



# Massachusetts Department of Elementary and Secondary Education

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September 20, 2012

Kevin Lyons, Superintendent  
Hudson Public Schools  
155 Apsley Street  
Hudson, MA 01749

RE: Intake # 13-0029  
Group Name: All Students  
**Letter of Finding**

Dear Superintendent Lyons:

On August 6, 2012, the Massachusetts Department of Elementary and Secondary Education ("Department") received a written statement of concern from Jorge Teixeira involving the Hudson School District ("District"). As the PRS Specialist inquiring into this matter, I have taken the following steps:

- Reviewed the statement of concern and supporting documentation.
- Requested a Local Report from the District.
- Reviewed the District's Local Report and supporting documentation submitted to the Department on August 23, 2012
- Reviewed the complainant's response to the District's Local Report.
- Reviewed the District's letter in response to the complainant's response to the Local Report.
- Reviewed relevant state and federal special education laws and regulations.
- Consulted with other Program Quality Assurance Services personnel.

The Department's inquiries indicate that noncompliance has been determined, and we are advising the District now of this finding, as well as of the required corrective action which must be implemented. The concern included in the signed statement, our findings and required corrective actions are as follows:

## CONCERNS AND FINDINGS

The complainant, on behalf of the District's Special Education Parent Advisory Council, several parents and all special education students in the District, alleges that IEPs often do not specify the type of service provider (e.g., "sped staff" listed instead of "special education teacher" or "paraprofessional") in violation of: *603 CMR 28.06(2)(a)*:

*The decision regarding placement shall be based on the IEP, including the types of related services that are to be provided to the student, the type of settings in which*

*those services are to be provided, the types of service providers (emphasis added), and the location at which the services are to be provided.*

In its Local Report, the District contends that PQA procedures do not allow for an individual to file a complaint on behalf of other students without the written consent of their parents.

The Department's "Problem Resolution System Information Guide" states:

***When Someone Who Is Not the Student or the Student's Parent Files a Complaint***

*Sometimes a complainant is not a student or a student's parent, 2 but is an educator, community member, or someone else. In those cases, the Department cannot continue to talk with the complainant about a specific student unless the student's parent has given his or her written permission to do so. Federal and state laws require the Department and school districts to keep education records about students confidential unless the student's parent has given permission (also known as "consent") to let someone else have access to them. 3 The parent's consent must be in writing, and needs to include:*

- 1. The records or information that may be disclosed by the Department and the school district;*
- 2. The purpose for which the records or student information can be disclosed; and*
- 3. The people to whom disclosure can be made. 4*

*Parents have an important role in making educational decisions for their children. Therefore, the Department strongly encourages the non-parent complainant to contact the student's parent to ask for consent, or to make sure the parent or the person who makes educational decisions for the student is aware of the issues that are being brought to the Department's attention. **In some cases, the PRS specialist may be able to continue to work on resolving the complaint without written consent from the student's parent, but, in these circumstances, he or she cannot communicate directly with the non-parent complainant.** If a parent requests that a complaint filed by a non-parent not go forward, the PRS specialist will likely honor that request.*

In this specific case, the complainant is both a community member and a parent of a special education student. Also, the complainant, as chairperson of the District's Special Education Parent Advisory Council (SPED PAC), kept other parents informed regarding the content of this complaint in his role as SPED PAC chairperson, without identifying specific students. Since the complaint does not name specific students, consent from other parents would not be necessary for PQA to investigate the specific issue raised in this complaint. The Department therefore finds that the complainant has legitimate standing to file this specific complaint.

The case documentation submitted by both the District and the complainant indicates a fundamental disagreement between the parties regarding whether or not the terminology "sped staff" is permissible as a "type of personnel" on the IEP service delivery grid. In an email to the District dated July 16, 2012, the complainant referenced a previous Department Coordinated Program Review finding stating that the use of "sped staff" was not acceptable. The District countered that 603 CMR 28.06 states only that an IEP must describe the "type of

service providers” and that “SPED staff” complies with this requirement. A District email response to the complainant from the Director of Pupil Personnel Services stated that she would not deny any IEP Team from using “sped staff” if they so choose.

The Department disagrees with the District’s assertion that SPED Staff complies with the with the requirements of 603 CMR 28.06. CMR 28.06(2)(a) requires the IEP Team to consider “the *types* [emphasis added] of service providers.” In order for the IEP Team to make a reasonable decision regarding the student’s placement, the IEP Team must have some knowledge of the kinds of service providers who will provide the student services. In the same manner which the IEP Team must distinguish between the types of related services necessary for the student (for example, “Speech Therapy” or “Physical Therapy”) in making its placement decision, the regulation requires the same sort of consideration for distinguishing the student’s service providers. The Department notes that it has previously informed school districts that the term “SPED Staff” is not sufficient to describe the types of personnel required on the IEP service delivery grid. The Department finds the District in violation of : 603 CMR 28.06(2)(a).

#### CORRECTIVE ACTION WHICH MUST BE IMPLEMENTED

1. The District must send a memo to its IEP Team Chairpersons responsible for the development of the IEP stating that the use of term “SPED Staff” on the IEP service delivery grid is not acceptable, and that each IEP should identify the type of service providers, e.g., special education teacher, paraprofessional, Occupational Therapist, etc.
2. The District must send a copy of the memo to the Department, including the names and titles to whom this memo was sent.

Please provide the Department with the required Corrective Action Report pursuant to these findings **no later than October 12, 2012**. A standard response form is enclosed for your use in responding to this request. **A copy of your Report must also be sent to the person who registered this complaint.**

Also note that for matters related to special education the parties may seek mediation and/or a hearing through the Bureau of Special Education Appeals (BSEA) on the same issues addressed in this letter. Such a hearing, however, is a new proceeding and is not for the purposes of reviewing the Department’s decision in this matter. Any order or decision issued by the BSEA on the issues raised in this complaint would be binding.

I would be pleased to provide further clarification of all information and requirements noted above if you find it necessary. Please call (781) 338-3747.

Sincerely,



Joel Krakow, PRS Specialist  
Program Quality Assurance Services



Dean Paolillo, PRS Supervisor  
Program Quality Assurance Services

enclosure: Response Form

cc: Jorge Teixeira, Complainant  
Julianna Bahosh, Director of Pupil Personnel Services, Hudson Public Schools

**MASSACHUSETTS DEPARTMENT OF  
ELEMENTARY AND SECONDARY EDUCATION**

**Program Quality Assurance Services  
Problem Resolution System**

**School District/Private School/Collaborative: Hudson**

**CORRECTIVE ACTION REPORT  
In Response to Intake # 13-0029**

Name of Student or Group: \_\_\_\_\_

Response Prepared by: \_\_\_\_\_ Date: \_\_\_\_\_

The Corrective Action Report **must include a statement of assurance of the steps taken, or to be taken, to remedy the identified noncompliance issues**, any plan of compensatory services offered, together with completion date(s), persons responsible and copies of information documenting implementation of the Corrective Action.

**A copy of this Corrective Action Report must be sent to the person registering this complaint.**

**This District's Corrective Action Report was sent to the complainant on (date)**

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