



STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

MOLLY M. SPEARMAN
STATE SUPERINTENDENT OF EDUCATION

September 28, 2015

Mrs. Carrie C. Brock
Interim Superintendent
Williamsburg County School District
423 School Street
Kingstree, South Carolina 29556

Dear Mrs. Brock:

General Appropriation Act, 2015 S.C. Acts 91, Proviso 1.43 states "each South Carolina resident of lawful school age residing in licensed residential treatment facilities (RTFs) for children and adolescents as defined under Section 44-7-130 of the 1976 Code, ("students") shall be entitled to receive educational services from the school district in which the RTF is located ("facility school district"). The responsibility for providing appropriate educational programs and services for these students, both with and without disabilities, who are referred or placed by the State is vested in the facility school districts." Willowglen Academy - South Carolina (Willowglen) is a RTF located within the jurisdictional boundaries of the Williamsburg County School District. Therefore, the Williamsburg County School District is the facility school district.

As the facility school district, Proviso 1.43 specifically requires your school district to provide the necessary educational programs and services that each child needs to access appropriate instruction and benefit from his or her educational program. The provision of an educational program and services in a location owned by the RTF is strictly conditioned upon the RTF facility providing and maintaining comparable, adequate space for the educational program and services consistent with all federal and state least restrictive environment (LRE) requirements. Adequate space includes all building, fire, and other applicable standards, codes, and other regulatory requirements, as well as appropriate electrical support and Internet accessibility.

The Proviso also includes the requirement that all children enrolled in the facility school district have access to the facility school district's general education curriculum, which must be tied to the South Carolina academic standards in the core content areas. All children with disabilities who are eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) and the State Board of Education (SBE) regulations must receive special education and related services in the LRE by appropriately certified personnel. All children in RTFs, both with and without disabilities, must at all times be eligible to receive educational credits, which include credits toward a state high school diploma. Teachers must also meet the requirements set forth in the IDEA and Elementary and Secondary Education Act of 1965, as amended (ESEA).

The RTF Proviso requires the South Carolina Department of Education (SCDE) to oversee the implementation of the requirements in the Proviso on an ongoing basis. Additionally, in accordance with the IDEA statutory requirements set forth in 20 U.S.C. §§ 1412 and 1416 and the regulatory requirements in 34 C.F.R. §§ 300.149 through 300.152 and 300.600 through 300.604, the SCDE is charged with the general supervision of local educational agencies (LEAs) to ensure compliance with applicable federal and state statutes and regulations governing educational programs for children with disabilities. Under 34 C.F.R. § 300.1, the SCDE is also charged with ensuring that all children with disabilities have a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; ensuring that the rights of children with disabilities and their parents are protected; and assessing the effectiveness of LEA programs for children with disabilities.

Additionally, to meet the state's definition of a RTF for Children and Adolescents, the Department of Health and Environmental Control (DHEC) regulation at 61-103(A)(1)(o) requires the provision of a special education program with a minimum program defined by the SCDE. The DHEC regulation at 61-103(H)(1)(e) requires the RTF to arrange for or provide an educational program that meets the minimum SCDE program requirements and the RTF must retain documentation on file that the facility has such a program. This regulation requires the RTF to take each child's particular needs, including educational placement and programming, into consideration.

Background

On September 9, 2014, the SCDE received a formal, written complaint, filed against the Williamsburg County School District on behalf of a named student with a disability who was referred by the state and placed at Willowglen. On September 19, 2014, the complainant raised additional allegations of noncompliance with the IDEA and provided both the SCDE and the school district with a copy of the amended complaint. Based upon a review of the facts and evidence submitted by the school district and the complainant, the SCDE identified numerous issues of noncompliance of the requirements in the IDEA, SBE regulations, and SCDE policies and procedure, including the failure to

- 1) educate the named student in the LRE;
- 2) notify the complainant of the discontinuation of speech-language (SL) therapy services for the 2014–15 school year;
- 3) develop a transition plan that identified an appropriate post-secondary outcome for the named student and the supports and instruction needed to achieve that outcome;
- 4) revise the named student's individualized education program (IEP) goals based upon the methods of assessment set forth in the IEP;
- 5) issue progress reports in a manner consistent with the named student's IEPs;
- 6) provide the named student appropriate instruction;
- 7) identify any school-related behavioral concerns that prevented the named student from participating in a regular school setting, or if such behaviors indeed existed, to address these behaviors;

- 8) respond appropriately to the complainant's request for an independent educational evaluation (IEE);
- 9) allow the complainant the opportunity to participate as an equal member in the development of the named student's IEP;
- 10) issue appropriate prior written notices to the complainant that addressed the reasons for the discontinuation of the SL services; the refusal to implement appropriate education services in a regular school setting in the manner requested by the complainant; the refusal to grant the complainant's request to address the need for the development of independent living skills and provide community-based employment experiences; the refusal to grant the complainant's request for an IEE; and the refusal to grant other requests made by the complainant; and
- 11) comply with certain IEP development processes related to the inclusion of appropriate present levels of academic achievement and functional performance, measurable annual goals, and inclusion of accurate frequency, location, and duration of special education, related services, and supplementary aids and services in the named student's IEPs.

In addition to the issues of noncompliance related to the named student, the SCDE identified systemic issues of noncompliance that relate to the educational programs and services for all children with disabilities at Willowglen. In accordance with the IDEA regulation 34 C.F.R. § 300.151(b), as the state educational agency, the SCDE, pursuant to its general supervisory authority, must address not only the failure to provide appropriate services for the named student in a formal complaint, but other similarly-situated children as well. The SCDE is also required to mandate corrective actions appropriate to address the needs of children currently affected by the school district's noncompliance and ensure the appropriate future provision of services for all children with disabilities in the LEA.

As a result, the SCDE issued a letter of resolution (LOR) dated November 10, 2014, that included very specific corrective actions to address both the student-specific and systemic issues of noncompliance. The LOR includes notification of the requirement that the District complete all corrective actions as soon as possible, but in no case later than one year from the November 10, 2014, LOR and notification that the failure to comply with the individual corrective actions set forth in the LOR, or any other corrective actions that the SCDE determines necessary to remedy this matter, may result in sanctions, as outlined in the IDEA. The LOR was addressed to Tara Cunningham Cantey, who served as the director of special services for the Williamsburg County School District until June 30, 2015, and copied to Yvonne Jefferson-Barnes, EdD, the superintendent at the time that the LOR was issued.

On November 24, 2014, personnel in the SCDE, Office of General Counsel (OGC) and the Office of Special Education Services (OSSES) met with Ms. Cantey and Melanie Duke, who was a curriculum coordinator for the school district when the LOR was issued. During this meeting, SCDE personnel provided technical assistance through a review of each finding of noncompliance, corrective action requirement in the LOR, and deadlines for document submissions; outlined exactly what was needed to fulfill each requirement and sufficiently address the numerous student-specific and systemic issue of noncompliance; and provided Ms. Cantey and Ms. Duke an opportunity to ask questions and seek clarification concerning what was required to resolve this matter.

Despite the submission of the letter of assurance signed by you and Ms. Cantey on December 17, 2014, that the school district would address all of the issues of noncompliance in the November 10, 2014, letter of resolution, the District missed several due dates following the November 24, 2014, meeting. In addition to repeatedly following up with the District by telephone, OGC personnel followed up with emails to Ms. Cantey in December 2014, January 2015, March 2015, April 2015, May 2015, and June 2015, in an effort to solicit the school district's cooperation in the implementation of the corrective actions and submission of overdue documentation. Documentation that was eventually submitted by the school district was either incomplete or nonresponsive.

Following the February 25, 2015, on-site monitoring visit by the OSES and continued concerns about the District's failure to make a good faith effort to resolve the findings of noncompliance identified during the complaint investigation, John R. Payne, the director of the OSES, and I attempted to contact you by telephone to discuss this matter and the plans for the follow up on-site monitoring visit by the OSES. Although you were out of town during the initial attempt to contact you, I made subsequent telephone calls to your office and left messages in an attempt to speak with you regarding the District's lack of compliance and the need to conduct a follow up on-site visit or telephone conference to address this outstanding matter. My calls went unanswered the late afternoon of September 15, 2015.

On May 4, 2015, as a part of our continued attempts to obtain a resolution to this matter, Lana T. Ott, the interim complaint investigator in the OGC, and I participated in a telephone conference with Ms. Cantey; Christy Owen, the lead school psychologist; Celeste McIntosh, a social worker for the school district; Deloris Williams, a SL pathologist; Lisha Pasely, the transition coordinator; and Ms. Duke to address the continued issues of noncompliance identified during the review of the documentation submitted thus far by the school district. We allowed time for personnel to ask questions; responded to each inquiry, provided clarification and examples of how to address each of the identified problems, and explained the next steps. As a result of the continued issues of noncompliance, the SCDE reiterated the need to reconvene the IEP teams for all children with disabilities attending Willowglen to reconsider placement in the LRE and correct the deficiencies in each IEP. School district personnel on the call were instructed to provide my office with all documentation associated with the IEP meetings. In response to Ms. Cantey's notification of her reassignment for the 2015-16 school year to another position within the school district and her indication of resistance from the school district's administration to make any of the necessary changes to the educational program and services for the children at Willowglen, I notified Ms. Cantey and other school district personnel of the District's obligation to comply with the IDEA and renewed my offer to share this same information with the superintendent, the local board of trustees, and other school district personnel.

On May 8, 2015, Fred Moore, Jr., PhD, called to introduce himself as the new director of special services as of July 1, 2015, and to discuss the complaint regarding the Willowglen educational program and the complaint filed on behalf of another child with a disability, who was not connected with Willowglen. Dr. Moore also expressed a desire to participate in any subsequent discussions concerning the OSES on-site monitoring and any corrective actions that might result from the monitoring. The SCDE once again reached out to you for assistance in addressing the then-director's refusal to participate in any meetings or telephone calls that included the

participation of the incoming director and for instructions in how you wanted the SCDE to proceed, since we considered this to be a school district personnel matter. I made another call to your office, but was unsuccessful in my attempt to speak with you regarding the District's continued lack of compliance and the need to conduct a follow up on-site visit or telephone conference prior to the end of the 2014–15 school year. Despite the lack of a response to this call, but because it was so close to the end of the school year, the SCDE decided to continue working with the District and postponed the visit until the start of the 2015–16 school year.

In correspondence dated July 27, 2015, Ms. Ott notified you of each outstanding issue of noncompliance related to the Willowglen complaint that were still outstanding, the plan to conduct an on-site visit in August 2015, and the willingness to meet with you during the visit. Subsequent to providing the District notice of the plan for an on-site visit of the Willowglen educational program, the SCDE received additional parent calls voicing complaints and concerns about the deficiencies in the educational program and services provided for children at Willowglen. During a telephone conversation with Dr. Moore on August 28, 2015, in preparation for the visit, OGC personnel were notified that the educational program was still located at the old Willowglen facility at Camp Harmony, which is physically located in Clarendon County, rather than at the RTF in Williamsburg County.

On August 31, 2015, OGC staff, including Ms. Ott; Meg Hazel, the current complaint investigator; and I conducted an on-site review of the Williamsburg County School District's educational program for children at Willowglen. A subsequent visit on September 4, 2015, included staff from the SCDE, Office of School Facilities, the State Fire Marshal's Office, and the Clarendon County Fire Department. As a result of the unresolved issues of noncompliance related to the November 10, 2014, LOR; the identification of additional violations of federal and state statutory and regulatory requirements; the school district's failure to provide these children with access to a FAPE simply on the basis of their placement in the RTF; and significant concerns for the health, safety, and welfare of these children during the school day as a result of the use of the old Willowglen facility at Camp Harmony, which does not provide comparable, adequate space for the educational programs and services consistent with all federal and state LRE, building, fire, and other applicable requirements; **the SCDE hereby provides notice that this educational program does not meet the SCDE's minimum educational requirements.**

Based on the result of the on-site visits and overall program review detailed in the enclosed reports from the SCDE and the State Fire Marshal's Office, the SCDE hereby orders the Williamsburg County School District to take immediate steps to cease and desist in the use of the old Willowglen facility at Camp Harmony and take immediate steps to place each child in an appropriate and legally-compliant educational program that meets each child's individual needs in the LRE. As we discussed during our meeting at the SCDE on September 17, 2015, the students must be transferred from the Camp Harmony location no later than the agreed upon date of October 1, 2015.

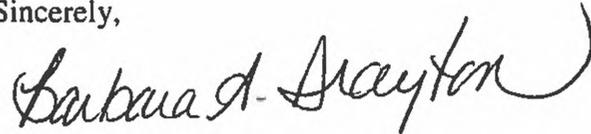
Please keep in mind that the SCDE's expectation is not for the school district to simply change the location of the program without implementing substantial revisions to the school district's practices and to the services provided to these students. To avoid additional findings of noncompliance and the imposition of additional corrective actions and possible sanctions, the new

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location for the delivery of services and the educational program must be compliant with all federal and state requirements and meet the individual student's needs.

We look forward to the District's correction of the identified issues of noncompliance in an expeditious and effective manner and continued cooperation during the resolution and completion of the mandated corrective actions. If you have any questions, please do not hesitate to contact me at 803-734-3393.

Sincerely,



Barbara A. Drayton, Deputy General Counsel
Office of General Counsel

Enclosures

c: Fred Moore, Jr., PhD, District Director of Special Services
John R. Payne, SCDE, Director, Office of Special Education Services
Cathy L. Hazelwood, SCDE, Deputy Superintendent, Legal Division
Vernie L. Williams, Esq., Attorney for the District
Holly Pisarik, Governor's Office, Chief Legal Counsel
Trina Cornelison, LPC, South Carolina Continuum of Care, Executive Director
Shelly B. Kelly, DHEC, Deputy Director, Health Regulations
Gwen C. Thompson, DHEC, Bureau Chief, Bureau of Health Facilities Licensing
Taron Davis, Department of Social Services, Interim Deputy Director, Division of Child Welfare
Louise K. Johnson, MS, Department of Mental Health, Director of Children's Services
Steve Von Hollen, Disabilities and Special Needs, Director, Clinical Services Division
Janet Priest, Disabilities and Special Needs, Director, ID/RD Division