



# STATE OF CONNECTICUT DEPARTMENT OF EDUCATION



March 12, 2024

## **Connecticut State Department of Education Response to OCA/DRCT Report on High Road Schools**

The CSDE vigorously disagrees with the conclusions drawn by the OCA/DRCT Report regarding the CSDE's involvement with High Road Schools.

The Report's claims regarding the CSDE do not comport either with the actual steps the CSDE took or with the performance of our oversight responsibilities for students whose local or regional school districts have placed them at Approved Private Special Education Programs, or "APSEPS," of which High Road is one.

The CSDE maintains compliance with current federal and state requirements regarding approval and monitoring/oversight of APSEPS. Additionally, the CSDE is attentive to concerns that are brought forth to the State's attention and engages in off cycle monitoring reviews, as acknowledged by the OCA on page 52 of their report.

During the period of investigation, from 2022 through February 2024, the CSDE received no complaints from parents, from guardians, from students, from attorneys, from parent advocates, or from local or regional school districts regarding High Road Schools. Of note, the CSDE's Special Education Division annually receives approximately 1,000 filings in the form of hearing requests, mediation requests, or compliance complaints, yet during the period of time covered in the OCA/DRCT Report, not one of those thousands of filings pertained to High Road Schools. As such, the OCA/DRCT Report stands alone, having employed an investigatory methodology about which the CSDE has serious reservations, including:

1. In the OCA/DRCT Report, OCA complains about the three-to-five- year statutory timeframe for the review cycle of APSEPS and then essentially faults the CSDE for conducting site visits within that legally prescribed timeframe. The fact that OCA may disagree with these statutory timeframes does not mean that the CSDE's compliance with the law is somehow inappropriate.
2. The CSDE maintains compliance with federal and state law with regard to APSEP monitoring and oversight and conducts required on-site approval visits every three to five years. In addition to these requirements, the CSDE conducts off-cycle site reviews when concerns are brought to its attention. In fact, on page 52 of the report, OCA acknowledges the following:

*"...the agency conducted three (3) targeted off-cycle reviews of High Road schools within the last five (5) years; in two instances based on concerns brought forward by the OCA regarding the suspected use of unlicensed personnel to perform nursing duties (August 2017) and the inconsistency in background checking (November 2019). There was also a concern brought to the attention of CSDE concerning the discharge of a student from High Road School of Fairfield with insufficient communication to a surrogate parent of a USDII student (November 2021)."*

3. In the Report, OCA states that these site visits “varied in terms of impressions, including *strengths* and challenges,” yet nowhere mentioned are the “strengths.”

4. The OCA/DRCT Report faults the CSDE for not providing annual Statements of Assurances for 2020 or 2021, when the pandemic disrupted both schools and agencies, yet admits in footnote ten of the Report that OCA paused its own investigation due to the same effects of the pandemic. The Report also fails to mention that the CSDE did provide Statements for 2017, 2018, 2019, 2022, and 2023.

5. With respect to on-site approval visits, the CSDE had already scheduled the following site visits for High Road schools during the 2023-2024 school year:

- Hartford High and Satellite Location: December 19 and 21, 2023
- Hartford Primary and Satellite Location: January 3 and 4, 2024
- Wallingford Location: March 26 and 28, 2024
- Fairfield County Location: April 10 and April 11, 2024

Nonetheless, as the CSDE remains committed to upholding the standards of special education provision and ensuring accountability in all aspects of oversight responsibilities, and given the seriousness with which the CSDE takes its oversight duties, the CSDE will treat the report as a formal State Complaint under 34 C.F.R § 300.151 and initiate a thorough investigation.

Additionally, and in accordance with Conn. Gen. Stat §10-76b and §10-76d, the CSDE will conduct an off-cycle program review of High Roads Schools to ensure compliance with statutory obligations as an APSEP. This includes on-site approval visits for High Road programs, with additional visits scheduled throughout the spring. Corrective actions will be issued for any identified deficiencies, with non-compliance potentially resulting in sanctions, including conditional approval status.

Although OCA originally offered the CSDE the opportunity to submit a response to the final Report, when the CSDE provided **the attached** March 11, 2024, letter, setting forth the CSDE’s concerns regarding the methodology and the findings in the Report pertaining to the CSDE, OCA refused to include it. Furthermore, when the CSDE renewed its request, OCA again refused.

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For immediate release: March 12, 2024

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STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION



March 11, 2024

*Via Electronic Mail*

Virginia Brown  
Staff Attorney  
The Office of the Child Advocate  
165 Capitol Avenue  
Hartford, CT 06105

Re: High Road Schools Report

Dear Virginia:

Good afternoon. Thank you for sharing with the CSDE a draft of the proposed final OCA/DRCT report entitled "High Road Schools and Educational Administration & Program Deficiencies" ["Report"]. It is quite the tome and reflects what was clearly a substantial investment of time by OCA and DRCT. The CSDE appreciates the OCA's and DRCT's obvious concern for the wellbeing of students with disabilities who have been placed by their local and regional boards of education at High Road Schools. Your interest parallels the CSDE's, for as the Report notes, the CSDE maintains oversight of Approved Private Special Education Programs ["APSEPS"] such as High Roads, a responsibility the CSDE takes seriously. At the same time, local educational agencies ["LEAs"] have primary responsibility for not only creating the Individualized Education Programs ["IEPs"] that set forth the specialized instruction and related services that special education students require but also for ensuring that the APSEPS in which they have placed students implement these IEPs.

With respect to that obligation, it is noteworthy that although the Report references "grave and widespread regulatory noncompliance by High Road Schools," *Id.*, p. 41, the districts with which OCA and DRCT apparently spoke did not appear to share that perspective regarding High Road Schools. Granted, the Report's assertions that one school district responded to your inquiries by stating "that other programs are worse," *Id.*, p. 42, and that another district's representative purportedly stated that "no one will take these students," *Id.*, p. 43, are, on their face, concerning, they could also be a perhaps too-frank acknowledgement of the fact that APSEPS are not required to accept any and all students referred to them. Rather, prior to placement decisions being made, APSEPS review the child's educational records and determine in consultation with the student's Planning and Placement Team as to whether the child's educational needs are those that can be addressed by that particular program.

As you correctly note, LEAs are responsible for ensuring that their special education students receive a free appropriate public education ["FAPE"] in the least restrictive environment. While the law favors the inclusion of students in settings with typical peers, as the United States Court of Appeals for the Second Circuit held in *P. v. Newington Board of Education*, 546 F.3d 111 (2<sup>nd</sup> Cir. 2008), the least restrictive environment is an individualized determination. Thus, while for

some students who receive special education services, the least restrictive environment could be, say, a co-taught regular classroom, for another it could be an out-of-state residential program. Along that spectrum, an APSEP like High Road falls somewhere in the middle. Thus, in cases in which an LEA is required to find an appropriate, private day program, such as High Road, ultimately, it is within the purview of such program to determine in the first instance whether to accept the student.

In any event, the CSDE is not aware of any LEA having raised concerns about High Road Schools. Similarly, the CSDE is not aware of any parents or guardians having filed a compliance complaint regarding High Road Schools. Finally, it is not aware of any attorneys or educational advocates for parents and guardians having complained about, or otherwise sought CSDE intervention regarding, High Road Schools. One, then, might ask how this lack of concern by those most closely associated with the students at High Road Schools squares with the “grave and widespread regulatory noncompliance” cited in the Report? The CSDE believes there could be a two-part answer to that question. First, the collective student population at High Road Schools is fairly significant, the Report noting that at least during the 2021-2022 academic year, High Road Schools had 316 students from 38 different school districts across Connecticut. *Id.*, p. 5.

Within that context, the more specific-student-centered shortcomings alleged in the Report apply to but a small fraction of that student population. Obviously, this is not meant to suggest that the failure to address any student’s needs is excusable so long as those of the vast majority of other students are. To the contrary, and to quote a line from the writer Michael Connelly, the CSDE believes that when it comes to students, “everybody counts or nobody counts.” Instead, this is perhaps a reason why none of those who are primarily responsible for the welfare of these children appear to share the Report’s negative characterizations of High Road Schools, and if those who have the closest and most direct relationships with these individual students have not detected any evidence of “regulatory noncompliance,” it is certainly unreasonable to claim that the CSDE should have.

The possible second answer to the question is that despite OCA’s and DRCT’s obviously diligent efforts, you were unable to establish any causal link between what you label “grave and widespread regulatory noncompliance” and adverse educational outcomes. In other words, there is no longitudinal study of individual student records that demonstrate a failure of these students to master or make satisfactory progress on their respective IEPs’ goals and objectives during their time at High Road Schools. To the contrary, as is noted in the Report, in May 2019, the CSDE commended both High Road/Hartford High and High Road of Wallingford for positioning students to return to less-restrictive settings within their home districts in a period of 24 months. Report, p. 50. The ability to prepare students to transition back to their districts is evidence of educational and behavioral progress.

In short, although there is clearly a presumption within the Report that High Road students are not making reasonable educational progress as required under the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §§1400 *et seq.* [“IDEA”], there is no definitive evidence of that, which perhaps is a reason why the LEAs that OCA and DRCT contacted did not share your views of the High Road placements. After all, it is reasonable to assume that LEAs are paying a substantial amount to High Road Schools for each student that the districts place there. Given that, it is equally reasonable to assume that were there a systemic failure to satisfy the placed students’ IEPs, the LEAs would be loath to continue investing such sums in what they

perceived to be ineffective or inappropriate placements. It is even more reasonable to assume that were that the case, the students' parents or guardians would vigorously oppose it.

At one point, the Report quotes July 24, 2023, guidance from the United States Department of Education, which provides in part that a State Educational Agency's reliance solely upon an APSEPS' state performance plan/annual performance report ["SPP/APR"] "would not constitute a reasonably designed general supervision system." Report, p. 53. In justifying this assertion, the guidance explains that "the SPP/APR does not measure the extent to which children with disabilities are receiving the IDEA services as prescribed in their IEPs." *Id.* In other words, the touchstone of determining the appropriateness of an SEA's general supervision is whether the IEPs of students placed in APSEPS are being implemented, thereby resulting in the students satisfactorily progressing on their IEPs' goals and objectives. Nonetheless, despite the Report's failure to provide *any* evidence of *any* specific student failing to master or make satisfactory progress on their goals and objectives due to not having received the services prescribed in their IEPs, the Report seeks to fault the CSDE, asserting: "It does not appear that CSDE conducts reasonably designed supervision of education provided in APSEPS as contemplated by federal guidance." This contention is, once again, predicated upon an implicit, and unsubstantiated, presumption, rather than on demonstrable fact, that the students at High Road Schools are not "receiving the IDEA services as prescribed in their IEPs." It is, however, not reasonable to allege a failure of supervision while at the same time being unable to establish the primary purpose of such supervision – to ensure the provision to students of their IEP services.

The Report does allege that upon site visits conducted by OCA and DRCT, some students appeared to be sleeping, or disengaged, or left to work on his or her own in a cubicle in the classroom. While all students should be engaged to the maximum amount possible, occasions such as these are not limited to students with disabilities or students in APSEPS. Student attendance and engagement are dilemmas that every school district is struggling with. A school year, however, consists of, at the minimum, 180 days and nine-hundred hours of actual school work. Conn. Gen. Stat. §§10-15 & 10-16. While obviously students should be alert and engaged on a daily basis, there nonetheless remains a wide – and the CSDE would say unbridgeable – divide between a random day of student disengagement and a conclusion regarding a student's ability to master or make satisfactory progress on the student's *annual* IEP. As such, it is not realistic for OCA and DRCT to take the position that a random student's disinterest in class on a particular day constituted a failure of the CSDE to exercise "*general* supervision."

I emphasize the word "general," as that is indicative of the fact that the CSDE is not required under either federal or Connecticut law to provide particularized supervision. Doing so would require a near-constant presence in every APSEP, which is neither practical nor possible. It would also be contrary to the common meaning of the word "general," which has been defined as "concerned or dealing with universal rather than particular aspects." *Merriam-Webster Dictionary*. In sharp contrast, LEAs have a legally required, individualized supervisory obligation to each of their students. Nonetheless, and as noted, despite this particularized obligation, the CSDE has not received any complaints from districts pertaining to High Road Schools. Furthermore, while the districts which OCA and DRCT contacted expressed concern about your allegations – as would any responsible administrator – given these districts' apparent lack of a material response, the deficits that you conveyed were apparently more than counterbalanced by the districts' own positive experiences with High Road.

The CSDE wishes to make it clear that the purpose of this response is not to praise or advocate on behalf of High Road Schools. The point is that in order to fault the CSDE for its purported failure to exercise “general supervision” over High Road, the Report must first establish both that there are systemic failures on the part of High Road Schools and that these failures have directly and adversely affected the ability of the students entrusted by LEAs to High Road to make reasonable educational progress on their respective IEPs. In short, a necessary predicate for the CSDE’s alleged failure is the failure of these students to make satisfactory progress on their IEPs goals and objectives. The Report, however, contains no such definitive, accessible, or corroborative evidence that this has, in fact, been the case.

It is also notable that the Report provides in part:

Despite the numerous deficiencies noted in this investigation, CSDE stated that there have been no *complaints* made to CSDE about High Road Schools operating in Connecticut. Notwithstanding that CSDE had not received any *complaints*, the agency conducted three (3) targeted off-cycle reviews of High Road schools within the last five (5) years; in two instances based on concerns brought forward by the OCA regarding the suspected use of unlicensed personnel to perform nursing duties . . . and the inconsistency in background checking.

Report, p. 52 (emphasis in original). In effect, then, OCA and DRCT acknowledge that the CSDE has received no complaints from LEAs, and, as previously noted, the CSDE has similarly received no complaints from students, parents, guardians, parent attorneys, or parent advocates. Rather, OCA and DRCT alone have expressed concerns, and when they did so, the Report acknowledges that the CSDE responded, conducting multiple off-cycle reviews. When, in the course of such reviews, deficiencies are found, the CSDE issues corrective actions, which it then follows up on. Included with this response are documents that detail an example of such CSDE corrective-action monitoring.

Additionally, and as the Report notes at page 49, High Road Schools are required to submit an Annual Statement of Assurances no later than October 15 of each year, the most recent of which from 2022 and 2023 are included herewith. Of note – given the Report’s discussion of High Road’s alleged failure to conduct background and employment verification checks of its employees -- enumerated paragraph eighteen on the checklist that comprises these Annual Statements provides: “The program is in compliance with CGS Section 10-221d, regarding background and employment verification checks of applicants or employees.” In the absence of any complaints or evidence to the contrary, it is reasonable for the CSDE to accept these certifications as true. Furthermore, and as iterated and reiterated herein, there were no such complaints or evidence other than the concerns that OCA and DRCT previously raised with the CSDE, which, as just noted, the CSDE responded to by conducting targeted, off-cycle reviews of High Road Schools. It should also be noted that should an APSEP fail to submit an Annual Statement of Assurances for each program location, or should it fail to submit a current Fire Inspection Report and Health Inspection Report indicating pass/approved with the Statement of Assurances as required, the CSDE follows up with them.

As stated at the outset of this response, the CSDE sincerely appreciates the collective efforts of OCA and DRCT to protect the interests of all children, particularly those with disabilities. It disagrees, however, with the Report to the extent that it suggests that the CSDE may have failed

to adequately exercise general supervision over the High Road Schools. There are no assertions, much less evidence, that the CSDE failed to conduct periodic reviews of the High Road Schools within the statutory timeframes. Furthermore, and as discussed herein, with the exception of the concerns OCA and DRCT previously raised with the CSDE -- which as the Report acknowledges resulted in the CSDE conducting multiple off-cycle reviews -- there have been no concerns, complaints, or requests for inquiry raised by parents, by guardians, by students, by attorneys, by advocates, or by LEAs. Even the Report does not provide evidence that even one of the hundreds of students enrolled by their school districts in High Road Schools failed to master or make satisfactory progress on their IEP's goals and objectives. There is no evidence that LEAs relocated students to other clinical day programs or to other placements due to dissatisfaction with High Road Schools. There is no evidence that parents initiated due process against their school districts or filed compliance complaints with the CSDE, contesting High Road Schools' efficacy.

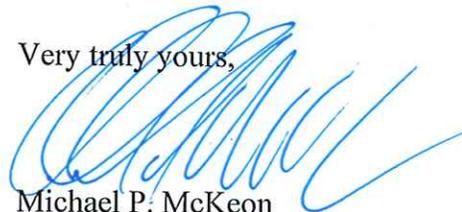
Therefore, for the reasons discussed herein, the CSDE cannot agree with – and strongly opposes - the first recommendation set forth in the Report, which calls for “annual inspections and site visits to ensure IDEA and regulatory compliance.” Id., p. 54, ¶1. This is an unreasonable and unrealistic demand. There are currently 86 APSEPS which the CSDE monitors. See [Approved Private Special Education Programs \(APSEPs\) \(ct.gov\)](#). Thus, such a mandate would, if considered in the context of a calendar year, require an average of 7.2 site visits a month, and, if considered in the course of an academic year, or ten months, 8.6 monthly site visits. The CSDE simply does not have the personnel, the resources, or the appropriations to undertake 86 separate inspections and site visits in the course of a year. Furthermore, the current cycle has proven an effective tool for overseeing APSEPS such as the High Road Schools, and there is simply no basis for such a radical departure from that process.

Nonetheless, and as a reflection of how seriously the CSDE takes its responsibility to provide general supervision to APSEPS, the CSDE will voluntarily take the following actions:

1. The CSDE will treat the Report as a formal State Complaint under 34 C.F.R § 300.151 and conduct a full investigation. If, at the conclusion of that investigation, the CSDE determines that corrective actions are warranted, such corrective actions will be mandated, and the CSDE will closely monitor High Road's compliance with, and implementation of, such corrective actions; and
2. The CSDE, in continued compliance with Conn. Gen. Stat §10-76b and §10-76d, will conduct an off-cycle program review of the High Roads Schools in order to ensure that High Roads is meeting its statutory obligations as an approved private special education program.

Thank you again for sharing with us a copy of the draft Report, and please let me know if you have any questions regarding this Response.

Very truly yours,



Michael P. McKeon  
Director of Legal & Governmental Affairs