stated that these letters did not constitute requests for a “medical exemption,” and therefore the requests were reviewed by local public health as well as special education staff as requests for disability-related accommodation. Records indicate that certain requests from families, through their physicians, for exemption or accommodation, resulted in the immediate placement of the child on remote learning pending further review and determinations by the District.

Despite the lack of information and clarity in District policies regarding the availability of exemptions and disability-related accommodations, the District had been engaged in some level of case-by-case review of requests for accommodation since the beginning of the school year. However, on November 9, 2020, the District sent a letter to all parents stating that if their child could not wear a mask in school, they could not enter the building, without exception.³⁹ The directive followed a November 5th email from the local public health director:

The city of Meriden reached “red status” on the state-town-alert system for COVID-19. Over the past 2 weeks we have seen 238 new cases, our current case count is 28.6/100k population, and our percent test positivity rate is 4.3%. Due to this change in status, but more importantly the surge in community COVID 19 cases in Meriden, I am recommending that for the safety of health and staff that all students coming to school are required to wear a face mask. This recommendation will be reviewed as our second-wave of this pandemic progresses.

On November 9, 2020, the District notified all families by letter that due to the “increase in the number of COVID-19 cases” that “all individuals entering any school building to wear a mask at all times.” The communication stated that:

[A]ny student who is unable to wear mask while inside school buildings **must temporarily be provided with alternative, remote learning opportunities**. If your child is currently attending in-person schooling pursuant to a medically-based or other mask exemption District staff will contact you directly to address remote programming for your child. Any existing exemptions to the mask requirement, along with any pending or future request for an exemption as an accommodation pursuant to the Individuals with Disabilities Education Act (“IDEA”) or Section 504 of the Americans with Disability Act (“ADA”) will be reviewed and/or re-reviewed by the Meriden Department of Health and Human Services. In the interim, during this critical red alert period, **any MPS student who is unable to wear a mask while in the school building will be provided with remote learning opportunities**.

(Emphasis added). According to records provided by the District many of the twenty-one (21) students referenced above were already being denied full in-person learning instruction. Records reviewed by OCA contain inconsistencies regarding the dates that individual children were placed out of school, either on hybrid status or full remote learning. Multiple students’ records provide that they were denied full in-person instruction *prior* to the November 5th email from the local public health director and the ensuing District letter to parents. Most students placed on remote status remained there for multiple months.

³⁹ OCA notes, however, that District IEP Implementation Forms (a form developed by SDE during COVID-19 pandemic) for some children documented that they were placed on full remote learning as of November 2.

DISABILITY RELATED MASK EXEMPTION REQUESTS

Of the twenty-one (21) children who were not permitted to receive in-person instruction by the District, there were eight (8) children whose parents submitted written requests and/or made inquiries for a disability exemption to the mask requirement, with seven (7) submitting a note from their child's physician.

Below are examples of exemption requests submitted to the District:

STUDENT 1. The physician of a student who has Down Syndrome and developmental delay provided that: “[m]y patient . . . has a developmental disability that may make it impossible for him to wear a mask while in school. Please exempt him from the mask requirement if he is unable to wear one.” In response, the District provided its September 2, 2020 Letter. The student was denied full in-person learning from September 3, 2020 through November 20, 2020.

STUDENT 2. The physician for a student who has multiple disabilities, including hearing and visual impairment, stated that his patient “has multiple disabilities including global developmental delays. Given these pre-existing conditions, it would be deemed unsafe for her to wear a mask during the school day.” In response, the District provided its September 2, 2020 Letter. The student was denied full in-person learning from September 3, 2020 through February 23, 2021.

STUDENT 3. The physician for a student with autism, global developmental delay and chromosomal abnormality provided a note dated August 25, 2020 that stated: “[d]ue to those diagnoses and her special needs, it is extremely difficult for her to keep a mask on her face. Please take this into consideration when she is at school.” In response, the District provided its September 2, 2020 Letter. The student was denied full in-person learning from September 3, 2020 through February 23, 2021.

STUDENT 4. The physician for a student with quadriplegic cerebral palsy and developmental delays, stated that: “[d]ue to these conditions, it is very difficult for him to keep a mask on, as he does not tolerate it. Please keep this this under consideration while he is at school.” In response, the District provided its September 2, 2020 Letter. The student was denied full in-person learning from September 3, 2020 through February 23, 2021.

STUDENT 5. The physician for a student who had multiple complex disabilities, including blindness, and neurological issues provided a note in support of a disability exemption, which stated that: “Please excuse [student] from wearing a mask due to her severe neurological issues.” In response, the District provided its September 2, 2020 Letter, and the student was denied full in-person instruction from September 3, 2020 through November 23, 2020. She returned to full in-person learning when able to tolerate wearing the mask.

STUDENT 6. The physician for a student who was blind and diagnosed with autism, stated that: “Due to [student’s] disabilities, he should not be required to wear a mask to school. If you can work with him, and he is able to put it on, take it off, and tolerate it, then it would be suitable.” The student was not permitted to attend in-person from September 3, 2020 through September 14, 2020 when he then returned to in-person learning only to return to full remote from November 16, 2020 through January 19, 2021.

STUDENT 7. The family of the student diagnosed with autism submitted a disability mask exemption request along with letters from the child's pediatrician stating that "he needs to be exempt from wearing a face [mask] for medical reasons," and the child's clinician stating that the child needed to be exempt from wearing a mask due to "his current mental health diagnoses." The District ultimately declined the requests for exemption and placed the student on remote learning for most of the school year; September 3, 2020 through February 22, 2021 and then in a single classroom the remainder of the school year for all of his academic classes with no other students because of his inability to tolerate wearing a mask.

STUDENT 8. According to another parent, when she asked the District about requesting a disability related exemption for her son who is diagnosed with autism and obtaining a note from his treating physician, she was told "not to bother" by the preschool program administrator. The student was denied full in-person learning from November 3, 2020 through February 8, 2021.

In written responses to the OCA, District officials described a process of responding to such notices/requests which included speaking to the children's doctors, meeting with the IEP team, reviewing the need for accommodation with special education leadership and public health personnel, and ultimately making a determination regarding the availability of strategies to both assist the child with increasing capacity for mask-wearing while reducing risk related to uneven or lack of mask-wearing. Such strategies, in general, per district description, included: practicing periods of mask-wearing, temperature taking, handwashing, use of additional space, plexiglass dividers, additional protective equipment for adults, and relocation of student instructional areas in classrooms.

In response to five (5) of those requests, the District provided a form letter dated September 2, 2020 that stated: "[w]e are in receipt of your physician's note regarding mask exemption for [your child]. Attached are the Meriden procedures. [Your child] will receive distance learning beginning on 9/3/20. [School official] will be in touch with a schedule. We will schedule a PPT to review [your child's] individual needs and educational plan." ("September 2, 2020 Letter").

Those students were not permitted to be in school while the District processed those requests. Once processed, all five (5) students were permitted to attend in-person half days to allow for "social distancing." In addition, not all the students' IEPs reviewed by OCA included language about the request for accommodation or the strategies being employed to assist with mask-wearing and mitigating risk to the child or others. Several of the children's IEPs do indicate the District placed them on a hybrid model (partly remote learning, partly in-person), as a social distancing measure.

In November 2020, five (5) of the eight (8) students whose family either submitted and/or inquired about a mask exemption were sent back home pursuant to the District-wide directive.⁴⁰

Per the District, there was no prior discussion about the local public health recommendation or the ensuing District directive with the local school board, the State Department of Public Health or the State Department of Education prior to the letter being sent out. In interviews, the Meriden department of public health stated that they were encouraged by DPH to reach out to SDE with questions about mask exemptions and attempted to meet with SDE and discuss those issues but that the SDE was not responsive, an assertion that SDE told OCA it "fundamentally disagrees with."⁴¹

⁴⁰ One student was already receiving instruction fully remote, and two (2) students were permitted to continue receiving instruction on a Hybrid schedule because they were able to wear a mask.

⁴¹ SDE also reviewed OCA's draft Findings Letter and provided this response along with other comments.

SDE told OCA that “not only were we available to Meriden on every Tuesday morning call with Superintendents, we did reach out to local public health officials and after playing phone and email tag, we were informed that the issue had been resolved and that the students had been returned to school.”

The District also told OCA that “in follow-up discussions with CSDE and DPH, both agencies agreed and advised that public health decision-making was to occur at the local level.” In interviews, Meriden’s local public health director stated that her department made that recommendation based on the high rate of infection in the town of Meriden. However, the recommendation to the District Superintendent did not reference statistics on the rate of infection in Meriden schools or the rate of infection at any of the schools that the impacted students attended, which data would also have been relevant to such a policy. Separately, OCA received documents from the District indicating that schools were not deemed to be the source of community spread during this time.

Notably, in its November 9, 2020 letter to parents, the District also asserted that “[o]ur schools have not been the source of community spread. In fact, our schools are one of the places in our community that model, mandate and enforce mask wearing and proper hygiene.” That opinion was shared at a December 1, 2020 Meriden Board of Education meeting where a local public health official stated that there was no “widespread transmission” or “secondary transmission” in Meriden schools to support closure and that transmission was taking place in “households.” Anecdotally, public health officials shared that on two occasions there had been a COVID-19 infected elementary student in class, and contract tracing showed that no other students or staff in that class became infected. As a result of the recommendation made by Meriden Public Health to the District superintendent to require all students to wear a mask, the District asserted to OCA that they were not able to accept any medical and/or disability mask exemptions or provide any accommodations/alternative strategies to permit these children to remain in school. The District told OCA that “in partnership with the local health department, there was an inability to keep these students safe due to the spread of COVID-19 in the community at the time and the limitations of other mitigating strategies.”

More than two months later, on January 21, 2021, some of the families whose children were not permitted to receive in-person instruction were notified by letter that the District was “able to plan for your child to return to school in person on a hybrid schedule beginning on 01/28/21.” The letter stated that the staff would “continue to work with your child on mitigation strategies including hand washing, social distancing and wearing a mask.” Those children were permitted to return to a hybrid schedule and then resumed full in-person instruction in February 2021. Other children remained out of school for longer.

PART A

CHILD-SPECIFIC EDUCATIONAL PROGRAMMING REVIEWS (CEPR)

OCA’s review included record examination and advocacy on behalf of four (4) Meriden students based on complaints received by the OCA. Each one the children highlighted below has unique challenges associated with his/her disability.⁴² However, they all had one thing in common – due to his/her disability, they were unable to tolerate wearing a mask for the entire school day. At the District’s directive, all four (4) children were denied in-person learning and put on remote placement at some

⁴²These highlighted children are part of the twenty-one (21) students detailed earlier in this Letter.

point during the 2020-2021 school year. That remote placement continued into January, February, March and for one highlighted student until the end of the school year.

Complaint to SDE- Based on these reviews, OCA alleges with regard to these four children that the denial of special education and related services in the least restrictive environment, triggered in part by the November 2020 district memorandum notifying parents that all children must wear a mask regardless of disability or need for accommodation violated children’s rights under IDEA and the Americans with Disabilities Act. Case-specific details are provided below. The names of those students are not provided in the document to protect the privacy of the families.⁴³

Alicia is a 10-year-old student who has multiple disabilities, including profound hearing and visual impairment. At the District’s directive, Alicia was designated for remote learning from September 3, 2020 through September 23, 2020 because she was unable to tolerate wearing a mask due to her disability. After processing her mask exemption request, she was then permitted to return to in-person learning half-days to allow her to be socially distanced from the other students. On November 4, 2020, a PPT was held, and the District indicated that it was “working on a plan for [Alicia] to attend school full day that will meet the health and safety guidelines.” However, the District then informed Alicia’s family on November 9, 2020 that due to the increased COVID-19 infections in the City of Meriden (and the new District-wide directive), Alicia would not be permitted to attend in-person at all. She was returned to fully remote status on November 16, 2020 and continued without access to in-person learning until January 28, 2021. She was permitted to return to half-day in person/remote learning on January 29, 2021 after the District received a note from her physician making such a request. Alicia did not resume full time in person learning until March 4, 2021.

Alicia’s IEP included various supports and services necessary for her to access her educational programming, including speech/language, occupational therapy, physical therapy, hearing impaired services, a behavioral intervention plan and limited inclusion with non-disabled peers. When asked how the District provided Alicia’s educational programming (including related services) during remote learning, the District replied: “[m]aterials and activities for the parents to utilize were posted on Google classroom. . . . [p]hysical materials were sent to the home for participation in remote learning.” The District also stated that while Alicia was “able to successfully participate in sessions with the teacher of the hearing impaired and teacher for the visually impaired as well as speech sessions,” that she “did not attend sessions with the special education teacher group or individual though they were available daily.” Such a remote program with minimal instruction was not adequate for Alicia, and according to her family, she experienced a significant amount of regression both academically and behaviorally due to the lost educational opportunities.

Brian is diagnosed with Autism and is blind. He is 5 years old and was in a self-contained classroom with seven other students who received special education. In addition to his academic programming, Brian received occupational therapy, physical therapy, and speech and language supports and services from the school staff. Brian could not tolerate wearing a mask because of his disabilities. He was put on remote learning by the District immediately at the beginning of the school year due to his inability to tolerate wearing a mask. With the OCA’s intervention the District agreed to bring Brian back into the classroom. Because of the district-wide directive to parents that November, Brian was put back on remote status from November 16, 2020 through January 19, 2021.

⁴³ In furtherance of this administrative complaint, OCA will provide names of the students referenced here-in to the State Department of Education.

When asked to describe the educational programming provided to Brian during this time, the District replied “[m]aterials were sent home for participation in remote learning activities. Sessions were conducted with special education teacher and teacher of visual impairments, speech pathologist, OT, PT and BCBA. Sessions required facilitation by parent and included parent training.”

At home, Brian was struggling with remote learning and experiencing behavioral issues. According to his family, he was often unable to access his educational programming, and that he regressed academically and behaviorally, spending hours in the empty bathtub, seeking to self-soothe.

Charlie who has Autism and is currently non-verbal, attended the District’s Pre-K program, which is a part-time 12.5 hour a week program. At a PPT held on October 16, 2020, the District directed that Charlie would be put on a hybrid schedule “2 day per week/3 day per week schedule . . . to provide an environment most conducive to social distancing.” On November 9, 2020, Charlie’s family was notified that pursuant to the new district directive, Charlie could no longer come to school. Charlie was denied access to full in-person learning through February 2021.

When Charlie’s family asked about a medical exemption in October of 2020 and offered to secure a note from their medical provider, the family asserted that the self-contained program facilitator told them that it would not matter if the family got a medical exemption from the physician. According to the family, and confirmed by OCA’s record review, there was no PPT, and the family received a phone call from the program facilitator and someone from the health department when Charlie was moved to remote status in November of 2020. Charlie’s family reported that he was frequently unable to access or benefit from his education during this time, that he regressed behaviorally and engaged in high-stress behavior such as chewing inappropriate objects.

When the District was asked to describe the programming for the 3 and 4-year-old students, like Charlie, who were denied in-person learning, it provided the following response:

The school team met with each family to discuss a learning model implementation plan during the time of remote instruction. The classroom special education teacher continued as the students’ direct instructor. Whole group virtual learning sessions were provided daily through Google Meets/Hangouts, daily assignments were posted on Parent Square, and students were provided individual sessions based on their needs. In addition, the Speech-Language Pathologists provided virtual group, individual and parent consultation sessions on a weekly basis. The families and school staff communicated via Parent Square, Google Meet/Hangouts/Phone and/or email to address specific student/family concerns. Supplemental resources, materials and/or equipment were provided to families in order to assist with facilitation of learning.

Danny is a 9-year-old student diagnosed with autism. Prior to the mask wearing mandate, Danny was in a mainstream classroom and received pullouts for various supports and services. For the entire 2020-2021 school year, at the District’s directive, Danny learned remotely and/or received academic instruction in isolation because of his inability to tolerate wearing a mask.

Danny’s family requested a mask exemption in August of 2020 for the upcoming school year and provided documentation from both a medical and mental health provider stating that the child needed a mask-exemption due to medical and mental health conditions. The District insisted that Danny wear the mask or receive instruction remotely. The District prepared a Learning Model IEP Implementation

Plan dated September 9, 2020 to indicate that it would only be offering the student remote instruction. Subsequently, a PPT was held on September 17, 2020 to further discuss Danny's educational programming. During that PPT, the District maintained that "the reasons for exemption as stated by the physician letter and [family] would not be in alignment with the criteria provided by the state department of education for medical exemption." As stated in the student's corresponding IEP, the District maintained its position that "[s]hould [Danny] be able to wear a mask at school, the district is ready to implement his in-person program."

On November 2, 2020, there was another PPT to discuss Danny's educational programming. The family reported that Danny was struggling at home and having behavioral issues. The District was firm in only allowing Danny back to the classroom for in-person learning if he "*is able to attend school safely within the health and safety standards that need to be followed during the Covid 19 pandemic.*" Despite the family calling the exemption a "medical" exemption during the PPT, it was clearly based on Danny's disability and so should have been considered by the District as a disability exemption. OCA again notes that the District had no articulated policy regarding the provision of disability-related accommodations. Danny continued to be denied in-person learning.

In February of 2021, Danny was finally permitted to return to a classroom with the stipulation that he would receive education in a classroom of one where he attended his academic classes by computer and received his supports and services in the otherwise empty room. He was allowed to have lunch and recess with his peers. Despite mitigation strategies proposed, including desk spacing, physical barriers, alternate space or class division, the District would not bring Danny back into his mainstream classroom.⁴⁴

PART B

OCA'S DATA AND RECORD REVIEW FOR CHILDREN PLACED OUT OF SCHOOL

During the 2020-2021 school year, in addition to the four (4) children highlighted above in Part A of this Findings Letter, Meriden also placed at least seventeen additional (17) children⁴⁵ with disabilities on Hybrid (part in-person/part remote) and/or Full Remote status due to the child's inability to tolerate wearing a mask and, in some cases, other reasons related to his/her disability.

Request for Differential Monitoring by SDE-

Based on OCA's records review, OCA alleges that the placement of these children on remote status due to reasons that arise from their disability, including the inability to sustain mask-wearing, without adequate supports to address children's behaviors, and in no small part due to a district-wide directive that specifically deprived families of the opportunity to seek or maintain reasonable accommodations and supports, raises concerns regarding the District's compliance with IDEA and the children's rights to access public accommodations under the Americans with Disabilities Act and Section 504 of the federal Rehabilitation Act.

⁴⁴ Danny is now back in the general education classroom after his mother provided a third note, this time from a treating psychiatrist. The District is employing the mitigation strategies and accommodations referenced above.

⁴⁵ In furtherance of this complaint to SDE, OCA will provide that agency with the full names of students referenced herein.

1. There were nine (9) children in Meriden’s Special Education Pre-K Program, diagnosed with Autism and/or Development Delay, whose families were informed that the children would be removed from in-person learning and received instruction and services remotely throughout the school year on various Hybrid and Full Remote schedules from as early as October 14, 2020 through February 2021.
2. There were seven (7) children in various elementary school grades (K-5th), diagnosed with multiple disabilities, who all were told to begin the 2020-2021 school year fully remote and continued remote learning throughout the school year on various Hybrid and Full Remote schedules. Two (2) children were permitted to return to full in-person learning in November of 2020; four (4) children remained on remote through February 2021; and one (1) child was brought back to a classroom of one, in which he received academic programming virtually for the remainder of the 2020-2021 school year.
3. There were five (5) children in grades K – 6 who were removed from full in-person learning due to inability to wear a mask and “dangerous” and “unsafe” behaviors and “spitting” and “biting;” these students were delivered instruction remotely for varying schedules, including:
 - Full Remote from September 21, 2020 through June of 2021
 - Full Remote from September 15, 2020 through January 5, 2021
 - Full Remote from October 7, 2020 through February 19, 2021
 - Full Remote from December 10, 2020 through January 29, 2021
 - Hybrid Model from November 4, 2020 through March 15, 2021

OCA has documentation for 4 out of these 5 children, which documentation indicates that only one of the 4 children had an IEP with a Functional Behavioral Assessment (FBA) and Behavior Intervention Plan (BIP) prior to being placed out of school. One child’s IEP (age 5), noted the child’s mask refusal and spitting behaviors, as well as his “lack of stamina” and “low tolerance for frustration.” The PPT “recommended an abbreviated school day to work on frustration tolerance, frustration, and stamina for the demands of a school day. A 2.5 hour in person school day was recommended with synchronous and asynchronous learning as well as school psychologist support.” The child did not have an FBA or BIP in place prior to this change in his educational program.

Another child’s (also age 5) PPT convened to review the child’s “ability to attend school safely within the health and safety guidelines required during the COVID-19 pandemic.” The team reviewed data regarding mask wearing and the child’s “out of area” behavior and noted the child “has had limited progress with increasing his ability and tolerance to wear a mask in the school setting,” was not socially distancing and engaged in biting behavior. The team recommended “home-bound instruction through a distance learning platform” with a plan to **“reconvene in 8 weeks to discuss progress.”** The child did not have an FBA, BIP or occupational therapy supports in place prior to his removal from school. He remained on remote status for over 4 months.

OCA AND SDE COMMUNICATIONS

The OCA often alerts the SDE when a particular educational intake presents unique and/or possible systemic concerns – this is especially true when there are possible IDEA violations. In July of 2020, the OCA received a complaint concerning the adequacy of the educational programming for a student with multiple disabilities enrolled in the District and transitioning from Pre-K to Kindergarten. This child was diagnosed with Autism and visual impairment. The OCA began its review and determined that the student’s programming needed improvements, and a PPT was set up for September. The 2020-2021 school year began, and the student was immediately put on remote learning because of his inability to tolerate wearing a mask. The OCA participated in a PPT on September 20, 2020, and the District agreed to return the student to in-person learning. However, soon after that PPT, the District informed the family that the student would not be permitted to return to school for in-person learning. The OCA was notified of that change in decision.

On September 22, 2020, the OCA contacted SDE about the individual situation, and SDE agreed that given the agreement for in-person learning, the District should be reviewing strategies (split the room into 2 rooms, etc.) – especially in a contained classroom with fewer students. Soon after OCA’s conversation with SDE, the District changed course and allowed the student to return to the classroom – until November 16, 2020, when the District put the student back on remote learning per the district-wide directive.

On January 15, 2021, the OCA reached back out to the SDE and advised that OCA was going to conduct a system investigation into the District’s policies and practices with respect to the lack of mask exemptions for children with disabilities and those children’s inability to access remote learning – constituting a potential violation of the IDEA. The OCA inquired about steps that SDE was taking to monitor the circumstances (i.e., the number of students with disabilities who are being taught remotely due to reasons other than parent/guardian preference) that we had alerted it to back in September of 2020, and if so, what those monitoring efforts looked like - and to learn of any efforts by SDE to have those students return to in-person learning.

Discussions between OCA and SDE continued into February and March of 2021. OCA met with SDE officials on multiple occasions, including the bureau chief for Special Education and the (former) agency legal director to discuss the need for state monitoring and potential technical assistance to assist districts and families with these concerns. Specifically, OCA recommended that SDE consider an informational request to school districts regarding how districts were addressing children’s inability to wear a mask, and whether there were other children across the state who were being denied in-person learning due to a disability-related constraint. SDE provided the following information to OCA for this Findings Letter:

In February, the SDE met with a group of special education directors to inquire about this issue. During the meeting the school districts shared the successful strategies that they have employed to increase students' ability to wear masks and a variety of accommodations/additional mitigation strategies employed in rare cases when a student was unable to wear a mask. This information was subsequently shared with the Meriden Public Schools.

With regard to Meriden, the (former) SDE legal director wrote to OCA in February 2021, that SDE officials were reviewing the matter, and that “our focus is on understanding the circumstances in Meriden and providing them support consistent with our guidance, given the information you have

pointed in our direction.” She stated that SDE and representatives from the Department of Public Health were going to meet with Meriden “to better understand the situation and provide additional support from the State perspective.”

RECOVERY SERVICES AND COMPENSATORY EDUCATION

In response to OCA’s request for information about pandemic recovery or IDEA-required compensatory education⁴⁶ for this group of students, the District replied that “individually based discussion occurred for each student” and that “[a]ssessing each student’s needs over the course of the next year will continue to be an ongoing process.” With respect to the specific education offered to the 21 students, the Districts stated that it provided six (6) extra days of education to 13 of the 21 students. The District stated that Extended School Year (ESY) was considered at PPTs for the 21 students. Students who were “eligible” for ESY were provided with “opportunities, including transportation” at several local camps and/or “one week camp sessions at Social Sabby.”⁴⁷ Whether the 21 students were determined to be eligible for ESY for the 2020-2021 school year was unclear. Generally, Middle School students were offered “3 weeks of enrichment activities and extended days at local camps.”

MERIDEN PROTOCOLS FOR 2021-22 SCHOOL YEAR

In Meriden’s newly issued August 9, 2021 public communication, *Safe Return to In-Person Instruction and Continuity of Services Plan*, which is posted to its webpage: “[a]nyone entering a school building is required to wear a mask per Executive Order 12A - All individuals, regardless of vaccination status, must wear a mask through September 30, 2021.” There is nothing in that document that addresses mask exemptions – medical or disability related.

Meriden offers the following exemption forms on its district website:

- Procedures-Meriden Medical Health Mask Exemption
- Parent Permission-Meriden Medical Health Mask Exemption
- Physician-Meriden Medical Health Mask Exemption

There are no forms for *Disability* Mask Exemption anywhere on the District website that the OCA could locate.

⁴⁶ “The IDEA allows ... appropriate remedy for students not provided a FAPE, and the Second Circuit has held that compensatory education is an available remedy under the IDEA to make up for denial of a FAPE. P. ex rel. Mr. and Mrs. P. v. Newington Bd. of Educ., 546 F.3d 111, 123 (2d Cir. 2008) (upholding compensatory education awarded by hearing officer). The award of compensatory education “must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” Doe v. E. Lyme Bd. of Educ., 790 F.3d 440, 457 (2d Cir. 2015) (quoting Reid ex rel. Reid v. District of Columbia, 401 F.3d 516, 524 (D.C. Cir. 2005)).” P. Ex Rel. Mr. and Mrs. P. v. Newington Bd. of Ed., 546 F. 3d 111 - Court of Appeals, 2nd Circuit 2008.

⁴⁷Social Sabby offers program for children with Autism, including a 1-week summer program. As stated on its website; “We are hosting a weeklong camp, to be held at Maloney High School in Meriden from Monday August 9th – Friday August 13th. Camp will run each day from 9a-2p, and the cost is \$50 per day. You may select how many days your child is attending (1-5) and add to your cart to complete your purchase.” Available on the web at: [August Summer Camp - Social Sabby](#).

SPECIAL EDUCATION PROGRAMMING ISSUES

OCA recognizes that the District and its local public health department were making decisions in real time during extraordinary and unprecedented conditions. However, OCA contends that the District's lack of clear and disseminated policies regarding parents' right to seek disability-related mask-exemptions for their children, and the District-wide directive in November 2020 which effectively halted individualized determinations regarding the provision of reasonable accommodations for profoundly disabled children to access in-person education, violated children's rights under IDEA and state and federal anti-discrimination laws.

During OCA's investigation, certain other issues concerning special education programming were brought to light, including the adequacy of the programming being provided to children with disabilities transitioning from the state's Birth to Three program to the District's Pre-K PRIDE Program, including whether students were receiving their education in the Least Restrictive Environment (LRE) and whether their services were uniformly limited due to District program design and allocated resources.

In response to OCA's request for information regarding some of the young children referenced herein, District data shows that the 94 children in the PRIDE program during the 2020-2021 school year were limited by program design to 15 – 15.5 hours of educational programming, provided in a self-contained classroom with no opportunities for inclusion with their non-disabled peers. Overall, the data regarding these 94 students gave rise to questions about whether these children were offered individualized assessments and educational programs in the least restrictive environment.

OCA RECOMMENDATIONS

1. SDE Resolution of OCA Complaint. In accordance with 34 CFR § 300.151, within 60 days of receiving this Findings Letter, SDE should take certain steps with regard to the four children outlined in Part A of this Findings Letter for whom the OCA performed CEPRs, and who the OCA contends were denied their right to a Free and Appropriate Public Education in the Least Restrictive environment as guaranteed by the IDEA and their right to seek reasonable accommodations in accordance with the ADA. Those necessary steps include conducting “an independent on-site investigation” and review all relevant information and make an independent determination as to whether the public agency violated a requirement of Part B of the Act and “issue a written decision to the complainant that addresses each allegation in the complaint and contains - (i) Findings of fact and conclusions; and (ii) The reasons for the SEA's final decision.” See 34 CFR § 300.152. In conjunction with those actions, the SDE should also include procedures “for effective implementation of the SEA's final decision, if needed, including - (i) Technical assistance activities; (ii) Negotiations; and (iii) Corrective actions to achieve compliance.”
2. Compensatory Education. As part of its final decision, SDE should address the concerns outlined in this Findings Letter and include direction regarding compensatory education for impacted students.

3. Differential Monitoring and Enforcement of District's IDEA Compliance.

- a. The practices and protocols by which the District denied certain children with disabilities, outlined in Part B of this Findings Letter, access to essential instruction and support, particularly the November 2020 letter to parents requiring universal mask-wearing regardless of the need for accommodation, denied these children their right to a Free and Appropriate Public Education in the Least Restrictive environment as guaranteed by the IDEA and their right to seek reasonable accommodations in accordance with the ADA and requires that the SDE engage in IDEA-required differential monitoring of district policies and practices with regard to these and similarly situated children.
- b. SDE should engage in targeted state-wide monitoring and enforcement activities to ensure that all school districts' policies and protocols going forward provide students with disabilities access to a free, appropriate, public education in the least restrictive environment, and that students denied in-person special education and related services receive adequate compensatory education.
- c. Based on the concerns identified in this Findings Letter regarding the provision of individualized assessment and service delivery in the least restrictive environment for young children in the District's special education PRIDE Program, the OCA recommends that SDE, pursuant to its authority and obligation under IDEA to conduct differential monitoring and enforcement of districts' IDEA compliance, engage in a fact-finding process, including a review of retrospective and prospective data, to ensure that young students with disabilities in the District are receiving a free, appropriate, public education in the least restrictive environment. Such a review would also include an examination of District practices and protocols for the evaluation of entering students and the allocation of hours and resources to those students on an individualized basis.

4. Direction to Districts Regarding the Requirements of IDEA and Federal Anti-Discrimination Laws for All Students.

OCA recommends that SDE, in consultation with disability-rights organizations and entities charged with enforcing anti-discrimination laws, develop and disseminate direction for school districts regarding the rights of students and their families to receive their education in the least restrictive environment, and to seek individual and interactive determinations regarding the need for reasonable accommodations to support children with disabilities.

We appreciate your review, and we would like to thank the District for its timely cooperation with OCA's investigation.

Sincerely,

Sarah Eagan

Sarah H. Eagan, Child Advocate

Cc: Tanya Hughes, JD, Connecticut Commissioner on Human Rights and Opportunities