

## City struggles with special ed

### Special ed

#### School district tries to find solutions to systemic problems that led to two decades of court supervision 35 years ago

#### WATCHDOG REPORT

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If you're looking for Kenneth Davis Jr. at School 50, you might start by checking the hallways. The 11-year-old has attention deficit hyperactivity disorder, high anxiety and a speech impediment that sometimes makes him the target of bullying, said his mother, Cynthia Brooks. He, his mother and his sister are homeless, staying with a relative until they can find a place of their own.

That's not all there is to him. He's a talented artist and tinkerer, and he concentrates better in class if he can run around for half an hour in the morning.

Still: Kenneth doesn't like being crowded together with people. He doesn't like feeling he's not in control, and he doesn't like being bored. Those are issues that a behavioral assessment might have helped mitigate, but he never had one.

So he leaves class and walks — or runs — the halls.

Not surprisingly, that has led to problems. Brooks said Kenneth has spent months on suspension over the last two years, in-school and out-of-school, mostly for leaving class without permission.

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that led to two decades of court supervision 35 years ago



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**Eleven-year-old Kenneth Davis Jr., a sixth-grader at School 50, has disabilities and was suspended**

**frequently in the last two school years. Kenneth is seen here with his mother, Cynthia Brooks. They and Kenneth's sister are staying with a relative for the time being.**

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“To me, (art) is his strength — I feel like that should get him somewhere,” Brooks said. “(But) there’s not much help you can give him when you’re steady putting him out of school.”

While school construction and the search for a new superintendent recently have dominated headlines from the Rochester City School District, increasing resources have been going into longneeded improvements in special education.

That is partly due to the district’s own five-year plan, but also comes as a response to a threatened lawsuit from the Empire Justice Center, whose attention to the same topic 35 years ago led to two decades of court supervision. A host of current state sanctions, some of them chronic, are another motivating factor.

In 2016 as in 1981, the Empire Justice Center, a statewide nonprofit law firm representing the poor and disabled, contends the district is failing its 5,900 students with disabilities in nearly every way. It bases the allegation on the experience of hundreds of clients as well as data gathered from both the district and the New York State Education Department.

Bryan Hetherington, the EJC lawyer who helped spearhead the 1981 lawsuit and is leading the new effort as well, said the current scope of problems is “about the same dimensions (as in 1981).”

“It’s pervasive and it affects every aspect of the education of kids with disabilities,” he said. “There are some different issues, and some issues are back again.”

Some of the most persistent problems:

- » For several years in a row, the state has cited the district for suspending too many of its students with disabilities, as well as disproportionately suspending those who are black.
- » Both the state and EJC have identified a serious problem in the district’s failure to conduct timely evaluations to detect or assess psychological or physical problems. That, in turn, delays students receiving the services they need.
- » Among the most important of those evaluations is a “Functional Behavioral Assessment,” conducted when it appears a student’s disability is leading to behavior that interferes with her learning. Data from 2014-15 show that at many schools, fewer than half of qualifying students with disabilities received the assessment and subsequent Behavior Improvement Plan the district was required to provide.

Despite decades of concentrated attention to special education, the district does not have a single, comprehensive document that describes all the intricate processes involved in providing services for students with disabilities. One is being compiled now, part of a broader re-examination of its special education structure and practices.

The district also doubled its official count this year of students with disabilities whose families require an interpreter at meetings. Before, its software defaulted to English as the language spoken at home, if no one said otherwise. As a result, the district has identified about 900 additional families who should be getting English interpretation or translation, but were not.

Based on those problems and others, the Empire Justice Center is threatening a second lawsuit against the district that, if successful, could lead to another round of negotiated oversight; the first round lasted 20 years.

Since hiring special education chief Chris Suriano in 2013, the district is following a five-year plan that promises to overhaul the entire discipline. So far, that has included changes to provide students with disabilities more access to job training; expanding the continuum of services available to them; and increasing staffing to conduct mandated evaluations on time.

Those structural practices have bumped the August special education graduation rate to 29 percent, up from 18 percent in 2012. Drop-out rates are falling as well.

A complaint last year by EJC over the treatment of students with disabilities who do not speak English, as well as a subsequent *Democrat and Chronicle* investigation, led to some improvement in that area (though some Latino families say they still face discrimination).

The district has been working with EJC on its list of concerns since last spring. In December, Deputy Superintendent for Instruction Christiana Otuwa told the school board the meetings had become “so time-consuming” that she needed a break from them to work on actually implementing the agreed-upon strategy.

The district also announced this week it intends to hire a dedicated special education compliance officer, in part due to the pressure from EJC.

Suriano expressed confidence that the district is now on the right path. Those structural and central office improvements, however, take time to percolate down to individual teachers and administrators.

The question remains whether EJC will sue again and ask the state to provide some sort of mandated framework for improvement. Hetherington said it is a distinct possibility; Suriano called it unnecessary.

“The issues they’re raising now are no surprise,” Suriano said. “They’re issues we have to deal with; we know they exist. ... Do I feel we need to be under a consent decree to do that? Absolutely not.”

While students with disabilities make up only a fraction of the district’s overall student body, Hetherington often points out that the strategies required to educate them effectively can be applied to other students as well.

“Part of the point we’ve made to (the district) is: If you actually execute well on (special education), it would raise test scores and performance for all kids,” he said. “Because special education, at its heart, is about meeting kids where they are, figuring out what’s keeping them from learning and (using) differentiated approaches to get them there. ... Well, there are a lot of kids who need to be met where they are.”

### **‘Somehow it’s OK for kids with disabilities’**

Staffing shortages; sky-high suspension figures; lack of help transitioning from school to a job; evaluations not conducted and progress reports not delivered.

The combined complaints of EJC and the state education department point to an array of serious problems in special education in Rochester. And while the district points to overall progress under Suriano, it acknowledges that many students with disabilities in the city are not receiving the education they deserve.

One of the longest-standing issues is the rate at which students with disabilities are suspended. In 2014-15, 3.6 percent of students with disabilities were suspended for 10 days or more, well above the state target rate. Many of them didn't get the required review meetings after they returned to school.

Additionally, black students with disabilities were suspended at a disproportionate rate, compared to both the state target rate and the rate at which other children with disabilities were suspended in Rochester.

Kenneth Davis Jr.'s mother, Cynthia Brooks, said her son has been suspended from School 50 for long stretches over the past two years, mostly for leaving the classroom without permission.

When her son is home on suspension, Brooks said he has never received either a packet of work to complete or a tutor to keep him up to speed. She said that she only sporadically receives official notifications of the suspensions, and that, by mid-June, she never had a meeting to determine whether Kenneth's misbehavior and suspensions stem from his disability.

The account of Kenneth's difficulties comes from him and his mother.

Chip Partner, chief communications officer for the RCSD said "The district cannot provide details about the education of individual students. However, I can say that the staff of School 50 is very sensitive to the challenges faced by Kenny Davis and his family. Throughout his career at the school, including this year, the staff has stayed in close touch with his mother and other caregivers to encourage good attendance and help him do his best in school."

Discouraged with his progress at School 50, Kenneth's mother doesn't always send him to school anymore, even when he's not suspended.

"Every time we go to school, they call me: 'Ms. Brooks, Kenneth isn't doing this, Kenneth isn't doing that, you need to come get him,' " she said. "It's almost like they don't want him."

Conducting proper Functional Behavioral Assessments (FBA) is one of the best ways to reduce suspensions of students with disabilities because it helps identify the behaviors that may stem from a student's disability. By law, the students cannot be punished in those cases.

A survey done in the summer of 2015, though, showed that many students had neither an FBA nor a Behavior Improvement Plan (BIP), the document that results from the assessment.

Out of 21 students at School 16, for example, six had a compliant FBA and eight had a compliant BIP. Perhaps more troubling, many schools did not respond to the survey at all.

"When the state came in 2014-15, we couldn't find some kids' BIPs," Suriano said. "We just couldn't locate them."

Students with disabilities are also supposed to receive a regular report showing how much progress they've made at meeting their individual goals. In 2014-15, though, only 65 percent of students with disabilities got the reports, leaving more than 1,900 children behind, according to district documents obtained through a Freedom of Information request.

“Imagine what would happen if they didn’t send out report cards for (33 percent) of kids,” Hetherington said. “But somehow it’s OK for kids with disabilities.”

Suriano said the district has changed its procedures to significantly improve compliance in terms of completing FBAs, BIPs and progress reports.

### **Staffing shortages**

Many of the persistent issues can be attributed in part to understaffing. If there are not enough psychologists or speech-language pathologists to evaluate students, a logjam develops and deadlines are missed.

Furthermore, the district every year sees its special-education enrollment swell a month or two after school begins, either from new arrivals or because students are newly classified after the summer break. Rather than staffing in advance, the district historically waits until those students inevitably arrive, then scrambles to hire additional teachers.

“Chris (Suriano) and Dr. (Christiana) Otuwa believe they’re adequately staffed; we’re highly skeptical of that,” EJC’s Bryan Hetherington said. “Chris has been willing to tell superintendents he can take cuts in his budget that he can ill afford.”

Suriano said he requested additional staffing in 2015-16 but instead lost five psychologists. By contrast, the 2016-17 budget includes another 16 special education teachers and 34 other specialists.

Finally, the district is emerging this year from state supervision over the career transition services it provides to students graduating or otherwise leaving the district. A large part of the problem was its former reliance on an old-fashioned program that, Suriano said, failed to push students with disabilities toward their highest attainable level of employment.

Dan Demarle is a special-education advocate who works with the families of children with disabilities to get them the services they need. He agreed with Hetherington that Rochester’s problems are widespread and deeply rooted.

“Typically, the only way we get very large government bureaucracies to respond to systemic issues is by doing the whole class-action lawsuit thing,” he said. “There are good intentions, but that doesn’t necessarily lead to different results.”

The question now is whether EJC will trust the district to continue with its five-year plan or press the issue with a lawsuit on behalf of its families. Meetings have resumed after Otuwa paused them over the winter.

“They are claiming systemic failure to do things. I’m not hung up on (the word) ‘systemic,’ ” Suriano said. “My goal here is to chip away. Because systemic or not systemic, these issues they’ve identified, we need to address.”

Hetherington, though, questioned whether Suriano and other central office administrators truly appreciate the depth of the problems facing families of students with disabilities — and whether they had the willingness and capacity to confront them.

“Some of this is around will and value,” he said. “To what extent do the lives of kids with disabilities matter ... to senior people over there with the power to allocate dollars?”

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**Kenneth Davis Jr., 11, displays a sailboat he made at School 50. “To me, (art) is his strength — I feel like that should get him somewhere,” says his mother, Cynthia Brooks.**

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**Cynthia Brooks gets a phone call from the Rochester City School District regarding her son, 11-year-old Kenneth Davis Jr., a sixth-grader at School 50, who has been suspended frequently, mostly for leaving the classroom without permission.**

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