

December 7, 2017
Dr. Tony Smith
State Superintendent of Education
Illinois State Board of Education
100 North First Street
Springfield, Illinois 62777

Re: More detailed response to CPS letter to ISBE dated Nov 22, 2017

Dear Dr. Smith:

As we indicated in our November 30th letter to you and ISBE, we are providing a more detailed response to Chicago Public Schools' (CPS) letter dated Nov 22, 2017 and offer a point by point response to the Appendix to CPS's letter.

But before that discussion, we want to respond to some of more generalized arguments presented by CPS to ISBE. Generally, we recognize our agreement with CPS about the school district's long-standing problems with its special education program. One of those persistent problems is academic achievement of CPS students with disabilities as measured by standardized assessments. CPS in its letter admits its academic deficits.

However, we disagree with CPS's choice of testing data for analyzing these problems. CPS focuses on data from those students with IEPs who utilize standard tests. CPS's argument does not address those students tested utilizing alternative assessments (DLM-AA) who are provided the DLM-AA because these students require accommodations that are not available on the general assessment to demonstrate skill and knowledge on the grade-level content and grade-level achievement standards, or for students who demonstrate achievement in different formats or contexts than are provided by the general assessment. It has to be noted that even in relationship to the DLM-AA for more disabled CPS students, the district lags behind the State as a whole. So in 2017 we see only 17% of CPS students taking the DLM-AA assessment in English Language Arts (literacy portion of the test) meeting or exceeding Standards by grade 11, whereas on a statewide level we see 26.9% of these significantly disabled students meeting these modified standards.

Those students with disabilities who currently take standardized assessments with or without accommodations when appropriate constitute the overwhelming majority of students with IEPs attending CPS. The State required assessment for these students are the PARCC tests. CPS students with disabilities taking the PARCC at grade level 8 only exhibit meeting or exceed expectations in English Language Arts at a level of 2.9% in 2017. While on a statewide level the PARCC report for students with disabilities at the grade 8 level meeting or exceed expectations in English Language Arts is clearly nothing for ISBE to cheer about, it is none the less more than double the CPS percentage standing at 6.0%.¹ We seem a similar gap at the high school level for literacy between CPS and the State utilizing the SAT.² Ultimately the insights CPS claims to find in standardized testing data about its students with

¹ All data from 2017 ISBE report card for District 299.

² CPS without question a far higher percentage of students with disabilities who are also defined as Economically Disadvantaged than does the State as a whole. A school district with even a higher percentage of low income students and far fewer economic resources, East St Louis SD 189, has comparable PARCC literacy scores at grade 8 for its students with disabilities, but even worse scores at the high school level. East Moline SD 37 again has a

disabilities lagging behind the academic growth for their non-disabled peers exists in numerous Illinois school districts, it is not unique to CPS. It is not an excuse for failing these students or for concerted efforts to limit the identification of students when appropriate.

As we indicated in our Open Letter to ISBE, we found the WBEZ report to be credible, and we find it unfortunate that CPS attacks this WBEZ report as “misleading and error-ridden.” We would point out to ISBE that the reporter of this story was also the reporter that first broke the story of payments going to former Chicago Public Schools CEO Barbara Byrd-Bennett from SUPES Academy. That story immediately merited investigation, but the CPS Board failed to make that happen. CPS did not even investigate the ethical and conflict of interest issues relating to these payments uncovered by this reporter. Ultimately it was a Federal indictment that led to her removal and 4 1/2 years in prison for scheming to collect hundreds of thousands of dollars in kickbacks. We think the reporter’s credibility is more than obvious.

Turning to the specific points CPS made in its Appendix, we address them below in the same sequence as presented by CPS:

- CPS argues that its unique electronic IEP has a system of “reminders” to CPS staff that all the relevant data has been collected for the IEP team to make “informed decisions.” We believe it goes far beyond that.

As a preliminary matter, we have no objection to reminding CPS staff to review relevant data for programming decisions. By way of explanation to those outside of CPS—the issue is that, even after consideration of all relevant data and agreement by a properly constituted IEP team, the CPS electronic IEP system can blocks IEP teams from including certain services in a student’s IEP. There is no way for an IEP team to move forward in the electronic IEP program in this situation and to add the IEP service without district-level intervention. This kind of block is more than a “reminder.” For example, in CPS’s most recent guidance regarding Extended School Year (“ESY”) services, CPS states that there are timing and data restrictions on when and how ESY services can be added to a student’s IEP. In practice, even if an IEP team agrees that the student is eligible for ESY, this service cannot be added unless the meeting is held within a specific timeframe and if specific data has been collected. The electronic IEP program prevents the team from adding ESY, and they cannot override the electronic IEP program. This feature was built into CPS’s electronic IEP program after the CPS policy changes—these blocks did not previously exist. Some CPS principals subject to administrative pressure and network chiefs have in the recent past demanded IEP teams to finalize the binding IEP documents without adding ESY, or other services, indicating they can be added later.

Similar system blocks exist for paraprofessional support and transportation services. This information comes from our collective experience of attending hundreds of IEP meetings throughout CPS last year and this year. We have had repeated incidents where CPS staff members would communicate during the IEP meeting that the CPS electronic IEP program would not allow them to add a service or open a particular section of the IEP. Data from ISBE supports our concern that these blocks resulted in a notable decrease in services for special education students. Specifically, during the 2016-2017 school year—the first year that CPS’s procedural manual and guidance were implemented, and the first year

higher percentage of Economically Disadvantaged than CPS and fewer resources and, at the 8th grade level, again very similar literacy scores to CPS. SD U-46, the second largest school district in Illinois, has lower 8th grade literacy scores than CPS with percentage wise fewer Economically Disadvantaged student than CPS and reasonable resources in comparison to CPS, it has comparable high school performance to CPS in literacy.

advocates saw these blocks in the electronic IEP program—nearly four thousand fewer students with disabilities were found eligible for ESY services. That was over a fifty percent decline in ESY eligibility in one school year. In previous years, there were fluctuations in ESY eligibility, but no annual change was remotely close to a four thousand student decline. In summation, we remain concerned that the blocks within CPS's electronic IEP system impermissibly interfere with the authority of IEP teams to provide services that students need and have resulted in wide-reaching denials of FAPE. We ask ISBE to investigate this issue.

- CPS vehemently disagrees that the district is imposing overly burdensome paper work requirements for IEP teams. Section 601(c) (5)(G) of IDEA states that: "Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by--focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results."

Entering data in conformance with the CPS Paraprofessional Justification format for example necessitates an increase in paperwork and other documentary requirements over approaches used just several years ago. Teachers and service providers report that before the newly imposed data collection and documentation procedures, equivalent data in support of the Team's determination could be imparted in 1/5 of the time using more straightforward and efficient data entry methods.

Since there is not enough time in the day to focus both on serving the needs of the students with disabilities, and spend the requisite amount of time and energy in order to meet the paraprofessional justification data entry requirements, teachers and service providers are often presented with a frustrating and demoralizing situation. They are faced with the tedious and time consuming requirements of the paraprofessional justification process are supposed to be met by the same staff members who provide existing services to students. This serve to shifts focus away from away from teaching and learning and in so doing, are subversive to meeting students' needs and best practices.

We urge ISBE to investigate the ways in which the current data collection and documentation requirements are overly burdensome and deleterious, and that the district will be required revoke the new Paraprofessional Justification procedures as soon as possible following that investigation.

- CPS indicates that it has fully eliminated its merged funding process in response to complaints from schools. Our response to this is that in the CPS FY 18 budget at page 86 we can read:

Beginning in 2017, the "Budgeted at Schools" amounts exclude funding for special education teachers and paraprofessionals for non-cluster students at district run schools because those funds are allocated through SBB. The 2017 approved budget includes \$397,297,253 of diverse learner funding added to SBB funds. The 2018 proposed budget includes \$375,366,000 of diverse learner funding added to SBB funds. The amount is lower in 2018 because the district has allocated more centrally- funded paraprofessional positions to schools with cluster programs.

It should be obvious to ISBE by this statement alone that student based budgeting for special education continues in CPS. CPS also calculates costs for special education staff in schools based on averages causing some schools with higher seniority staff to become short changed in the process. CPS uses special education enrollment projections to propose positions based on a totally unknown demographic analytic approach which is corrected 20 days into the school year. Another persistent problem is even when additional staff have been approved via the onerous IEP process CPS has adopted, the actual

money is not budgeted at schools for varying times depending on the cash flow of the school district. In those situations the schools must reach for additional funds they may have and reallocate those funds to cover the positions. ISBE should investigate this issue carefully and look at these practices. CPS appears to the authors of this letter to be inherently in violation of basic the concept of the Evidence Based Model for funding. The CPS weighing system for special education funding can be seen on pages 198 and 199 of the CPS FY 2018 budget and makes no reference to the research basis for these weights.

- In response to CPS’s claim that it does not encourage schools to “improperly allocate” Supplemental General State Aid SGSA and Federal Title 1 funds, we point to their white paper titled “Closing the Achievement Gap and Improving Outcomes for Students with Disabilities” [cited by CPS in its letter to ISBE] issued around July 25th 2016. In that white paper, CPS takes a rather unequivocal provision that students with IEPs are to be funded first and scheduled first in all schools.³ No distinction was made on where those funds were to come from in the school based budgeting process. In fact CPS made special efforts to alert principals in March 2016 that the district was in deep trouble, stating to principals that: “Budget cuts and short-term borrowing have helped us make up for the funding gap, but to ensure we will have enough cash through year-end, we need to spend less and preserve more.”

CPS made little or no effort to inform principals of Federal “supplement not supplant” requirements as they relate to IEP driven services, expecting them to figure out the rules. The danger lies with the necessity of hundreds of principals balancing individual budgets and responding to the service needs of students with disabilities at schools where there are shortages of special education funds to the cost of staff at those schools.

ISBE has created a three part test for school districts to determine if they are supplanting by their use of these funds.⁴

Test I: Required – Is the program or activity that the district wants to fund required under state, local, or another federal law? If it is, then it is supplanting.

Test II: Equivalency – Were state or local funds used in the past to pay for this program or activity? If they were, it is supplanting.

Test III: Non-Title I Programs – Are the same programs or activities being implemented in other schools that do not receive Title I funds AND are these programs and activities being paid for with state or local funds? If yes, then this is supplanting.

ISBE needs to clarify to CPS that it must inform all schools that mandated IEP delineated services are required by both state and federal law and to use Title 1 funds constitutes supplanting. ISBE needs to determine if CPS schools have carried out supplanting and implement corrective action to correct that situation if an investigation determines that took place.

³ See page 4 of that white paper.

⁴ <http://www.isbe.net/e-bulletins/pdf/02-09.pdf>

● CPS’s convoluted response regarding the need for investigation of the harmful impact of CPS’s funding practices on students with disabilities educated in regular education settings (Bullet #6 in our November 16, 2017 letter) only underscores the scope of the problem we have with CPS.

1. CPS totally ignores the fact that CPS funding practices necessitate the funding of IEP services, in part, with supplemental general state aid (SGSA) and some federal Title I funds. These practices result in fewer SGSA and Title 1 funds being available for services and programming for all children in regular education settings, including children with disabilities.

2. CPS similarly totally ignores the fact that the competition created by CPS’s “school-based zero-sum funding” scheme pits funding for special education services against funding for general education settings in which students with disabilities participate. If supports and services required by IEPs of students with disabilities increase, the funding for general education programming is decreased, and vice versa. Thus all students, including students with disabilities in regular education settings, are harmed if fewer dollars are available in the first instance; and children with disabilities in regular education settings are harmed in second instance when these funds are not used for supports and services necessary for these students’ success in the regular education settings. CPS’s zero-sum funding scheme compares unfavorably to the previous system where general education funding was separate from special education funding, which was to support services and supports prescribed in IEPs without a limit.

3. Most importantly, CPS’s focus solely on how many students are harmed when they are educated in regular education settings reveals only that CPS is once again educating a shockingly low percentage of students with disabilities in the least restrictive environment (LRE). CPS’s admits (1) that it educates only 49% in LRE1 and LRE 2 (40% to 100% of the day) and (2) that this is lower than state and national averages. What CPS does not reveal is the size of these state and national average gaps. Whereas CPS self-reports that it educates 49% of students with disabilities in regular education settings 40%-100% of the day, comparable Illinois state and national averages indicate, respectively, that 79% and 81% of students with disabilities are educated in regular education settings 40%-100% of the day.⁵ Because there is no reason to believe that the percentage of CPS students with disabilities educated in LRE1 and 2 should be 30 percentage points below state and national averages, the only conclusion that can be drawn is that the CPS policies and practices noted above, and likely other policies and practices, have harmed children with disabilities by discouraging their education in the least restrictive environment with appropriate supports and services.

Beyond our belief that CPS’ responses to our concerns about LRE are inapposite, we believe CPS’ recent funding and procedural decisions impact LRE in other ways not addressed in CPS’ response letter.

⁵ <https://www2.ed.gov/programs/osepidea/618-data/static-tables/index.html>, File#13, Number and percent of students ages 6 through 21 served under *IDEA*, Part B, by educational environment and state, 2015-2016. The state and national percentages used here compare students in LRE1 and LRE2 with all students with disabilities ages 6-21 in any setting. If CPS’s data compares students ages 6-21 in LRE 1 and 2 to the total number of students in LRE 1, 2, and 3, the state and national averages both rise to 85%. We note these data do not include children ages 3-5 because national data is not collected using the LRE 1,2, and 3 categories for these children. If CPS did include these students in the 49% statistic, their inclusion, even in the case that all were in regular education settings all the time, makes no significant dent in the gap between the 49% of CPS students with disabilities served in LRE1 and 2 and the state and national averages ranging between 79% and 85%.

These include that CPS' recent procedural changes have made it harder to obtain 1-1 aides for students in order to support LRE placements, that access to and intensity of related services have been reduced, effectively reducing needed supports for students, regardless of their LRE placement, and that under-identification of students with disabilities distorts the LRE numbers and likely results in some students being placed in alternative non-special education programs or expelled that are not counted in the LRE data. Further, the increased procedural requirements imposed by CPS make it harder for parents and teachers to understand the process and to effectively advocate for their students, whether for less restrictive options or simply for appropriate services in general.

- CPS indicates that our letter came to conclusions that multiple CPS program lines for special education in its budget have been merged into larger funding buckets by looking at the budget summary that appears on the CPS website. That was not the case at all it was actually a conclusion drawn by a close examination of what are called the CPS Oracle reports on its budget website. CPS moved much school based funding for special education into what it calls Core Instructional Funding, specifically in the FY 17 budget cycle CPS program code P127725 "Special Ed Instruction K-12." That one program code had special education funding in it for 653 schools totaling \$455.4 million. There were 5,935.5 positions assigned to this one program code.

CPS program code P121302 for Autism programs that contained funding and positions for 162 schools read zero in the FY 17 budget. Numerous cluster programs were consolidated into two larger program lines making comparisons close to impossible. ISBE established uniform program codes for special education statewide. Similar special education function, object and program codes have been used by States receiving IDEA funding for years. Special education funds are to be used to provide "specially designed instruction" (special education) and support and related services to children who are identified as children with disabilities. These funds may also be used to find and evaluate children who may be children with disabilities. The program codes serve a legal purpose, although as we indicated in oral testimony some specific codes may be antiquated and require updating. But clearly what CPS did was unacceptable and ISBE needs to enforce its fiscal accounting rules on CPS special education.

- CPS disagreed with our statement that it was implementing "excessive significant restrictions on transportation services," and it argued that in many instances CPS has actually provided more extensive transportation services than it is legally required to do. CPS's response ignores federal law which mandates that transportation be provided as a related services if transportation is required in order for a child with a disability to benefit from special education services. (34 CFR §300.34(c)(16) of the IDEA regulations.) In response to our concern CPS insists that it "would be within its rights to establish a neutral policy limiting transportation of students with disabilities to/from home and school, [but] we have not done so and actually transport such students to/from other locations such as daycare programs and other sites." This is an inaccurate statement of the law.

In fact, ISBE has in the past investigated CPS in regard to alleged transportation violations and has directed corrective action on both an individual and system wide level. Despite these decisions, the procedural manual reads, "If the student requires a different pick-up/drop off location in order to receive a FAPE, this decision must be supported and documented in the IEP as a special accommodation" (p. 78). We do not believe that this is consistent with state level findings regarding transportation services for students with disabilities.

We also remain concerned that some of the documentation and procedures the district requires for all special education students age 3 to 22 may cause undue delay in providing transportation service and may take authority away from the IEP team.

In conclusion we recommend that ISBE propose a date for an initial meeting of the signatories of the Open Letter to ISBE, CPS, and ISBE staff to discuss the parameters for an ISBE investigation process relating to the issues that have been raised relating to CPS special education. Indeed, CPS's letter recognizes a need for a CPS review to "ensure that all current CPS procedures, systems and resource allocation mechanisms are consistent with both established best practice and the requirements of federal and state law." We would suggest that the date be in January or February. We believe ISBE needs to make available to its Board members and the public at large all due process decisions and administrative complaint decisions, along with the original complaints, relating to CPS for the last five years. These would of course need to be in redacted form to comply with confidentiality rules.

We believe there is much work to be done to ensure the future of students with disabilities attending CPS schools and these students only get one shot at their K-12 public educations.

Yours,

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