



STATE OF CONNECTICUT OFFICE OF THE CHILD ADVOCATE

INVESTIGATIVE REPORT: EDUCATIONAL SERVICE DELIVERY FOR PRESCHOOL AGE CHILDREN WITH DISABILITIES ENTERING NEW BRITAIN PUBLIC SCHOOLS

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The first 5 years of a child's life is a crucial period during which 90% of brain development occurs. It is this phase that lays the foundation for a lifetime of learning.

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Introduction

The Office of the Child Advocate (“OCA”) is an independent state oversight agency directed by law to investigate and report on the efficacy of child-serving systems. OCA has authority to investigate inquiries or complaints regarding children receiving state funded services for the purpose of recommending changes in state policy and proposing systemic reforms pursuant to CGS §§ 46a-13k *et. seq.*

Complaint Made with the Office of the Child Advocate Regarding Inadequate Educational Supports for Children With Special Needs Transitioning from State’s Birth to Three Services program to the New Britain Public Schools

In May, 2015 OCA received complaints alleging that the New Britain Public Schools (hereinafter “The District”) systematically failed to develop or deliver appropriate special education services for preschool-age children with disabilities or developmental delays who were transitioning into the District from the state’s Early Intervention service program (known in Connecticut as “Birth to Three”). The complainants alleged to OCA that these young children, all of whom were identified by treating clinicians, providers and family members as having specific and sometimes significant disabilities or developmental delays, were systematically denied Individual Education Programs commensurate with the extent of their needs.

State and federal law require each state to offer developmental support services to children age birth to 36 months who have a developmental delay or impairment (or a medical condition likely to result in a delay or impairment).¹ Supports are to be provided in natural settings, including home and the community, and are designed to both support the child and work with the parent to understand the child’s needs and support the child developmentally.² In Connecticut this program is called Birth to Three.³

The law also requires that children served by Birth to Three be timely referred and transitioned to the local public school district prior to age 3 for a determination of the child’s eligibility for special education services.⁴ Receipt of Birth to Three services *does not automatically* mean the child will be eligible for special education services from the public school system. The law requires that public school districts identify, evaluate, and appropriately serve children age 3 to 21 who have a disability, impairment or other condition that interferes with the ability to make educational progress. Districts must work with the Birth to Three provider, district personnel and the child’s parent to evaluate the child in all areas of suspected disability, determine eligibility for special education services, and if the child is eligible, create an Individual Education Program that will bridge the gap between the child’s disability and the general education curriculum. The

¹ IDEA (C) Sec. 634 (state eligibility for federal funding).

² IDEA Sec. 632 (4)(G) (definitions – natural environments).

³ CT Gen. Stat. Sec. 17a-248.

⁴ CT Gen. Stat. Sec. 17a-248d, (c).

Individual Education Program must include a description of the child's needs, his or her current level of functioning across academic and developmental domains, the goals for the child, and the strategies, modifications and support services that will be provided to assist the child in meeting the goals. Services and academic/therapeutic interventions may appropriately vary as the child transitions from a Birth to Three provider to the public school system.

In this case, complainants alleged that children were systematically denied supports and services they were entitled to as they transitioned from the state's Birth to Three program into the local school district. OCA commenced an investigation into these allegations to determine whether the District appropriately evaluated and served children transitioning into the District from Birth to Three. OCA also examined whether the services provided to eligible children by the District were commensurate with their specialized needs and identified disabilities,⁵ and whether the District appropriately included parents in educational planning and service delivery. OCA's methodology, outlined in detail below, included review of over fifty (50) children's educational records, site visits, and interviews with District personnel. The names of all the children referenced throughout this report have been changed to protect confidentiality.

As a foundational matter, OCA observes that early educational supports can make a lifetime of difference for children. Experts have found that when properly executed, early educational intervention "can work a miracle, [allowing an estimated] 75-80% of the disabled children [to enter kindergarten] alongside every other ... five-year-old—without needing further supplemental special education."⁶ These positive outcomes substantially advance the [Individual with Disabilities Education Act]'s primary goal: 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.'⁷

Summary of Findings

OCA's year-long investigation raised serious concerns about the adequacy of educational service delivery for young children with developmental disabilities or delays who transitioned into the District from the State's Birth to Three program between June 2014 and June 2015. OCA's investigation raised grave concerns as to whether the District utilized or even had access to

⁵ IDEA requires that that IEPs include information regarding how the child's "disability affects the child's participation in appropriate activities," and a statement of "academic and functional goals designed to ... Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum." IDEA, Part B, C.F.R. §300.320.

⁶ *DL v. District of Columbia*, 845 F. Supp. 2d 1, 5 (D.D.C. 2011) (internal quotations omitted).

⁷ *DL v. District of Columbia*, 845 F. Supp. 2d 1, 5 (D.D.C. 2011) (internal quotations omitted) *citing* 20 U.S.C. § 1400(d)(1)(A) (holding the District of Columbia responsible for identifying and providing appropriate special education services to preschool age children with disabilities and developmental delays).

appropriate resources to support educational service delivery consistent with best practices or legal requirements for children with varying disabilities. OCA identified an alarming number of children with significant developmental delays who received services inconsistent with best practices or state guidelines.

OCA specifically found:

- The District received more than 150 children in transition from Birth to Three during the 2014-15 school year. OCA reviewed a sample of approximately 1/3 (55) of these children's records.
- 33/55 children were found eligible to receive special education services.⁸ The District did not find some children eligible for special education services despite documented developmental delays or impairments.
- The District did not provide adequate special education hours for all children, particularly those with significant developmental support needs.
- The District did not provide extended day special education hours (e.g., 9 a.m. to 2 p.m. or 9 a.m. to 3 p.m.) for any child in the sample, regardless of the child's need for intensive and frequent support services, and most children received programming for a only 5 or 7.5 hours per week (a.m. or p.m.).
- Educational records review raised significant concern that the District did not provide appropriate services for children who entered the District already clinically diagnosed as having an Autism Spectrum Disorder (ASD). Some children received minimal or even no direct speech and language therapy. Most children received no occupational therapy. No child's record reviewed by OCA documented provision for services from a behaviorist, recommendations for 1:1 support, or hours of instruction consistent with best practices for children with Autism. Site visits gave rise to additional concerns about the dearth of evidence-based curricula or methodologies consistently being utilized for children with ASD, or whether adequate support and training for staff was provided to educate children with Autism. While federal law does not require the automatic provision of certain services specifically to match a particular diagnosis (such as Autism), the fact that commonly needed services were missing from *every IEP* that OCA reviewed for a child previously diagnosed with ASD was a red flag that children were being denied critical supports that they needed.
 - 12 of the children whose records were reviewed by OCA came into the District with a clinical diagnosis of Autism Spectrum Disorder. After transition from Birth to Three to the District, however, *none of the children were formally identified* on their IEPs as having a primary disability of Autism. The only child who was

⁸ Seven parents revoked authorization for Birth to Three to refer their children to the District.

Six records did not include all of the data required to properly analyze the appropriateness of services (e.g. missing Birth to Three data, missing pages of the IEP). The District found 9 children ineligible to receive special education services. Children's identified disabilities included Autism Spectrum Disorder ("ASD"), Attention Deficit Hyperactivity Disorder ("ADHD") communication delays, cognitive and physical delays or impairments.

identified as Autistic for educational planning purposes entered the district with an existing education plan developed by another public school district.⁹

- Educational records review raised significant concern that the District did not provide adequate related services such as speech and language or occupational therapy supports for children who had profound deficits in language, play skills or sensory processing.
- The District did not have adequate training or supervision to support the implementation of multi-disciplinary evaluations and education plans for all students with disabilities. Of the 55 records reviewed, the District conducted its own “transdisciplinary evaluation” in only 3 of them, relying instead on information from the Birth to Three provider for the initial determination of special education eligibility and creation of an Individual Education Program. Notably however, despite reliance on Birth to Three records, the District often *eliminated* supports from a child’s education plan that the child had previously been receiving through Birth to Three.
- The District lacked effective policies or practices to ensure that parents had access to appropriate training about their child’s educational needs and services. Of the records reviewed, no child’s educational plan contained a parental training component despite federal law requiring such training as a related service when necessary to support a child’s educational progress.
- Although site visits conducted in April and June of 2016 revealed classrooms that were comfortable and organized and staff were appropriately committed to the children they serve, visits led to serious concerns regarding the provision of adequate services for children with significant developmental support needs. Staff training was identified by reviewers as an immediate need, along with improved protocols for assessment, systematic instruction, multi-disciplinary planning for children, and an extension of preschool hours for many of the children served.

⁹ Connecticut State Department of Education, Bureau of Special Education, *Guidelines for the Identification and Education of Children and Youth Autism*, (CSDE Guidelines) July, 2005, revised 2011, found on the web at http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/Guidelines_Autism.pdf. Districts are not required to classify young children as having Autism for educational planning purposes but may utilize the category of “developmental delay” as the District did here. However, the IEP must still reflect needed services, supports and modifications to support the child in all areas of suspected or actual disability. Children clinically diagnosed with ASD will have difficulties (in varying degrees) with social interaction, communication and repetitive behaviors. IEPs developed for children with Autism would be expected to include information reflective of these difficulties and include commensurate supports and interventions consistent with best practices.

District Response

OCA found the District to be extremely cooperative with this investigation, and OCA extends its appreciation to District staff for these efforts. During site visits OCA met with District personnel who were committed, passionate and invested in producing high quality outcomes for their three and four year old students.

Leadership personnel in the District changed substantially during the latter months of OCA's investigation. In April, 2016 a new Superintendent began her tenure, subsequently appointing a new director of Pupil Services and other new leadership personnel. OCA continued to meet with District personnel. They have been very receptive to OCA's findings and have already begun to reform certain District practices for preschool-age children with disabilities. Leadership has expressed a commitment to reform and a vision for robust services for all children to begin at the earliest age possible. The District recently identified a consultant who will be doing a needs assessment and will be assisting the District with drafting a comprehensive plan to improve the delivery of its preschool special education services.

The District's response to OCA's draft report, dated September 22, 2016, included details regarding several actions the District has been and is committed to taking to ensure quality service delivery for young children with disabilities. As a prefatory matter the District reported to the OCA the following:

The District offers and provides services to general education and special education preschool students across the full continuum. For special education students, the District offers and provides services to students in both integrated and self-contained settings, as determined by individual needs identified through the [Planning and Placement Team].... All preschool students in the District, whether identified [as eligible for special education services] or not, are provided with transportation to and from school.

The OCA deeply appreciates the attention of the District to the concerns raised by this review and the commitment displayed by new District leadership to ensuring improvements across its system that will assist its young students. District leadership acknowledged the resource challenges affecting school districts in recent years and the need to use existing resources innovatively and effectively. The District also acknowledged that resources remain a challenge as they endeavor to implement change for all students. The District's action plan includes attention to training, evaluation, related service delivery, increasing access over time to extended school day programming, parent training and data collection. The District's full action plan is contained in the Appendix to this report.

Methodology

1. OCA obtained and reviewed educational records of 55 students (out of approximately 150 transitioning 3 year old students) transitioning from Birth to Three to the District during 2014 and 2015. These records were considered a random representative sample of the population of children transitioning into the District from Birth to Three. Records reviewed by OCA regarding the 55 children included the following:
 - Birth to Three Individual Family Service Plans, evaluations and discharge reports.
 - Individualized Education Programs ("IEP") and records of Planning and Placement Team ("PPT") meetings.
 - Other provider evaluations or recommendations submitted to the District from community providers, pediatricians or hospitals.
2. OCA also reviewed memoranda provided by the District in response to specific questions about their preschool programs.
3. OCA consulted with Drs. Michael D. Powers and Mark J. Palmieri from the Center for Children with Special Needs on all aspects of this investigation and report.¹⁰
4. In April and June 2016, OCA toured District preschool programs at Gaffney Elementary School and the Roosevelt Early Learning Center for the purpose of viewing and evaluating the District's self-contained and integrated classrooms, conducting interviews with staff, and observing the interaction between teachers and students.
5. OCA conducted multiple interviews with District staff.
6. OCA conducted multiple interviews with Birth to Three provider organizations.
7. OCA provided the District with a draft of this investigative report on August 12, 2016 and the OCA reviewed the District's response and Action Plan, dated September 22, 2016.
8. OCA reviewed findings from this investigation with the State Department of Education and the Office of Early Childhood/Birth to Three Division.

¹⁰The Center for Children with Special Needs & The Center for Independence is an interdisciplinary clinic specializing in the diagnosis, evaluation, and treatment of children and adolescents with complex developmental disabilities. Dr. Powers specializes in the diagnosis, assessment, and treatment of individuals with autism and related neurodevelopmental disorders. Dr. Palmieri oversees school consultation services to lead capacity development initiatives which establish sustainable educational programs for individuals with Autism Spectrum Disorder and other complex neurodevelopmental disabilities.

The Law: Early Intervention for Children with Disabilities and the Transition to Special Education

The Individuals with Disabilities Education Act (“IDEA”) entitles all school-age children with disabilities to receive a free appropriate public education (“FAPE”) to meet their unique needs and prepare them for further education, employment, and eventually, independent living.¹¹ IDEA has four distinct sections. The Connecticut Birth to Three program is a federal grant program, in compliance with Part C of IDEA, that assists in operating comprehensive early intervention programs for infants and toddlers with disabilities or developmental delays, age 0 through age 2, and their families. In Connecticut, the Office of Early Childhood (“OEC”) is the lead agency that administers the Birth to Three System through contracts with local providers.

Under Part C of IDEA, a child is automatically eligible to receive services from the state’s Birth to Three program if the child has a documented medical condition expected to lead to a developmental delay. A child may also qualify to receive Birth to Three services if an evaluation by professional staff from two disciplines substantiates that the child has a significant developmental delay. During this process, local Birth to Three teams assess children in five developmental areas including physical development, communication skills, adaptive skills, cognitive skills and social-emotional development to determine the child’s individual needs. Once a child’s needs are identified, services are provided in a “natural environment,” comparable to those provided to children without disabilities. A key principle of the Birth to Three program is to provide parents and caregivers with the skills that they need to support the child in all areas of development.

Part B of IDEA lays out the educational requirements for children who transition from the Birth to Three program and into a local public school district and who have disabilities or developmental delays that adversely affect educational performance and for which the child requires special education services.¹²

When a child is close to turning three years old, Birth to Three providers, with the consent of the parent or guardian, refer the child to the local school district for a determination of eligibility for special education and related services. The district then convenes a meeting¹³ for the child and his or her family. Through the meeting and evaluation process, a determination will be made as

¹¹ 20 U.S.C. § 1412(a)(1)(A).

¹² 20 U.S.C. § 1401(3). Disabilities identified in the law include intellectual disabilities, hearing impairments, speech or language impairments, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities or multiple disabilities.

¹³ The district will convene a formal Planning and Placement Team meeting to discuss the process for determining the child’s eligibility for special education services.

to whether the child is eligible for special education services and if so, what services the child needs to address his or her disability/s and make continued educational and developmental progress. The district is required to ensure that the child is assessed in all areas related to the suspected disability, "including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities."¹⁴ Federal law requires a smooth and effective transition for the child between early intervention services and preschool special education.¹⁵

Per federal and state law, a child shall be found eligible for special education and related services if the child has a disability or developmental delay that impairs his or her ability to make progress in school.¹⁶ Related services are supports that may be needed to assist a child with a disability to benefit from special education.¹⁷ Related services can include, but are not limited to: speech and language therapy, physical or occupational therapy, counseling, transportation, social work supports, and parental training.¹⁸

If a child is found eligible for special education, the Planning and Placement Team¹⁹ will create an Individual Education Program (IEP).²⁰ The IEP is the school record which documents the participants in the educational planning process, the primary disability impacting the child, the present levels of the child's performance in various areas of functioning (cognitive, academic, social-emotional), what the goals and objectives will be for learning, how progress will be measured, and what services and supports will be provided to help the child make progress.²¹ All supports and services must be research-based or otherwise found to be demonstrably effective.²² All decisions for the IEP are made by the team members collectively.²³

¹⁴ 34 C.F.R. § 300.8, 300.304.

¹⁵ 20 U.S.C. § 1412(a)(9).

¹⁶ 34 C.F.R. § 300.306.

¹⁷ 34 C.F.R. § 300.34.

¹⁸ *Id.*

¹⁹ The Planning and Placement Team is Connecticut's term for the Individual Education Program planning team. The PPT is comprised of district administrator/s and educators, the parent/s, and individuals knowledgeable about the child and the development of his or her program as well as individuals knowledgeable about assessments and evaluations the child has received.

²⁰ 34 C.F.R. § 300.34.

²¹ 34 C.F.R. § 300.320.

²² Under federal law the IEP must include a statement "of the special education and related services and supplementary aids and services, based on *peer-reviewed research to the extent practicable*, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child" to make progress towards goals and objectives and to be educated with other children with disabilities and nondisabled children. 34 C.F.R. § 300.320.

²³ 34 C.F.R. § 300.321 (2013). If a parent disagrees with a proposed recommendation of the District, or vice versa, the IEP documents what the disagreement is and the parent/s can avail herself or himself of dispute resolution options, including mediation, the filing of an administrative complaint, or participation in an administrative hearing.

EVIDENCE-BASED PRACTICE

Both the Individuals with Disabilities Education Act (IDEA) and Elementary and Secondary Education Act (ESEA) require that schools use programs, curricula, and practices based on “scientifically-based research” “to the extent practicable.” This means that whenever possible, the educational interventions being used must be strongly supported by evidence from well-conducted research studies.

Children identified as eligible for special education and related services are entitled to the services needed to assist them in all areas of the suspected disability.²⁴ Individualized programming for a child will include specific accommodations and program supports and may include help from a speech and language pathologist, an occupational therapist, a social worker, and/or a Board Certified Behavior Analyst (Behaviorist).

The school district must ensure that the preschool age child with a disability receives an appropriate education and services in the least restrictive environment, regardless of whether the district operates a public preschool program for children without disabilities.²⁵ The district “may provide special education and related services to a preschool child with a disability in a variety of settings, including a regular kindergarten class, public or private preschool program, community-based child care facility, or in the child’s home.”²⁶

²⁴ 34 C.F.R. §300.320 (The IEP shall include “a statement of measurable annual goals, including academic and functional goals designed to—Meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and Meet each of the child’s other educational needs that result from the child’s disability.” The IEP must also include a statement regarding the special education and related services that will be provided to the child “and a statement of the program modifications or supports for school personnel that will be provided to enable the child—To advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum... and to participate in extracurricular and other nonacademic activities; and To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.”

²⁵ See “Dear Colleague” letter, dated February 29, 2012, regarding preschool placement options under federal law, issued by the United States Office of Special Education and Rehabilitative Services, found on the web at <https://www2.ed.gov/policy/speced/guid/idea/memosdcrltrs/preschoollre22912.pdf>.

²⁶ Id. at 4. OSEP advisory states that while districts do not have to provide a public preschool program, they must still provide appropriate services and supports for a child with a disability and must explore alternative methods to ensure that the least restrictive requirement is met for the child. This may include working with public agency-operated preschool programs such as Head Start, enrolling children in private preschool programs, locating classes for preschool children with disabilities in regular elementary schools or providing home-based services. “If a public agency determines that placement in a private preschool program is necessary for a child to receive [a Free Appropriate Public Education], the public agency must make that program available at no cost to the parent.”

Children receiving special education services may be eligible for Extended School Year services if so determined by their Planning and Placement Team.²⁷ Extended School Year Services (ESY) will be provided at the end of the regular academic year and/or during the winter break.

Above all else, the *foundational principles* of IDEA are the emphasis on family participation in decision-making and the need for *individualized* planning on behalf of a child. Cookie-cutter programs that are delivered without attention to the individual needs of the child or without adequate input from parents violate the letter and spirit of IDEA.

This report addresses the District's compliance with IDEA, best practices for young children with disabilities, and focuses on the provision of recommended services to children already identified with a range of developmental delays and impairments.

Finding: The District found some children ineligible for special education services despite documented developmental delays or impairments.

- *Emilio²⁸ came into the District with documented delays in daily living/adaptive skills (4th percentile), cognition (7th percentile) and "significant delays" in social-emotional functioning.²⁹ Per the last evaluation performed by Birth to Three six months prior to Emilio's transition to the District, the child didn't understand the concept of "hot" items, he continued to put dangerous items in his mouth, he couldn't find an object once hidden under a cup by the evaluator, he could not match shapes or colors, and he was not interested in books and would eat the pages if left alone with the book. Despite these documented concerns, and the six month-old evaluation from Birth to Three, no updated assessments were completed by the District and Emilio was found ineligible for special education services through the PPT process.*
- *Olander³⁰ came into the District in June 2015 with a history of being served by Birth to Three. His most recent developmental evaluation was over a year old (Birth to Three had previously identified Olander's delays in adaptive, cognitive and communication development) so the District initiated its own evaluation to determine whether Olander was eligible for special education services. Though the District recommended a "transdisciplinary evaluation," ultimately it performed an evaluation for "speech*

²⁷ 34 C.F.R. §300.106 requiring school districts to "ensure that extended school year services are available as necessary to provide [a Free Appropriate Public Education (FAPE) within the meaning of federal special education law], ... Extended school year services must be provided only if a child's IEP Team determines, on an individual basis... that the services are necessary for the provision of FAPE to the child. In implementing the requirements of this section, a public agency may not—Limit extended school year services to particular categories of disability; or Unilaterally limit the type, amount, or duration of those services."

²⁸ Name changed.

²⁹ Evaluation was performed 6 months prior to his transition to the District.

³⁰ Name changed.

articulation delays” only and did not conduct any other assessments of Olander’s functioning in other areas. The speech articulation evaluation noted that “formal assessment was not possible” of the child given that he was so distracted during the process and could “not attend” to the evaluator. The evaluator noted through observation that the child’s phonological development and articulation were “age appropriate.” However the evaluator also observed possible deficiencies in Olander’s capacity for attention and engagement. She wrote that “in light of observations made throughout the assessment process, it is recommended that the parent and the teacher carefully monitor Olander’s ability to attend and maintain attention adult-led activities,” and that The District should “consider referral to Response to Intervention” supports for the child. Though no additional evaluations followed, the District concluded Olander was ineligible for special education supports.³¹

- Demian’s³² family had an initial planning/eligibility meeting with the District in December, 2014. His most recent developmental evaluation was conducted by the Birth to Three provider four weeks prior. The evaluation determined that Demian remained delayed across multiple domains, and was 1.5 and 1.47 standard deviations below the norm in both adaptive (daily living) skills and cognitive development, respectively.³³ The record contains no additional assessments performed by the District and Demian was found ineligible for special education services through the PPT process.³⁴
- Trent³⁵ entered the district with a recent assessment from his Birth to Three provider indicating that all areas of his development were “age appropriate.” However Trent’s record also indicated that he had been evaluated and diagnosed as having an Autism Spectrum Disorder³⁶ while with Birth to Three. At the time of his referral to the District, his individual family support plan with Birth to Three noted that Trent was “still walking up to strangers,” “still changing shoes constantly,” “he had difficulty requesting items,” and he had “difficulty following directions.” No follow up to these concerns is documented in the

³¹ On April 29, 2016 the Federal Office of Special Education and Rehabilitative Services (part of U.S.D.E.) issued a memo to states that “Response to Intervention strategies” may not be used to delay or deny a timely evaluation for preschool children suspected of having a disability.

<http://www2.ed.gov/policy/speced/guid/idea/memosdcitrs/oseprtppreschoolmemo4-29-16.pdf>

³² Name changed.

³³ Based on the utilization of the Battelle Developmental Inventory-II (BDI). “The BDI is an early childhood instrument based on the concepts of developmental milestones. As a child develops, he or she typically attains critical skills and behaviors sequentially from simple to complex. BDI helps measure a child’s progress along this developmental continuum by both global domains and discrete skill sets. BDI is aligned to the three OSEP Early Childhood Outcomes, as well as the Head Start Child Outcomes.” Riverside Publishing Website.

<http://www.hmhco.com/hmh-assessments/early-childhood/bdi-2#uses>.

³⁴ As stated above, IDEA requires that in assessing the child in “all areas related to the suspected disability,” the evaluation must be “sufficiently comprehensive to identify all of the child’s special education and related service needs.” 34 C.F.R. § 300.304.

³⁵ Name changed.

³⁶ Concerns noted, Verbal Behavior Milestones Assessment and Placement Program (VBMAPP) performed, which led to diagnosis. The VBMAPP is an assessment, skills-tracking system and curriculum guide to assess the language, learning and social skills of children with autism or other developmental disabilities.

record. The District performed no additional evaluations and Trent was disqualified from receiving special education services.

All of the examples above raise several concerns. First, a child with a “developmental delay” that causes the child to require special education is a child eligible for such special education as defined by state law.³⁷ State statute defines a “developmental delay” as a “significant delay in one or more of the following areas: (A) Physical development; (B) communication development; (C) cognitive development; (D) social or emotional development; or (E) adaptive development, as measured by appropriate diagnostic instruments and procedures and demonstrated by scores obtained on an appropriate norm-referenced standardized diagnostic instrument.”³⁸

According to a publication from the Connecticut State Department of Education regarding the identification and education of children and youth with Autism, a child scoring more than 1.5 standard deviations below the average in social interaction, communication skills, including receptive and expressive language and pragmatic skills, and behavior, is considered evidence of “significant disability” warranting evaluation, support or intervention.³⁹ In the examples above, Emilio, Olander and Demian all had documented delays that placed them significantly behind other children their age in *multiple* areas of development.

Second, Districts are required to ensure children are evaluated in all areas of suspected disability, and while a district may rely in part on Birth to Three assessments, the eligibility determination process must include up-to-date information about the child’s level of functioning, including input from parents and relevant community providers.⁴⁰ Olander was recommended by the District for a trans-disciplinary evaluation though he *never received this* and concerns found by the speech and language therapist during her observation of the child were not followed up on as part of the evaluation process. Emilio’s most recent developmental evaluation was six months old and identified him as moderately and severely delayed in cognitive and adaptive functioning. No updated evaluations were performed for Emilio prior to his being disqualified from special education services. Demian was significantly delayed in at least two areas of development and

³⁷ Conn. Gen. Stat. § 10-76a.

³⁸ Conn. Gen. Stat. § 10-76a(6).

³⁹ CSDE Guidelines, *supra* n. 9, at 22. “When all assessments are completed, the PPT determines whether the student demonstrates a disability based upon the available information. A disability may be measured by standardized instruments, in which case scores more than 1.5 standard deviations below the average in [various domains] are considered evidence of significant disability.”

http://www.sde.ct.gov/sde/lib/sde/PDF/DEPS/Special/Guidelines_Autism.pdf.

⁴⁰ Federal law requires that the initial evaluation process ensure the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 CFR § 300.304(c)(4). Additionally the law requires that in conducting the evaluation, the district “use a variety of assessment tools and strategies to gather *relevant* functional, developmental, and academic information about the child” and that “the evaluation is sufficiently comprehensive to identify all of the child’s special education and related service needs.” Federal regulation § 300.320 requires that the IEP include a “statement of the child’s *present levels* of academic achievement and functional performance, including ... For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities.”

yet ultimately found not eligible for services either without documented evidence of additional assessments or evaluations.

These cases all *raise red flags*⁴¹ regarding the adequacy of the evaluation process, the transition from Birth to Three and the loss of services and continuity for children whose educational records document numerous developmental concerns.

Finding: Records Revealed Concerns that Communication Supports May be Inadequate for Children with Significant Language Delays or Who Have No Language at All.

Of the cohort of children whose records were reviewed by OCA, the District found thirty-one (31) preschool children eligible to receive direct therapeutic support from a speech and language pathologist. Records indicated that individual children's communication delays ranged from mild to significant (non-verbal). Most children (n=27) received the minimum of direct support from the speech therapist, only a half-hour a week *or less*, regardless of individual needs. At least two children diagnosed with Autism and who had no meaningful language received no direct services at all.

- *When three year old Randy*⁴² *transitioned into the District he was identified as globally and significantly developmentally delayed with almost no meaningful language and limited awareness of other children. His most recent developmental assessment from the Birth to Three provider noted that Randy could not attend to any task for longer than a minute. The Individual Education Program developed by the District provided for only three mornings a week of special education preschool supports, two and one-half hours per morning. His plan provided for no direct speech and language supports though this was Randy's most delayed area of development—raising concern about the appropriateness of his program.*⁴³
- *When Jimmy*⁴⁴ *was close to turning three and transitioning into the District he was developmentally delayed in multiple areas. Only weeks prior to his educational planning*

⁴¹ OCA cannot always draw a conclusion as to other information that may have contributed to the decision-making process but which may not have been documented. OCA's conclusions are that records, combined with site visits and staff interviews, raise *serious concerns* about the District's compliance with IDEA mandates during the period of time under review.

⁴² Name changed.

⁴³ His IEP called for fifteen minutes per week of consultation by a therapist, but no direct service delivery to the child.

⁴⁴ Name changed.

meeting with the District, Jimmy received a pediatric developmental evaluation. The doctor noted that Jimmy was significantly delayed with language and it was recommended that he receive direct one-to-one speech therapy. Jimmy's most recent Birth to Three assessment observed that he was "unable to understand commands that were presented verbally only... unable to identify family members during the evaluation... [and] responded inconsistently to his name...." Jimmy was estimated to have a less than five word vocabulary, and he made inconsistent eye contact with adults. Jimmy's receptive language (how much he could understand) was determined to be three standard deviations below the norm for children his age, and he was therefore identified as having a "significant delay" in communication, with concurrent delays in cognitive ability, personal social skills and daily living skills. Jimmy received only three mornings a week of special education preschool supports and a half of an hour a week of direct speech and language supports—raising concern about the adequacy of his program.⁴⁵

- *Xander⁴⁶ was three years old when he entered the District already diagnosed with Autism. He was identified as having global developmental delays and was non-verbal. Xander did not initiate play and he did not vocalize when greeting familiar adults. Although Xander's IEP identified him both in his plan and in accompanying forms as having significant speech and language needs, the IEP developed by the District provided for no direct speech and language supports.⁴⁷ Xander had other significant challenges. He had trouble scribbling and couldn't extend his finger to point, he couldn't run ten steps without falling and he couldn't kick a ball - all significant deficits for a child his age. Despite these gross and fine motor challenges, Xander received no occupational therapy and no physical therapy as related special education services. While with Birth to Three, Xander had received both direct speech and direct occupational therapy supports, as well as direct service with a Board Certified Behavior Analyst.*

Speech and language therapy is often provided for children who have disorders with producing language or understanding language and putting language together. Children may have an *articulation* disorder, which creates difficulties in producing sounds or saying words correctly, or a fluency disorder, such as stuttering. Speech and language therapists work with children to overcome these challenges and improve communication. Therapists will have a master's degree and certification or licensure in the field of speech-language therapy. They evaluate the specialized needs of the child and devise an appropriate, individualized, treatment and education plan. Services may be provided one-on-one, in a small group, or directly in the classroom.

⁴⁵ Children with global and significant developmental delays or impairments often benefit from more intensive and comprehensive special education preschool supports. See pages 20-23 for more discussion regarding the hours of service delivery offered by the District and how the short duration of programming does not meet the needs of children with more extensive disabilities.

⁴⁶ Name changed.

⁴⁷ The IEP called only for indirect consultation each month, but no direct therapy for the child.

From a best practices standpoint, children with ASD require intensive therapy to develop attention capacity, understand and use gestures to communicate and follow directions. The therapist will help the child understand and use words with augmentative or alternative communication such as picture books and assistive technology. Not all hours of communication support must be provided by the therapist; therapists can also train teachers, paraprofessionals and parents on strategies that will continue to support and develop children's communication abilities. However, regular and frequent contact with the therapist is often important to assess and evaluate the child's progress and reinforce teaching strategies. Children with ASD should have clear functional communication goals, a written program to assist with communication development and skill acquisition, a framework for systematic teaching of new skills and the collection of data to review progress and modify the program where necessary.⁴⁸ Speech and language therapy is available as a "related service" under IDEA for children who require such services to help them benefit from the special education program.⁴⁹ While a particular related service is not automatically appropriate for a child simply due to the fact of a child's particular disability,⁵⁰ OCA notes that speech and language services are *often* critically important for children with Autism Spectrum Disorders as well as for children who have already been found to have significant deficits in communication. Additionally, the federal government's Office of Special Education and Rehabilitative Services issued a "Dear Colleague" letter in 2015 addressing the specific concern that young children with autism spectrum disorders were *not receiving appropriate speech and language services*.⁵¹

Though OCA does not find that all children served by the District were denied appropriate speech and language services, OCA does find that multiple children with significant communication deficits received minimal or no direct speech and language supports and these findings present grave concerns regarding the adequacy of the children's IEPs.⁵²

⁴⁸ For more information regarding speech-language treatment of Autism, see the Autism topic on the American Speech-Language-Hearing Association webpage, <http://www.asha.org/PRPSpecificTopic.aspx?folderid=8589935303§ion=Treatment>.

⁴⁹ 34 C.F.R. 300.34(a). Federal regulations define related services to mean "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social services in schools, and parent counseling and training."

⁵⁰ The PPT will look to cause, nature and impact of impairment on the child's access to education.

⁵¹ Found on the web:

<http://www2.ed.gov/policy/speced/guid/idea/memosdcrltrs/dclspeechlanguageautism0706153q2015.pdf>

⁵² The District's September 22, 2016 response to OCA's draft report specifically disagreed with OCA's statement that there are children with significant communication deficits who received "minimal or no direct speech and language supports." However two of the three examples included in the lead to this section describe children who had significant communication deficits and for whom no direct speech and language therapy was provided. The District's action plan, also dated September 22, 2016, acknowledges the "high need for Speech and Language

Moreover, to the extent that speech and language supports may be imbedded into a child's daily instruction, OCA reviewers saw scant evidence in records or during site visits of data collection or written programming for children with significant developmental impairments, including communication delays. Additionally OCA concludes that there is little gap between "best educational practices" for children with disabilities and the requirement under IDEA that each child's IEP include information regarding services and supports provided to the child that are based on "peer-reviewed research to the extent practicable"⁵³ so that the child can make progress towards his or her goals and objectives.

Working intensively with young children who have communication deficits is critically important given the research showing the impact of poor communication on other critical areas of development. There is a longitudinal relationship between behavioral, emotional and social difficulties of students with a history of specific language impairment.⁵⁴ The denial of appropriately intensive communication supports for children with profound speech and language deficits has a detrimental effect for children across all areas of development. In young children with social impairments and restricted and repetitive behaviors, recent studies suggest that expressive communication skills are also associated with social skills for children with ASD.⁵⁵ Children with expressive language delay are also more likely to have social-emotional problems.⁵⁶ Put another way, young children who have difficulty communicating are more likely to develop or already exhibit challenges in behavioral or emotional development. Illustrative of this point are the records of multiple children entering the District who earned significantly low evaluation scores in communication *and* social emotional areas.

Finding: The District Discontinued Occupational Therapy for All Students Entering the District From Birth to Three and Who had Previously Received that Service from Birth to Three.

- *When Betsy⁵⁷ entered the District from Birth to Three she was already diagnosed with Autism and presented with associated developmental delays. The most recent developmental evaluation, performed when Betsy was thirty-four months old showed her daily living/adaptive skills, social-emotional abilities and communication skills to*

services across the District," and that the District "is in the process of hiring another full time speech clinician to assist with the needs of our speech and language delayed preschoolers."

⁵³ 34 C.F.R. § 300.320.

⁵⁴ M.C. St. Clari, et al., *A Longitudinal Study of Behavioral, Emotional and Social Impairment (SLI)*, 44 JOURNAL OF COMMUNICATION DISORDERS 186 (2011).

⁵⁵ C. Park, et al., *Brief report: The Relationship Between Language Skills, Adaptive Behavior and Behavior Problems in Pre-Schoolers with Autism*, 42 JOURNAL OF AUTISM & DEVELOPMENTAL DISORDERS 2761 (2012).

⁵⁶ R. C. Tervo, *Language Proficiency, Development, and Behavioral Difficulties in Toddler*, 46 CLINICAL PEDIATRICS 530 (2007).

⁵⁷ Name changed.

be in the 1st, 2nd and 3rd percentile respectively for children her age. The assessments completed by Birth to Three prior to her transition observed that Betsy did “not initiate social contact, she would play near but not with other children and she had difficulty self-soothing.” She was not responding consistently to verbal commands and she relied primarily on gestures to communicate. Betsy’s records indicated she received one hour per week of occupational therapy support while with Birth to Three. This service was not recommended by the District. The District did offer Betsy an occupational therapy “observation,” but despite the subsequent observation report noting that Betsy displayed “definite difference with registering auditory input,” a sign of a sensory processing impairment, the District determined that she did not need direct occupational therapy as a related service on her Individual Education Program.

- The same result occurred for Kaleb⁵⁸ as for Betsy. The District performed its own evaluation of Kaleb to determine whether he was eligible for special education services upon transitioning into public school. The District’s evaluation noted that Kaleb needed adult support to follow basic routines, including eating; he had limited response to his name; he was non-verbal but could echo some adult sounds; and he could not make a simple choice between two preferred items. The evaluator noted that Kaleb was “able to imitate a single basic pretend play, but he spent the majority of unstructured time picking up and dropping items, ... he was also observed to mouth play food items despite repeated modelling and prompting of appropriate pretend play... [and] Kaleb could not unscrew and screw a nut and bolt,” raising significant concerns about his fine motor skills. He “did not appear to understand a simple yes or no question, was not observed to imitate social contact with adults and did not respond to his own name.” Like Betsy, Kaleb was recommended for an occupational therapy “observation,” though he too was ultimately determined to not qualify for this service.
- Jimmy was recommended by his pediatrician for direct occupational therapy support in school, but though the pediatric report is included in Jimmy’s educational file, this service was not included in his Individual Education Program. Districts are not legally obligated to implement the recommendations from evaluators outside of the school district, but they are obligated to consider such evaluations.⁵⁹
- Eddie,⁶⁰ diagnosed with Autism, received two hours of occupational therapy per month, along with other services, when he was being served by the state’s Birth to Three system. Upon entering the District, this service was not included in his education

⁵⁸ Name changed.

⁵⁹ 34 C.F.R. § 300.502 providing that “an independent educational evaluation [obtained by the parent] at public expense or... private expense... Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child.”

⁶⁰ Name changed.

plan and, like the other children, a one-time “observation” was recommended. Eddie did not end up qualifying for occupational therapy either.⁶¹

Displaying a sensory impairment or presenting with a developmental delay in motor skills, or even having a recent history of receiving a related service such as occupational therapy from the Birth to Three provider does not automatically mean that a child is eligible for the receipt of such therapy as a related service under IDEA. However, as with other observations and findings in this report the concerning trend was that *none* of the children whose records OCA reviewed and who received an “observation” by the District were later found by the District to require direct occupational therapy, even where children had signs of relevant developmental impairment and where such children had already been receiving such therapy through their Birth to Three provider.⁶² As stated earlier in this Report, prior receipt of a service during a child’s Birth to Three years does not automatically entitle the child to continued receipt of the service by the public school system as part of a special education program. The focus of early intervention and early childhood education are different in that early interventions “are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant’s or toddler’s development”⁶³ whereas the primary goal of IDEA Part B (public special education) is to ensure that the child, with the provision of appropriate services, will be able to access all aspects of his or her educational program. However, in the context of early childhood education, developmental and educational needs are often synonymous, and related services, such as occupational therapy support, may be necessary to assist the child in critical skill development. This is often true beyond the early childhood education setting as well.

According to the American Occupational Therapy Association, “occupational therapists and occupational therapy assistants help people across the lifespan participate in the things they want and need to do through the therapeutic use of everyday activities. Common occupational therapy interventions include helping children with disabilities to participate fully in school and social situations, and helping people recovering from injury to regain skills.”⁶⁴

⁶¹ The District’s September 22, 2016 response to the OCA’s draft report included its contention that “in many of the cases reviewed by OCA, the level of impairment did not interfere with the student’s ability to access his/her IEP and to move forward in the curriculum to an extent that warranted direct OT services.” Despite this broad assertion by the District, OCA’s concern was the clear trend observed in the large cohort of children’s records OCA reviewed that revealed the District did not find *any* student entering from Birth to Three eligible for this direct support.

⁶² In the District’s September 22, 2016 response to the OCA’s draft report the District stated that “while [OCA’s] Report notes that many students (who had previously received occupational therapy services through Birth to Three) were not recommended to receive direct OT Services in preschool, it is important to note that these students were placed into preschool settings which provide multiple opportunities to build and refine fine-motor skills. Most District preschool classrooms are designed to promote sensory regulation with input from the occupational therapists. In addition, OT practitioners routinely assist children within these classrooms. Such delivery is best practice for children in preschool.”

⁶³ 34 C.F.R. § 303.13(a)(4).

⁶⁴ *About Occupational Therapy*, THE AM. OCCUPATIONAL THERAPY ASS’N, INC., <http://www.aota.org/About-Occupational-Therapy.aspx> (last visited Nov. 3, 2014).

For many children with sensory and/or motor delays and disorders, occupational therapy is a critical educational support. Occupational therapy assists children in developing coordination necessary to handle and play with routine materials and toys in the classroom setting; therapy helps children tolerate different environments, various sensory stimulations, and regulate themselves in the classroom.⁶⁵

Occupational therapy is important not only for children with Autism Spectrum Disorders, but also for children who have attention difficulties or even social-emotional challenges and who may struggle with regulating sensory input.⁶⁶ Research-based intervention to support improved sensory processing through occupational therapy is a critical service for many of these children.

During a site visit to preschool classrooms in New Britain, personnel reported that the preschool children are supported by related service professionals including an occupational therapist. However no child's IEP reviewed by OCA included occupational therapy as a related service other than the child entering the school system with an *existing IEP* already developed by a neighboring town.

In responding to OCA's draft report the District stated that there is no automatic obligation to continue delivery of occupational therapy for a child who received that service from a Birth to Three provider. Commendably, the District's action plan, dated September 22, 2016, specifically responds to these concerns and includes an emphasis on training staff regarding the obligation to evaluate children in all areas of suspected disability and to ensure assessment of the child in areas of related service (such as occupational therapy) prior to determination that such services are not or no longer appropriate.⁶⁷

Finding: The District Did Not Provide Full-day Special Education Programming to any Child in OCA's Review Regardless of the Significance of a Child's Disabilities.

The District typically provided special education preschool programming for two-and-a-half hour sessions (2.5), two or three days per week. Twenty-six (26) of the thirty-three (33) children in OCA's sample that were found eligible for special education services by the District were placed in District-run programming for either two or three mornings per week for a total of five (5.0) hours or seven-and-one-half (7.5) hours of special education preschool services. Two children were placed in the District's programming four (4) mornings per week (a total 10 hours) and five children were recommended for five (5) mornings per week (a total of 12 hours). *No child*

⁶⁵ American Occupational Therapy Association generally - <http://www.aota.org/About-Occupational-Therapy/Professionals/CY.aspx>.

⁶⁶ J. Owens, J., et al., *Abnormal White Matter Microstructure in Children with Sensory Processing Disorders*, 2 NEURO-IMAGE: CLINICAL 844–53 (2013).

⁶⁷ Please see the Appendix for a full rendering of the District's Action Plan.

received morning and afternoon programming (extended day services, e.g., 9 a.m. to 2 p.m. or later).⁶⁸

Records indicated that typically all of the children identified as eligible for special education preschool supports received their education in a District-run program and that the District did not “push in” services to a private preschool, home setting, or state-funded preschool such as Head Start. As stated above, school districts are not obligated to run a publicly-administered preschool program, but districts are obligated to ensure that all preschool age children with disabilities or developmental delays are identified, evaluated and provided appropriate educational supports. Districts may run their own programs, pay for private programs and transportation, or pay for the provision of services within other settings. The district is ultimately responsible for providing services consistent with the child’s right to a Free Appropriate Public Education.

Upon inquiry by OCA, the District acknowledged that certain children need full-day programming, and the District stated that “[p]rovision of half-day versus full-day programming [by the District], as well as number of days per week, is determined by PPT⁶⁹ in consideration of the severity of the disability and its impact upon functional communication, rate of learning and amount of adult support required.” Yet in the records reviewed by OCA, severity of disability *did not result* in adequately differentiated length of programming. Many of the children that were part of OCA’s review presented with significant needs necessitating full time, skilled programming and instruction. None of the children in OCA’s sample were recommended for 1:1 adult support *no matter the significance of their needs*.

Districts are not obligated to provide “full day” programming to all children with disabilities. Rather, districts must have a *continuum* of educational placement/program options and services so that students with disabilities, including pre-school students, will receive the appropriate duration, frequency and intensity of interventions that they require to make educational progress.⁷⁰ The amount of time a child spends in special education programming must depend on his or her needs. Preschool-age children have the same right as older students to be educated in the least restrictive environment appropriate to their needs.⁷¹ Based on the significant nature

⁶⁸ OCA spoke with several local school districts to see if any offered “extended day” special education preschool programming. OCA also spoke with the Office of Early Childhood and the State Department of Education to seek feedback from Birth to Three providers regarding the percentage of children transitioning from early intervention services to extended day special education preschool. While the OEC did not have specific data responsive to this question, feedback from Birth to Three providers as well as feedback provided to OCA directly by school districts indicated that many districts (though not all) in the state did offer “extended day,” i.e. five hours or more per day of special education preschool supports. Multiple districts offered programming for six hours per day (9 a.m. to 3 p.m.). Some districts offered full day programming primarily to children with ASD. Some programs offered full day programming for four year olds but not three year olds.

⁶⁹ OCA observes that the PPTs are charged with collective decision-making, but a district’s administrative representative typically facilitates or leads the PPT and the discussion of programming recommendations may be limited in scope to resources the district already has available.

⁷⁰ 34 C.F.R. § 300.115.

⁷¹ 20 U.S.C. § 1412(a)(5)(A).

of some children's range of disabilities and corresponding need for intensive intervention, OCA and its consultants find that full-day special education programming is required for some children to receive a Free Appropriate Public Education within the meaning of federal and state special education laws.⁷² Connecticut regulations specifically provide that "each board of education shall ensure that extended school day or extended school year services are available to each child with a disability in accordance with the IDEA."⁷³

While the District contended to the OCA that "few three year old children can sustain a 7 hour school day," the OCA's concern is that no child was offered more than 2.5 hours per day, and this Report includes information that other districts in Connecticut do offer more educational hours for pre-school age children.⁷⁴ The District did acknowledge that a "longer day may be appropriate for some four year old children and [the District] intends to increase the number of full day slots moving forward."

Site Visit Observations and the availability of full day special education programming

The preschool programs observed by reviewers have many important programmatic structures that are helpful for creating a warm and comfortable environment for the students enrolled within it. Each classroom was well organized and the classes clearly followed a consistent group schedule, allowing students to follow and predict the day's activities generally well. District correspondence to the OCA included information that its staffing ratios in the preschool classrooms meet the guidelines established by the National Association for the Education of Young Children.

For OCA reviewers, one of the areas of greatest concern was the lack of well-conceived assessments and case planning for children with significant developmental delays who are likely to require full day teaching, inclusive of intensive intervention services. It would be expected that this would be a common programmatic element for many students and that a full day of instruction would be a typical program element for many learners with complex developmental delays.

A full day of instruction is often necessary in order to allow students sufficient time for large and small group instruction, related services, and direct teaching. Without this, the school team will struggle to establish the necessary teaching opportunities for all students. Such limited services may then reduce overall gains and position students to leave the preschool and enter kindergarten requiring more restrictive services.

Further, the direct teaching plans that are used do not have systematic procedures to transfer skills into the natural environment, thereby placing skill generalization at great risk. It would be

⁷² Multiple state hearing decisions in Connecticut have also found that, under IDEA, full day programming may be required for a preschool age child with disabilities.

⁷³ Connecticut Regulation § 10-76d-3.

⁷⁴ See note 65 *supra*.

reasonable to anticipate that a substantial expansion of the current preschool infrastructure would position the teams to better support all students. Such an expansion would likely further develop the teams that support the initial assessment of student needs so that comprehensive programming is established immediately. Such programming, grounded in a sound assessment process, would then be aligned with appropriate expectations for evidence-based supports.

In the late stages of OCA's review when the District came under new leadership, district administrators acknowledged the lack of full time programming for many students and indicated that this was resource-driven *and therefore not a reflection of the individualized planning required by IDEA*. District personnel expressed an intention and commitment to extend preschool special education programming hours for more children and to work closely with community-based preschool providers to push-in services and consultation and optimize learning environments for children.

The District Did Not Adhere to Best Practice Standards, Including Instructional Hours and Related Service Delivery, for Educating Children with Autism

- *Greg⁷⁵ entered the District at age three with a clinical diagnosis of Autism. He was born drug-exposed and spent several weeks in the hospital after birth. The IEP developed by the District classified Greg as "developmentally delayed" and documented that Greg had "significant delays in expressive language, cognitive abilities and social-emotional skills." Greg's Birth to Three record indicated that he could have "extreme tantrums," with four to five episodes each week of dysregulation. The District's IEP provided for two 2.5 hour sessions a week of special education preschool.⁷⁶*
- *Andre⁷⁷ came into the District from Birth to Three with a clinical diagnosis of Autism Spectrum Disorder and presenting with significant developmental delays across all domains. His most recent developmental evaluation prior to transition scored his cognitive, social-emotional, communication and adaptive skills between 2.5 and 3 standard deviations below the norm for children his age. Andre was observed to need "constant" supervision. He displayed "no awareness of other people and did not respond to his name." While in Birth to Three services Andre received intensive supports including*

⁷⁵ Name changed.

⁷⁶ As reviewed in the previous section, a child with significant delays may need or will benefit from daily or more intensive special education preschool programming. National best practices recommend that children with Autism Spectrum Disorders be identified as early as possible and that interventions be provided for a minimum of 20 to 25 hours per week. National Resource Council (2001) recommendations may be found at the National Academies of Sciences, Engineering and Medicine, <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=10017>. None of the children entering the District with a diagnosis of Autism received services commensurate with accepted standards as articulated by the National Resource Council.

⁷⁷ Name changed.

occupational therapy, physical therapy, speech and language therapy and support from a Board Certified Behavior Analyst. Andre's records also contain a copy of a report from a local children's hospital recommending Andre for "significant support" services from school. After transitioning to the District, Andre lost all of the direct therapeutic supports he received from Birth to Three. While he was offered special education preschool 5 mornings per week, he was initially provided no direct speech and language support, no occupational therapy and recommended only for a one-time physical therapy observation, despite a Birth to Three evaluation that identified him as having significant delays in gross motor development. At a subsequent school meeting several months later, the District ultimately agreed to provide Andre with direct physical therapy and direct speech and language supports, one-half hour each week.

- Yael⁷⁸ also entered the District with a clinical diagnosis of Autism. Her most recent Birth to Three evaluation, completed when Yael was thirty-four months old, found that she was significantly cognitively delayed. She was not yet looking at books and was not matching colors. She also made infrequent eye contact and did not attend to people's faces. She was identified as being significantly delayed in communication development. Her Birth to Three provider recommended in writing that Yael receive "intensive intervention" from the school district, including Applied Behavior Analysis (ABA) strategies, and supports from a Board Certified Behavior Analyst (BCBA). According to the provider, the District's BCBA should "design, implement, monitor and modify as necessary an intervention program with a focus on verbal communication." Yael's IEP recommended only three sessions a week of special education preschool (7.5 hours) inclusive of a half-hour each week of direct speech and language support. She was not provided with direct occupational therapy and her IEP did not include recommendations for support from a Board Certified Behavior Analyst as recommended by the Birth to Three provider.
- Ricki⁷⁹ entered the District at age three having already been briefly served by another public school system. Ricki and his family were homeless when they received Birth to Three services in a local motel. The Birth to Three provider noted that Ricki had no typical play skills, did not point, and "displayed repetitive and sensory seeking behaviors" including hand flapping. He was diagnosed with Autism by the time he transitioned from Birth to Three to his original district. The original district classified Ricki as Autistic for educational planning purposes and recommended him for an in-district program that would provide ABA support, one hour per week of direct speech and language therapy, additional direct occupational therapy and an "ABA trained paraprofessional" to support Ricki in school. His IEP also indicated that his program would include use of an iPad and an augmentative communication system to support his learning. Five months later Ricki transitioned to New Britain Public Schools ("The District"). The District maintained the original district's autism classification in Ricki's educational plan and maintained the provision of occupational and

⁷⁸ Name changed.

⁷⁹ Name changed.

speech and language therapy.⁸⁰ The IEP however eliminated language regarding ABA and eliminated the language recommending an “ABA trained paraprofessional.” Ricki was the only child whose records OCA reviewed that maintained a classification of Autism in his or her educational records, and Ricki received more direct related services (occupational and speech/language therapy) than any other child whose records were reviewed.

The examples outlined above give rise to numerous concerns regarding the identification, evaluation and provision of educational services for children diagnosed as having an Autism Spectrum Disorder. These concerns will be outlined categorically below.

A. Loss of Autism Classification for Educational Planning Purposes

Of the fifty-five (55) records that OCA reviewed, twelve (12) children came into the District with a clinical diagnosis of Autism Spectrum Disorder (ASD). For eleven (11) of these children, the District *declined to* identify the student as Autistic for educational planning purposes. Instead, the District utilized the more global category of Developmental Delay. *None of the twelve children with ASD diagnoses subsequently received educational services from the District consistent with accepted best practices or State Department of Education guidelines.*

OCA’s review revealed that the District, via the Planning and Placement Team process, participated in identifying only *one* of the twelve children as having a primary disability of ASD. It is imperative to note that the one student in OCA’s sample that was identified as having Autism for educational planning purposes entered *from another district* and this child already had an IEP developed by that district that included the Autism classification and associated recommendations for services. Of the students that entered New Britain Public Schools directly from Birth to Three, *none* of the students’ IEPs identified the student as having a primary disability of Autism.

The law allows for children under age six to be identified as having “developmental delay,” for educational planning purposes (as opposed to being identified as having Autism).⁸¹ However,

⁸⁰ A discontinuation of these services, *already recommended in the IEP by another school district*, would have required New Britain to conclude based on new evaluations that Ricki did not require these services. The District could not unilaterally remove the services already in Ricki’s IEP.

⁸¹ 34 C.F.R. § § 300.306, 300.308. Federal law provides that children identified as “aged three through nine experiencing developmental delays” are eligible for special education and related services. States may use the category of “developmental delay” for young children in lieu of classifying children as having a specific disability such as Autism. However the child’s classification should reflect the *primary* disability affecting the child’s ability to make progress educationally or, for preschool children, participate in age-appropriate activities. Where a child has been clinically diagnosed with an Autism Spectrum Disorder and relevant data and other evaluative criteria reviewed by the PPT indicate that the child is primarily hampered by deficits associated with ASD, then Autism is likely the most appropriate classification for the child’s IEP.

because nationally-accepted standards as well as publications from the Connecticut State Department of Education (“CSDE”) provide very specific guidelines regarding the evaluation and education of children diagnosed with ASD, the PPTs’ decision to decline this classification for all of the young children entering the District is concerning. While on the one hand an educator may contend that replacing the identifier of Autism with the identifier of Developmental Delay may or may not make a difference for the child’s program *if the same services* are provided to the student and all support personnel have knowledge and training regarding educating a child with Autism, here reviewers found that educational teams not only opted *not* to classify any child as Autistic, but the District also failed to provide services to any of the children consistent with best practices for educating children with Autism. No child entering the District with a diagnosis of Autism received services commensurate with national or state-issued best practice guidelines for treating and educating children with Autism.⁸²

Additionally, it is perilous to assume that the educational categorization makes no difference in terms of the efficacy of service delivery. How services are delivered, the curriculum that are used, the approach of a teacher, may all change depending on school personnel’s understanding of the etiology of the child’s difficulties. A recent decision from the federal 9th Circuit Court of Appeals addresses the deficiencies that arose in a young child’s program after the local school district declined to evaluate the child for Autism or categorize him as a child with an Autism Spectrum Disorder: “[The school district] argues that it provided Luke with a free appropriate public education because its staff would have made the same recommendations as to the specialized services Luke required regardless whether he had been diagnosed as autistic....This argument is plainly contradicted by the fact that [the district]’s staff treated Luke as if he were selectively mute, which they certainly would not have done if they had an assessment for autism...”⁸³ The Court also found that various interventions utilized for the child may have been *contra-indicated* for a child with Autism.⁸⁴

⁸² The District pointed out in its September 22, 2016 response to the OCA draft report that the District “did not decline to formally identify students as having Autism...; [rather] individual PPTs, not the District, made determinations regarding eligibility.” The OCA acknowledges that such determinations are officially made by the Planning and Placement Teams (PPTs). However, the parent is often the only non-educator at the PPT and may be the only non-district representative at the PPT. Many parents, particularly parents of young children entering a public school district for the first time, do not have comprehensive or sophisticated knowledge either of educational best practices for children with certain disabilities or of the breadth of educational entitlements guaranteed to their child by state and federal law. Therefore a school district, in certain cases (not all), has significant influence in shaping the development of the IEP, including the primary disability classification included in the document. The trend OCA has identified here is not that *some* of the IEPs reflected the child’s previous receipt of an Autism diagnosis as the primary area of disability, but that *none* of the IEPs did, a consistent result that appears unlikely to be coincidental but rather a result of a pattern and practice of the District at the time these records were created.

⁸³ *Timothy O. v. Paso Robles Unified School District*, 822 F.3d 1105, 1125 (9th Circuit, May 23, 2016).

⁸⁴ *Id.*

Flawed Evaluation Procedure

OCA sought information from the District regarding its evaluation process. With respect to Autism Spectrum Disorder symptomology, it was reported by the District that common tools used to guide the evaluation and educational planning team are the Childhood Autism Rating Scale (CARS) and the Gilliam Autism Rating Scale (GARS). However, in OCA's sample of fifty-five (55) records, the District conducted its own initial evaluation of a child only four (4) times and these evaluations were not all comprehensive in nature. Indeed, none of the twelve (12) children in OCA's sample entering the District with a clinical diagnosis of Autism received an eligibility evaluation conducted by the District.

Kaleb⁸⁵ was one of the four children in OCA's cohort for whom the District conducted an initial evaluation. But despite the District's evaluation containing numerous red flags for Autism (including his failure to initiate social contact, his failure to respond to his name, his lack of language, his lack of play skills and his limited ability to comprehend "simple verbal input" or understand "simple yes/no questions"), the word "Autism" does not appear in the evaluation findings, no additional Autism assessments were included in the file and, like other children, Kaleb was classified as "Developmentally Delayed."

When asked about the most common diagnoses of the children entering the District's self-contained classrooms, District staff stated that Developmental Delay is the common classification. Indeed Developmental Delay was the *only classification* seen in OCA's sample other than the child classified as Autistic who entered New Britain from another school district. As a justification for the decision not to classify children as having Autism for educational planning purposes even when they had already been identified as having an Autism Spectrum Disorder, the District emphasized the high degree of variability in the depth and quality of information the teams receive when conducting initial assessments with new students. Though the District expressed some concern about the quality of information received from Birth to Three, only a few children's records included any evaluation data developed by the District itself. Instead the District relied almost exclusively on Birth to Three information and input from parents. Additionally, while District personnel expressed some skepticism about the "frequent utilization of an Autism diagnosis" by community diagnosticians, the records OCA reviewed revealed multiple children with numerous indicators for Autism or other complex neurodevelopmental disorders that the District classified as "developmentally delayed."

If a district is making the determinations or PPT recommendations to identify children as developmentally delayed rather than Autistic, then the district should be conducting evaluations to help support that determination. The failure to properly evaluate or identify a child's disability is a violation of IDEA. In the 9th Circuit decision cited above, the Court found that the district had

⁸⁵ Name changed.

not complied with IDEA when it failed to evaluate a child specifically for an Autism Spectrum Disorder, consistent with the criteria of IDEA, when the child's record already included information putting the district on notice of this suspected disability.⁸⁶

Inadequate Instructional Hours

The early classification or identification of children with ASD is critical so that children can receive appropriate educational programs with adequately intensive instruction consistent with their diagnosis. The National Research Council ("NRC") recommends that children with ASD participate in an intensive educational program as soon as possible after diagnosis.⁸⁷ After extensive review of model programs, the NRC issued a report in 2001 that is widely cited today, regarding educating children with Autism. The NRC concluded that the provision of active engagement in intensive instructional programming for at least twenty-five (25) hours per week [full school days, five days a week] is critical for children with ASD.⁸⁸

The NRC's recommendations are generally accepted as the standard of care for educating children with ASD. The Connecticut State Department of Education (CSDE), in its educational guidelines for children with ASD, also emphasizes the standard that children with ASD receive intensive programming of at least twenty-five (25) hours per week.⁸⁹ State guidelines further emphasize the need for specialized curricula, based on each child's developmental level, that address the central deficits in ASD (communication, play skills and social interaction). In the "Frequently Asked Questions" section of the state guidelines, the first question addresses the hours of service a child with ASD should receive. CSDE provides the following response:

*As all students with ASD are different, the answer to this question varies, depending upon the individual needs of the child. In general, according to the National Research Council report, **students with ASD should receive a minimum of 25 hours of educational services per week**, bearing in mind that the law entitles children with autism to at least the same amount of educational time as their typically developing peers. It is important to note that this refers to hours of active engagement in focused instruction and social activities.*⁹⁰

No child in the sample reviewed by OCA received intensive service delivery consistent with these guidelines. The average number of instructional hours that the District provided to children with

⁸⁶ *Timothy O. v. Paso Robles Unified School District*, 822 F.3d at 1121-23.

⁸⁷ In 2001, at the request of the Office for Special Education Programs (OSEP), the National Resource Council published *Educating Children with Autism*, with recommendations developed by a committee of experts. The NRC's recommendations have become the standard of care for children with ASD. National Resource Council (2001) recommendations may be found at the National Academies of Sciences, Engineering and Medicine, <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=10017>

⁸⁸ CSDE Guidelines, *supra* N.9 at 44.

⁸⁹ *Id.* at 4.

⁹⁰ *Id.* at 58.

ASD in OCA's sample was approximately nine (9) hours per week, *little more than 1/3* of the state guidelines and standard recommendations.

No Behavioral Assessments or Intervention Plans

State guidelines also note that children with ASD may have challenging behaviors that make it more difficult to function in the classroom, and in such cases a functional behavioral assessment (FBA) and behavior intervention plan (BIP) should be completed.⁹¹ None of the records reviewed by OCA included an FBA or BIP even for children entering the District with documented concerns about social-emotional functioning, dysregulated behaviors and extreme tantrum behavior.⁹²

Inadequate Related Service Delivery and Minimal Use of a Board Certified Behavior Analyst

Minimal direct speech and language supports were provided to some children despite their significant communication deficits. In IEPs developed by the District, no child was found eligible for occupational therapy;⁹³ and no IEP included recommended support from a Board Certified Behavior Analyst, a critical service for children with ASD and other neurodevelopmental or social-emotional disorders. It is the Behaviorist who is often the lead expert in developing structured teaching programs for children with ASD, monitoring the implementation of the programs, reviewing data regarding the child's progress and modifying individual programs as needed to support the child's skill development. Site visits to the District in April, 2016 revealed that the District had one part-time BCBA for District-wide use. By staff report, historically the BCBA had not played an active role within the preschool classrooms. It was reported to OCA that this had recently begun to change, though the BCBA services were primarily provided for staff training. Staff reported that the BCBA has no current role in the development or implementation of instructional plans for students. The lack of documentation in children's IEPs regarding the use of BCBAs for children with ASD in the District was alarming to OCA reviewers as this is a core support service for children with Autism.

⁹¹ CSDE Guidelines, *supra* N.9 at 22.

⁹² The District's September 22, 2016 response to the OCA draft report noted that many younger students "enter preschool with behavioral challenges and need direct instruction in establishing routines, social interaction, play skills, and responding to directives. It is not appropriate to suggest that each student requires an FBA and a BIP, especially when students have not been provided with an opportunity for instruction on such skills." However *none* of the educational records OCA reviewed included such assessments.

⁹³ The only child in OCA's review cohort that received occupational therapy was the child whose IEP was already developed by a neighboring public school district.

Lack of ABA Instruction for Children with Autism

The traditional evidence-based approach for teaching children with Autism is based on applied behavioral analysis (ABA)⁹⁴ and according to CSDE “emphasizes precision and organization during instruction.”⁹⁵ From the CSDE guidelines:

In brief, the systematic behavioral approach may be summarized as follows:

For each learner, skills to be increased and problem behaviors to be decreased are clearly defined in observable terms and measured carefully by direct observation... Selection of treatment goals for each individual is guided by data from initial assessment, and a curriculum scope and sequence that lists skills in all domains (learning to learn, communication, social, academic, self-care, motor, play and leisure, etc.), broken into smaller component skills and sequenced developmentally from simple to complex. The overall goal is to help each learner develop skills that will enable him or her to be as independent and successful in the long run. (Green, 2005; <http://behavior.org/autism/> retrieved April 7, 2005)⁹⁶

Again, while districts are not required to utilize ABA instruction for every child with Autism federal law emphasizes the requirement that students be provided with curricula and interventions that are peer-reviewed and research-based *whenever practicable*. Therefore programming for children with disabilities or developmental delays consistent with an Autism Spectrum Disorder (*regardless of how the District/PPT chose to categorize the child's disability on the IEP*) are entitled to interventions and curricula that conform to generally accepted practices and standards.

School districts are also required to ensure that staff have the skills, training and experience necessary to implement the goals and instructional strategies embedded in a child's IEP.⁹⁷ Staff “should have experience and training in implementing programs based upon the principles of applied behavior analysis, positive behavioral supports, completion of functional behavioral assessments and developing behavioral intervention plans.”⁹⁸

After review of records and site visits in New Britain, OCA found that only one student with ASD received intensive direct teaching consistent with ABA principles and even this student's

⁹⁴ The National Autism Center at the May Institute has published a National Standards Project, Phases 1 and 2, available on the National Autism Center's website: <http://www.nationalautismcenter.org/>. Per its website, The National Autism Center is May Institute's Center for the Promotion of Evidence-based Practice, and is dedicated to serving individuals with autism spectrum disorder by providing reliable information, promoting best practices, and offering comprehensive resources for families, practitioners and communities. The National Standards Project, a primary initiative of the National Autism Center, addresses the need for evidence-based practice guidelines for autism spectrum disorder and utilizes rigorous research criteria to categorize interventions and practices for individuals with ASD by the degree of research that exists to support the efficacy of the practice or intervention. The Standards Project found that the “largest category of Established Interventions is the Behavioral Intervention category... comprised of interventions typically described as antecedent interventions and consequent interventions...”.

⁹⁵ CSDE Guidelines, *supra* n.9 at 68.

⁹⁶ CSDE Guidelines, *supra* N.9 at 68.

⁹⁷ CSDE Guidelines, *supra* n. 9. at 78. See also 20 U.S.C. § 1454(a)(3)(B)(v).

⁹⁸ *Id.*

instruction was limited. During site visits and interviews, OCA reviewers were given the opportunity to review the direct instruction protocols active within the classroom as well as specific data regarding the one student with Autism whose IEP had recommended Applied Behavior Analysis as a teaching intervention.⁹⁹ The program book contained many of the common elements that would be consistent with typical direct teaching practices and included written teaching protocols with specifically defined prompting and data collection methods associated. In discussion with District staff it was made clear that this program book is presently designed, implemented and reviewed exclusively by the district's BCBA. Staff also indicated that at the time (April, 2016), this was the only student throughout the preschool program who received services of this kind.¹⁰⁰ Further, the direct teaching protocols were implemented in a 1:1 teaching format and at the time of the site visit there was not an infrastructure available to support skill practice outside of the 1:1 format, including embedding instruction on social or adaptive targets or systematically encouraging skill generalization from direct teaching to the natural preschool environment. As such, the only programs implemented within this student's individualized teaching protocols were those amenable to direct work with a teacher at a tabletop in 1:1 teaching. There were no protocols for guiding skills to be learned across all environments.

Even given the limitations of the student's ABA program, it was concerning that he was the *only* student receiving direct BCBA programming support. There are many students throughout the District's preschool programming that likely need access to organized programming using ABA-based formulations. The observed model was unlikely to establish the infrastructure necessary for a sustainable and comprehensive application of direct teaching and other evidence-based instructional methods.

Inadequate Data Collection/Progress Monitoring

Site visits also showed students in another self-contained classroom that were utilizing assisted devices for communication. While OCA reviewers were able to observe a variety of team members engaging with the students as they practiced functional communication skills, there was no evidence of embedded data collection systems to support this practice. During one of the OCA site visits it was observed that there was no clear and systematic structure for supporting student's communication skills development in a consistent fashion (e.g., different staff were observed to cue communication differently to the same student.) Such inconsistency can have an important and challenging impact on learning.

⁹⁹ "[ABA] is a scientifically validated approach to understanding behavior and how it is affected by the environment... Behavior analysis focuses on the principles that explain how learning takes place... Through decades of research, the field of behavior analysis has developed many techniques for increasing useful behaviors and reducing those that may cause harm or interfere with learning... ABA is widely recognized as a safe and effective treatment for Autism. It has been endorsed by a number of state and federal agencies... More information about behavior analysis and ABA is available at the websites of the [Association of Professional Behavior Analysts](#), the [Association for Behavior Analysis International](#), and the [Behavior Analyst Certification Board](#)." *Autism Speaks* information site, <https://www.autismspeaks.org/what-autism/treatment/applied-behavior-analysis-aba>.

¹⁰⁰ This was not a child whose record was part of the fifty-five (55) records originally received and reviewed by OCA.

This classroom did not have any students who were participating in direct teaching at the level that would be expected for a setting designed to support preschool students with highly complex learning needs. Such spaces would typically have an established and clear process for students to transition into and out of direct teaching and, importantly, an instructional staff that is fluent in such work.

The lack of evidence-based and data-driven curricula and interventions for children with complex disabilities or neurodevelopmental disorders raises significant concerns about compliance with IDEA requirements for research-based interventions.

Staff Not Appropriately Trained and Supported

Staff interviews with OCA also revealed significant training needs. It was reported to OCA that none of the staff have had full training or on-the-floor support with implementing direct teaching procedures. Such training limitations will have a tremendous impact on the ability of the system to implement evidence-based programming in a fashion consistent with the expected instructional needs of all students.

CSDE guidelines for working with students with Autism emphasize the need for staff training. All individuals working with the student should be trained in the following areas:

1. Knowledge of ASD;
2. Knowledge of early intervention;
3. Knowledge of cooperative planning and family involvement;
4. Knowledge of individualized and intensive programming;
5. Knowledge of comprehensive curriculum;
6. Knowledge of systematic instruction and ongoing objective assessment;
7. Knowledge of how to provide structured predictable learning environments;
8. Knowledge of evidence-based instructional strategies;
9. Knowledge of how to facilitate peer relationships
10. Knowledge of transition planning.¹⁰¹

The District Failed to Include A Parental Training Component in Any Individualized Education Plans.

The Birth to Three model of intervention is to work with a child's parent or caregiver/s to increase their capacity to support the developmental needs of the child. As a child transitions into preschool, federal regulations corresponding to IDEA also emphasize the need for parent training and engagement, stating that "supportive services as are required to assist a child with a disability

¹⁰¹ CSDE Guidelines, supra N.9 at 53-55.

to benefit from special education... also include[s]... parent counseling and training.”¹⁰² Federal law specifically *requires* parent training as a related service, where deemed appropriate and necessary by the PPT, and defines such counseling and training as “assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP.”¹⁰³

Of the records OCA reviewed, *none* of the children’s educational plans included parent training as a related service.

Connecticut Guidelines for educating children with Autism also emphasize the necessity of parent training:

Families are most impacted on a day-to-day level by the child’s autism and know their child best. They bring to the team knowledge of their child and family that spans many years and environments.... Throughout the educational process, parents should receive information regarding the types of and range of service options available... staff must be available to help parents interpret the scientific evidence about the effectiveness of a given intervention... Families members need to know how to carry over behavioral support plans for challenging behaviors that interfere with the child’s functioning. When helping families incorporate intervention strategies into family routines, the types of skills that are most conducive to fostering child independence include:

- Daily living skills
- Safety skills, such as teaching a child to stop when asked, walk with you without holding your hand, or how to recognize an emergency
- Simple one-step directions such as come here, sit down, stand up, and wait
- Functional communication skills such as requesting, protesting, and gaining attention
- Independent leisure skills.

Parent training in these areas can reduce family stress and increase opportunities to become engaged in the community.¹⁰⁴

¹⁰² 34 C.F.R. § 300.34.

¹⁰³ 34 C.F.R. § 300.34.

¹⁰⁴ CSDE Guidelines, *supra* N.9 at 40-41.

As stated above, twelve (12) of the children in OCA's sample entered the district with a diagnosis of ASD. Over half of those children had little to no language. These language barriers have the potential to frustrate children in their struggle to communicate their wants and needs to teachers, family members, and other caregivers. Multiple children's evaluations indicated that frustrations manifested in decreased self-regulation and increased behavioral problems. Children also experienced documented anxiety when separated from loved ones with whom they were familiar.

Emotional "meltdowns" were common during transitions from one activity to another. The mother of another child, also significantly delayed in the area of expressive language, disclosed that her son has intense tantrums during which he "hits himself and others and throws things." She told evaluators that it sometimes takes him an hour to calm down. These parents require, and are likely entitled to, parent training as an educational support service.

"Parents deserve the opportunity to receive training and ongoing support as well. Parents who are knowledgeable about their child's disability are more likely to be involved in their child's education, and are better able to extend the improvements that educators achieve with the student at school into the home or community. ...These trainings can be formal or informal, led by teachers, school-based therapy providers, school administrators, or outside consultants. In addition, educators can inform parents about independent training opportunities that may be available to them."¹⁰⁵

Parental training is also beneficial and may be required for families of children with developmental delays other than ASD. Parent training can include assistance with educating parents about supporting the child in activities of daily living, sensory activities, community integration, and setting appropriate limits. Parental training in all areas of development can reduce family stress and increase caregiver's confidence that they can meet the needs of their child over time. Moreover, teaching parents how to best assist their children will maximize learning opportunities for the child and the family and set the optimal developmental trajectory.

OCA's review saw no documentary evidence of parent training consistent with the requirements of federal law.

¹⁰⁵National Autism Center, *Evidence-Based Practice and Autism in the Schools: A Guide to Providing Appropriate Interventions to Students with Autism Spectrum Disorders*, 2009, available on the web at: https://www.pbis.org/Common/Cms/files/Forum14_Presentations/D15_NAC_Ed_Manual_FINAL.pdf.

1. The District Reduced Special Education Support Hours for All Students Found Eligible for Extended School Year (Summer Programming)

The District provided minimal ESY hours for eligible students when compared with their special education hours during the regular academic year. No child received more than three weeks of summer programming, leaving a prolonged gap in services for children with complex needs who likely required year-round support to ensure continuous learning and ward of regression of learned skills.

ESY services are individualized special education and/or related services provided beyond the normal school year at no cost to parents.¹⁰⁶ In addition to special education instruction, these services may include speech/language therapy and/or occupational therapy or any other special education service that may be needed to support the special education instruction for the child. While the summer break is generally the longest break during the school year, ESY may be required during shorter breaks. ESY can also be an extension of the student's normal school day to include tutoring and enrichment programs.¹⁰⁷

Whether a child is eligible for ESY and what ESY should consist of (hours, educational strategies, duration of program) must be determined by the IEP team inclusive of the parent, and must be individualized to the needs of the student.¹⁰⁸ Federal law specifically provides the following:

Schools may not "limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services."¹⁰⁹

Federal and state court decisions and responses from the Office of Special Education Programs in Washington, D.C. provide that no single criteria should be used to determine ESY eligibility.¹¹⁰

¹⁰⁶ "[T]he term extended school year services means special education and related services that are provided to a child with a disability, beyond the normal school year of the public agency, in accordance with the child's IEP, and at no cost to the parents of the child; and meet the standards of the SEA." 34 C.F.R. § 300.106. Further, in implementing the requirements of extended school year services, **"a public agency may not limit extended school year services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services."** *Id.*

¹⁰⁷ 34 CFR 300.106.

¹⁰⁸ CSDE Guidelines, *supra* N. 9 at 67.

¹⁰⁹ 34 C.F.R. 300.106.

¹¹⁰ Per a 2007 Topic Brief published by the Connecticut State Department of Education regarding Extended School Year Services, "[t]he state standard in Connecticut has included both regression/recoupment criteria and non-regression criteria for determining if a child is eligible to receive ESY services. The Bureau provided information on

In determining a child's eligibility for ESY, the IEP team (PPT) should consider not only whether the child will regress over the summer, but also whether the nature and severity of the child's disability requires summer programming, and whether the child is in a developmental window for emerging skills along with other criteria.¹¹¹

OCA's investigation revealed that the District reduced the number of special education hours and the duration of instruction for *all students* from their academic year programming, typically providing services for a maximum of 3 weeks. No child received twelve-month programming. No child received extended day programming during the summer months. Records raise significant concerns regarding the adequacy of individualized planning for ESY as required by federal law.

Recommendations

A District Wide Plan is needed to Improve IDEA Compliance and Educational Services Delivery for Children Entering From Birth to Three or Otherwise in Need of Special Education Services.

- The District must develop a comprehensive plan to address the deficiencies outlined in this Report. The plan should include a timeline, clear goals and benchmarks, as well as list of subject-matter experts involved in the creation, implementation and monitoring of the plan.
- The District should review the need to provide compensatory education services for preschool or kindergarten age children in need of special education services who were served by the District during the 2014-15 and 2015-16 school years.
- The District should assess the need for technical assistance from the Connecticut State Department of Education and local providers regarding the assessment, evaluation and provision of services to children with varying and/or complex disabilities.

ESY in Update 28 dated January 10, 2002 and included a specific reference to Reusch v. Fountain, 21 IDELR 1107 (1994). Reusch contains a good discussion of the regression and non-regression factors which should be considered in determining whether or not a child may be eligible for extended school year services. These factors include:

- The nature or severity of the student's disability;
- The student is likely to lose critical skills or fail to recover these skills within a reasonable time as compared to typical students;
- The student's progress in the areas of learning crucial to attaining self-sufficiency and independence from caretakers;
- The student's stereotypic, ritualistic, aggressive or self-injurious interfering behaviors prevent the student from receiving some educational benefit from the program during the school year; or
- Other special circumstances identified by the IEP team such as: the ability of the student to interact with other non-disabled students; the areas of the student's curriculum that need continuous attention; the student's vocational needs; or the availability of alternative resources.

¹¹¹ *Reusch v. Fountain*, 872 F.Supp. 1421 (U.S. District Court, D. Maryland 1994).

- The District should identify a leadership-level employee who can serve as a liaison to families with young children within the District who may have concerns about their individual child's education plan after release of this report. The liaison must assist parents in reviewing the adequacy of their child's educational plan and addressing any deficiencies therein through the IEP process.

Specific Areas that the District Should Include in the Compliance Plan:

- District Intake/Evaluation Procedures

The District should comprehensively review intake/evaluation procedures for new students entering the preschool and create a clear plan for how to evaluate student needs. Such plans will ensure that a comprehensive case review is completed with previous materials informing program planning and extensive supports provided to enable educational planning. This intake structure should position the team to review educational profiles for the need to access common instructional elements (e.g., systematic teaching) so that such services are included from the time of intake. When students carry a previous diagnosis, such as Autism Spectrum Disorder, it will be essential that a comprehensive multidisciplinary review is conducted with appropriately informed assessments before determining classification for the initial IEP. The preschool team should have access to staff training from experts in needs assessment, diagnosis, and program planning for young children with complex neurodevelopmental disorders. Such training will allow the team to execute a contemporary review of the current procedures and expand or evolve these as needed.

- Appropriate and Intensive Service Delivery for Children with Complex Needs

It is essential that the preschool teams be positioned to provide students with access to direct instruction procedures that establish skills through systematic instruction and then progressively fade supports as independence establishes. This would require the team to substantially expand direct teaching services throughout the preschool and build a process for data collection to occur comprehensively, day long. Student with complex developmental disabilities often require highly individualized teaching plans to establish critical skills. With appropriate resources to provide such teaching, it is likely that students would experience substantial benefit with respect to levels of independence, functional communication, academic readiness and group learning.

Systematic teaching procedures should be organized in a fashion consistent with the teaching principles and practices of applied behavior analysis. Such procedures will be evident through the use evidence-based methods for direct teaching in 1:1 and small group settings as well as naturally embedded instruction. All procedures should be associated with direct measurement of skills which track acquisition rates and provide a foundation for evidence-based decision making.

- Multidisciplinary Teaming

The District must execute a comprehensive review of the preschool teaming and staff resources available. In order to plan appropriately for student needs there should be an established process for multidisciplinary teaming. Teams should meet, at minimum, weekly with special education, related services, and BCBA participation. Such teams should plan collaboratively around educational, social, adaptive, and positive behavior supports and enable the entire staff to contribute to student development. Appropriate staffing resources will be essential to this process. BCBA support to the program will be essential if evidence-based teaching methods are to be established system-wide. The team should plan, proactively, for BCBA support into classrooms with participation multiple times weekly to demonstrate program implementation, oversee behavior support plan use, complete program planning activities, and engage in multidisciplinary meetings.

- Full Day Programming a Necessity

Full day programming is a need for many students and it is quite likely that there are a number of learners in the District's preschool program who should have access to such services.

The team should be provided with the necessary staff training, program planning and time to establish a full day instructional model. Further as students participate in a longer day they will have sufficient time to practice skills in direct teaching and self-contained settings while still enjoying time to push into integrated settings. Given the many skills needed to teach during the preschool years, this is likely a key programmatic need.

- Staff Training is an Immediate Need

Staff training is an immediate necessity to establish a foundation for the education teams to apply appropriate evidence-based supports for all students. A needs assessment should be conducted to fully map staff training needs across instructional domains (e.g., direct teaching, data analysis, functional-based intervention planning, naturally embedded instruction, functional communication training). Any training should be supported with direct modeling and performance feedback in order to ensure that the team is able to follow through with training methods and that the team can access a venue for requesting help and seeking answers to questions.

- Parent Training

The District should immediately create policies and protocols for ensuring that parent training is included in children's IEPs as a related service whenever needed to support the child's educational progress. Protocols should provide guidance to school personnel as to how to evaluate the necessity of parental training as a related service. The District must evaluate what interventions and supports are available and what services need to be developed to provide parent training consistent with federal law requirements.

Recommendations for the Connecticut State Department of Education

- The CSDE should develop a corrective action plan to assist and monitor the District's progress in complying with IDEA mandates.
- The CSDE should assess its monitoring and oversight of, and the provision of technical assistance to, the District to ensure compliance with IDEA and adequate provision of educational services to young children with disabilities or developmental delays.

Recommendation for the Birth to Three System

To assist with continuity of service delivery for children exiting Birth to Three and entering the public school system, the state should consider expanding its outcome tracking to include data regarding transition outcomes for children. Specifically, the Office of Early Childhood, alone or in partnership with the State Department of Education, should consider collecting data, by district, on the rate of children found eligible for special education services, the type of programming received inclusive of related services delivered, with specific attention paid to children entering the District with a diagnosis of Autism Spectrum Disorder. Such data collection could assist with identifying areas of unmet needs for children and for school districts that may struggle to build capacity to support children with varying disabilities.

Public Policy Recommendation: Identifying and Supporting Children Age Birth to Five

As the District continues with reform efforts and focuses on improving educational service delivery and promoting positive outcomes for young children, the District should consider the creation of a Birth to Five program model. A policy paper from a national organization (CLASP) describes the efforts of a Wisconsin school district to create a Birth to Five support model using various federal funding streams.¹¹² The school district alternately led or coordinated efforts to increase access to developmental screening for young children, inform parents of area resources for young children and their families through outreach efforts assisted by the school district, coordinate with home visiting programs, and consultation with community child-care and preschool programs. The school district took a visionary approach to supporting school-readiness by coordinating with providers that work with the under age 3 population and their families. According to CLASP, districts "can be partners and contribute to building larger community-wide comprehensive early childhood systems... [and support] meaningful linkages across health services, family support, early intervention, and early learning." The Wisconsin school district "demonstrates that a school district can take the lead in facilitating early childhood systems building in local communities."

¹¹² Matthews, Hannah, *Financing a Birth to Five Program*, (March., 2011), available on the web at <http://www.clasp.org/resources-and-publications/files/financingbirthtofive.pdf>.

Appendix: New Britain Public Schools' Summary of the District's actions

Prior to the publication of this Report, the District has already taken a number of steps to demonstrate its commitment to improving its preschool programs for students. The District has also identified future promising plans for its preschool programs in response to the concerns identified in this Report. The District has also identified a consultant who will be doing a needs-assessment and will be assisting with drafting a comprehensive plan to improve the delivery of preschool special education services in the district.

1. Early in her tenure, the new Direct of Pupil Services met with the Preschool Assessment Team to re-visit the District's procedures. The Director has also reorganized oversight of the preschool program. Specifically, the Preschool Coordinator currently oversees the Readiness Program and serves as Principal at the Early Learning Center, while another experienced and well-qualified administrator has assumed responsibility for oversight of the Birth to Three process.
2. The District has assigned a Supervisor of Special Education with the responsibilities to attend all Birth to Three Transition PPT meetings and maintain oversight of the PPT process during Birth to Three transitions into school.
3. The District has assigned a bilingual (Spanish-speaking) psychologist, who has a significant amount of experience with evaluating young children on the autism spectrum, to the preschool program to replace a departed school psychologist.
4. Shortly after the Direct of Pupil Services' arrival, a BCBA who served students in the District program for students with autism was brought into the two preschool classrooms to begin assessing the needs of preschool students and to deliver training to para-educators in those classrooms. Unfortunately, the BCBA departed from the District over the summer. The District is currently searching for a BCBA to provide BCBA services to students in our autism program (and preschool program).
5. There is a high need for Speech and Language eservices across the District. In the preschool program, SLPs have historically assessed students, generated the goals and objectives, delivered the primary instruction, and worked with paraprofessionals to provide the reinforcement of skills. Given the high need, the District is in the process of hiring another full-time speech clinician to assist with the needs of our speech and language-delayed preschoolers.
6. The District has established a structure to provide extended day programming to students who require it. The District intends to continue to review opportunities to reallocate resources so that it is able to provide full-day programming for students with significant needs who would benefit from full-day programs. The District acknowledges that the

increased cost of full-day programming is significant, due to finite space and personnel resources.

7. Full day classes have been established by making each PreK3 and Prek4 class available in both the a.m. and p.m.
8. In June, 2016, the Director of Pupil Services met with the Birth to Three liaison in New Britain to review the Birth to Three transition process and to discuss the Director's expectations regarding transitioning students. The liaison shared essential and productive feedback, including the need for increased access to relevant staff participation in PPT meetings, and for increased oversight over documentation of PPT meetings.
9. On September 1, 2016, the Director of Pupil Services met with the District's entire Preschool Assessment Team to provide training on the Birth to Three Transition Process with an emphasis on the following areas:
 - a) PPT Participation and Membership
 - b) Consideration of B-3 info and to determine whether additional assessment is needed
 - c) Evaluation in all areas of suspected disability
 - d) Assessment in areas of related service (OT/PT/Speech) prior to determination that such services are no longer appropriate
 - e) Appropriate assessment/evaluation tools for students suspected of being on the Autism Spectrum (utilizing guidelines established by the State of Connecticut Department of Education)
 - f) Determination and recommendation of appropriate services based on individual student need and level of severity
 - g) Consideration of re-valuation of students three to six months after the student has started in the District, to determine the impact(s) that instruction have played and to get a better sampling of skills due to students' comfort levels and willingness to participate in formal evaluation procedures.
10. Occupational Therapy providers have been directed to: 1) re-evaluate students who come in receiving OT services to determine whether or not the student requires direct OT services, and 2) identify and document indirect services to be provided (or consultation time) that is part of the student's IEP but has not previously been documented.
11. The new director of Pupil Services has ensured that PPTs consider the need for parent training at a number of PPT meetings, and will reinforce that such related services should be considered at PPTs. The District also offers monthly sessions for parents in the event, and provides child care to facilitate attendance. These sessions have focused primarily on special education topics and are conducted by District supervisors of special education.
12. Many of the District's preschool-aged children are referred to the District from community-based programs where they are already receiving full-day day care programming. New Britain's past practice included pulling students out of these programs on certain days per week, bussing them to one of the public schools, providing a half-day preschool program, and then bussing them back to their community program.

The District has now re-allocated one of its preschool teachers to serve students as an itinerant service provider within these programs. The District has also deployed a [Speech and Language therapist] to do the same. While the District recognizes that there are children who need the specialized supports and instruction from the special education staff, the District also recognizes that, in many cases, bringing the supports to the students where they are is truly the least restrictive environment. Consultation time between the special education providers and the community-based preschool staff has also been built into the itinerant teacher's schedule.

13. Last spring, the District hired a Special Education Supervisor responsible for oversight of the Autism ("Key") program, who brings with her a wealth of experience and knowledge in developing programs and supporting the educational needs of students on the Autism Spectrum. With her oversight of the Birth to Three process and the two self-contained preschool classrooms, the District is confident that the necessary training of staff will occur and those supports needed for delivering [a Free Appropriate Public Education] will be in place.
14. The District has identified a need for additional training and support in the areas of identifying target behaviors, developing data collection tools, interpreting results, and using data for informed decision-making. The District will focus on providing coaching and training for relevant staff in these areas.
15. The District has planned training for the 2016-17 school year to include PPT Procedures and IEP accuracy.