

# PUBLIC INTEREST LAW FIRM

*Oficina Legal de Interes Publico*

*Law Foundation of Silicon Valley*

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April 14, 2008

Jack O'Connell

State Superintendent of Public Instruction and Director of Education

California Department of Education

1430 N Street

Sacramento, CA 95814

*Re: Demand letter re CDE's failure to adequately monitor COEs' special education programs*

Dear Superintendent O'Connell:

We write to you as public interest law firms concerned about the adequacy of special education programs operated by county offices of education ("COEs") for students enrolled in California's Juvenile Court and County Community Schools. The purpose of this letter is to protest the failure of the California Department of Education ("CDE") to adequately monitor the extent to which these special education programs comply with the requirements of federal and state law, which, among other things, guarantee that all children with disabilities<sup>1</sup> are identified and provided with a free, appropriate, and equal education in the least restrictive environment.

By failing to adequately monitor the special education programs in these alternative schools, CDE has violated the civil rights guaranteed to some of California's most vulnerable students under the Individuals with Disabilities Education Act ("IDEA"), as well as under other federal and California laws. Our hope is to quickly and amicably resolve these issues with CDE without resort to litigation.

## CDE's Legal Responsibility to Monitor COEs' Special Education Programs

CDE is required to monitor and enforce local educational agencies' ("LEAs") implementation of Part B of the IDEA and state special education provisions.<sup>2</sup> CDE's monitoring must include quantitative and, as necessary, qualitative indicators to measure LEAs' performance in specified "priority areas," including the provision of a free appropriate public education in the least restrictive environment.<sup>3</sup> One of the "primary foc[i]" of these monitoring activities must be on "improving educational results and functional outcomes for *all* children with disabilities."<sup>4</sup> In addition, CDE's responsibility for general supervision includes a mandate that it ensure that "*all*

<sup>1</sup> State law employs the term "individuals with exceptional needs." Cal. Educ. Code § 56026.

<sup>2</sup> 20 U.S.C. § 1416(a)(1)(C); Cal. Educ. Code § 56600.6(b); *see also* Cal. Educ. Code § 56600 (requiring "ongoing comprehensive evaluation of special education programs"); Cal. Educ. Code § 56606 (requiring "onsite program and fiscal reviews of the implementation of [special education] plans").

<sup>3</sup> 20 U.S.C. § 1416(a)(3); 34 C.F.R. § 300.600(d)(1); Cal. Educ. Code § 56600.6(d)(1).

<sup>4</sup> 20 U.S.C. § 1416(a)(2)(A) (emphasis added); *see also* 34 C.F.R. § 300.600(b) (same); Cal. Educ. Code § 56600.6(c)(1).

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educational programs for children with disabilities in the State, including all such programs administered by any other State agency or local agency . . . meet the educational standards of the State educational agency.”<sup>5</sup> Lastly, CDE must analyze *each* LEA's performance in implementing Part B of the IDEA.<sup>6</sup>

COEs must be included in CDE's monitoring and analysis, as they are included in the definition of “local educational agency” for purposes of special education law, and they provide (or should provide) special education services for children with disabilities enrolled in the Juvenile Court and County Community Schools.<sup>7</sup>

### CDE's Failure to Monitor Special Education Programs of COEs in Juvenile Court and County Community Schools

Review of public records from CDE and a number of COEs reveals CDE's failure to adequately monitor the special education programs for students enrolled in California's Juvenile Court and County Community Schools. Indeed, it appears that CDE has all but exempted Juvenile Court and County Community Schools from its special education monitoring process. CDE identifies four types of “more formal reviews” it uses to ostensibly fulfill its responsibility for general supervision under Part B of the IDEA,<sup>8</sup> three of which could be used to monitor the special education programs in Juvenile Court and County Community Schools.<sup>9</sup> However, COEs are not subjected to Facilitated District Reviews<sup>10</sup> or Verification Reviews,<sup>11</sup> nor are they required to conduct Special Education Self Reviews,<sup>12</sup> with respect to the special education programs in these alternative settings.

CDE staff have told us that CDE does not subject COEs to these formal reviews because Juvenile Court and County Community School student records are included in the review of

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<sup>5</sup> 20 U.S.C. § 1412(a)(11)(A) (emphasis added); *see also* Cal. Educ. Code § 56600.6(a) (requiring state to comply with federal special education law “by evaluating pupil performance against key performance indicators”); Cal. Educ. Code § 56836.04(a) (requiring the State Superintendent of Public Instruction to “continuously monitor and review all special education programs”).

<sup>6</sup> 20 U.S.C. § 1416(b)(2)(C); 34 C.F.R. § 300.602(a).

<sup>7</sup> *See* Cal. Educ. Code § 56026.3 (defining “local educational agency”); 20 U.S.C. § 1401(19) (same); 34 C.F.R. § 300.28 (same).

<sup>8</sup> Special Educ. Div., Cal. Dep't of Educ., State of California State Performance Plan for Individuals with Disabilities Education Act of 2004, at 101-03 (submitted Dec. 2, 2005; updated Feb. 1, 2007), *available at* <http://www.cde.ca.gov/sp/se/qa/documents/spp0506.doc> (hereinafter “State Performance Plan”).

<sup>9</sup> The fourth type, Nonpublic School and Agency Reviews, does not appear to apply to COEs by definition. *See* State Performance Plan at 102-03.

<sup>10</sup> Facilitated District Reviews are three-year reviews of districts with the lowest overall Key Performance Indicators (“KPIs”). State Performance Plan at 102. Facilitated District Reviews begin with a Verification Review. *Id.*; *see infra* note 11.

<sup>11</sup> Verification Reviews are annual reviews by CDE staff of districts whose KPIs are lowest in the selection priorities established by the KPI Stakeholder Group or which have deficiencies in compliance. *See* State Performance Plan at 102; Quality Assurance Process, Special Educ. Div., Cal. Dep't of Educ., at <http://www.cde.ca.gov/sp/se/qa/qap.asp> (last reviewed June 11, 2007).

<sup>12</sup> Special Education Self Reviews are conducted primarily by district staff and are required of approximately one quarter of districts each year. State Performance Plan at 102.

randomly pulled student records in the formal reviews of school districts; it is CDE's apparent view that these reviews satisfy its monitoring obligations.<sup>13</sup> We have been told by CDE that the rationale for this practice is that the school district remains the "district of residence" for some of these students, even though the students are enrolled in a Juvenile Court or County Community School and the COE is the entity that provides (or should provide) special education services for students in these settings. Whatever the reason, sampling a limited and likely unrepresentative assortment of student files in the context of a formal review of a school district—a separate entity from a COE—is an insufficient and inadequate means to systematically monitor the special education programs in Juvenile Court and County Community Schools or to ensure that children with disabilities who are enrolled in such schools are receiving all the services to which they are entitled under federal and state law.

COE's failure to conduct formal reviews focused on the special education programs for students enrolled in Juvenile Court and County Community Schools has, in turn, resulted in the following. It appears that CDE is failing to make on-site monitoring visits to these alternative schools; conduct observations to determine if Individualized Education Programs are implemented as written; interview administrators, teachers, and other staff from these school sites; interview the students enrolled in these schools and their parents; and analyze COEs' relevant policies, procedures, and complaint and due process history data. Moreover, in the absence of such formal reviews, it appears that CDE is not fully utilizing the system for correction of noncompliance in these special education programs,<sup>14</sup> allowing illegal aspects of the programs to go unidentified, uncorrected, and unresolved—all to the detriment of the children with disabilities who are enrolled in these schools.

These failures are especially distressing given that these schools serve the most at-risk students in California. County Community Schools are reserved for expelled students, students referred by School Attendance Review Boards or probation departments, and other at-risk youth.<sup>15</sup> Approximately 44,099 students were enrolled in County Community Schools throughout the 2005-06 school year.<sup>16</sup> Juvenile Court Schools provide educational programs primarily for students who are involved with the juvenile justice system and are detained in county juvenile detention facilities.<sup>17</sup> Approximately 68,470 students were enrolled in Juvenile Court Schools throughout the 2005-06 school year.<sup>18</sup> Juvenile Court Schools enroll a disproportionate

<sup>13</sup> Letter from Georgianne Knight to Deborah Escobedo (April 11, 2007), enclosed herewith.

<sup>14</sup> Each of the formal review processes may result in findings of noncompliance at the student and/or district level, and findings of noncompliance require correction. State Performance Plan at 103. Sanctions may be imposed if a district fails to correct its noncompliance. *Id.*

<sup>15</sup> Cal. Educ. Code § 1981.

<sup>16</sup> This number was generated by adding the number of unduplicated students enrolled in County Community Schools in each California county. See "2005-06 Alternative Schools Accountability Model (ASAM) School Report – Report Summary," <<http://dq.cde.ca.gov/dataquest/page2.asp?Level=School&submit1=Submit&Subject=ASAM>> (last accessed Nov. 6, 2007).

<sup>17</sup> See Cal. Educ. Code §§ 48645-45.6 (governing Juvenile Court Schools); 15 Cal. Code Regs. § 1370 (setting minimum standards for educational programs in juvenile facilities).

<sup>18</sup> This number was generated by adding the number of unduplicated students enrolled in Juvenile Court Schools in each California county. See "2005-06 Alternative Schools Accountability Model (ASAM) School Report – Report

Letter to Jack O'Connell

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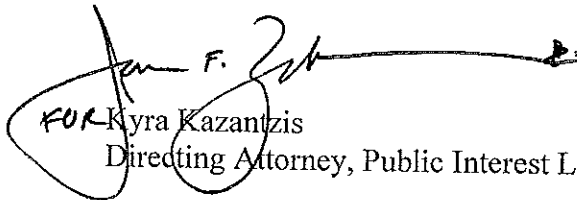
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percentage of minority youth.<sup>19</sup> Moreover, it is estimated that students with disabilities are overrepresented in the juvenile justice system, with estimates ranging from 32 to 90 percent.<sup>20</sup>


In conclusion, CDE fails to monitor or review the special education programs for students enrolled in Juvenile Court and County Community Schools in any meaningful way. This failure on CDE's part effectively excuses from full oversight the entities that serve—or at least purport to serve—a significant portion of the state's most at-risk children with disabilities.

We request that you take the necessary steps to come into compliance with your obligations under state and federal law to monitor and review these programs. Please provide us, by May 5, information regarding your plan to fully include Juvenile Court and County Community Schools in CDE's formal special education monitoring and review processes. We would be happy to meet with you to discuss the concerns raised above and to participate in discussions about how this plan might be accomplished. If you have any questions about our demand, please contact Kyra Kazantzis at (408) 280-2401, or [kyrak@lawfoundation.org](mailto:kyrak@lawfoundation.org); or Deborah Escobedo at (415) 543-3379 x3907 or [descobedo@ylc.org](mailto:descobedo@ylc.org). Thank you for your consideration.

Sincerely,

  
FOR Kyra Kazantzis  
Directing Attorney, Public Interest Law Firm

  
Deborah Escobedo  
Staff Attorney, Youth Law Center

  
Brian Blaylock  
Skadden Fellow, Bay Area Legal Aid

cc: Mary Hudler  
Director, Special Education Division  
California Department of Education  
1430 N Street  
Sacramento, CA 95814

Encl.: Letter from Georgianne Knight to Deborah Escobedo (April 11, 2007)

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Summary," <<http://dq.cde.ca.gov/dataquest/page2.asp?Level=School&submit1=Submit&Subject=ASAM>> (last accessed Nov. 6, 2007).

<sup>19</sup> Enrollment data found on DataQuest reveal that Latino, African-American, and Asian/Pacific Islander students comprise 80.3% of all students enrolled in California's Juvenile Court Schools and 67.89% of the general student population in California schools.

<sup>20</sup> Nat'l Ctr. on Secondary Educ. & Transition, Youth with Disabilities in the Juvenile Justice System: Prevention and Intervention Strategies (Feb. 2005), available at [http://www.edjj.org/Publications/NCSETIssueBrief\\_4.1.pdf](http://www.edjj.org/Publications/NCSETIssueBrief_4.1.pdf).