

Special education in trouble again

RCSD leaders absent

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The Rochester City School District’s special education department once again finds itself under scrutiny from state investigators while at the same time the department leader is on a lengthy leave of absence, leaving parents of children with disabilities frustrated in their attempts to turn around a disastrous start to the remote school year.

Chief of Special Education Kisha Morgan and one of her top deputies, Dan Fontanez, have been out of work since late August. Morgan has been on medical leave while Fontanez is on paid administrative leave, according to RCSD.

State Monitor Shelley Jallow, meanwhile, requested the New York state Education Department restart a special education review that had been put on hold because of COVID-19. The full scope of the review is unclear but includes problems with Medicaid billing and giving children all the services to which they’re entitled.

Deputy Superintendent Melody Martinez-Davis has assumed control of special education despite having no background or certification in the area. She is being assisted by Deserie Richmond, the former Spencerport special education director, who was initially brought in this summer to do an internal special education review.

Parents and advocates say the lack of leadership is apparent. Children, particularly those with the greatest needs, are floundering at home.



Matthew Carleton is a 14-year-old ninth grader and in a special-needs curriculum at Edison Tech. It is sometimes hard for him to stay focused on his school work at home even with the help of his mother, Cheryl. And when school pages are slow to load on his computer, his attention can wander even more.

PHOTOS BY JAMIE GERMANO/ROCHESTER DEMOCRAT AND CHRONICLE



Matthew Carleton has his class schedule on a cork board in his bedroom, where he does his remote learning.

“The special education department has really gone very silent,” said Cheryl Carleton, the mother of a child with Down syndrome and president of the Special Education Parent Advisory Council. “And that’s unusual for us. SEPAC has built a pretty good relationship with them.”

The most stringent oversight was supposed to come from a consent decree, agreed upon by the district and the Empire Justice Center in federal court. Yet more than 18 months after that broad agreement was first announced, the two sides still have not made it official.

“It’s really, really tragic,” Carleton said. “I don’t know the answer, but I know we could be doing better than we’re doing.”

The review

The current state review grew from a nebulous special education investigation first reported by the *Democrat and Chronicle* in March. The topic was, for RCSD, an old standby: whether it was giving students with disabilities the proper services and keeping up with compliance standards.

One component of that investigation started in early November 2019 as part of a larger search for spare dollars during RCSD’s unexpected budget crisis last year, according to the district. The outside auditors involved in that search began to raise broader concerns about special education, leading to a separate state investigation.

RCSD, the state Education Department and Capital Region BOCES, which conducted the audit, provided thousands of pages of documents in response to separate Freedom of Information requests. Together, those documents provide significantly more detail into how the reviews developed and what they sought.

One of Morgan’s key reforms was changing the timing of children’s annual Committee on Special Education meetings, where their educational plan is reviewed and approved. Previously they all were done in the spring, creating a work overload for a few months of the

Before going on leave, Morgan promised remote learning this fall would be a “night and day” difference from the spring. But a layoff of more than 100 paraprofessionals sent a shockwave through the district; Rosner said she suspects RCSD now is looking to shave costs by withholding services.

“Since they announced they were going fully remote, we’ve been just bombarded with parents who didn’t know how they were going to make this work for their kids,” she said. “I don’t know what (an ideal district plan) would look like. But the fact is that they’re not even trying.”

Martinez-Davis said mid-level special education directors are checking every student’s records to ensure their required services are being appropriately ported over to remote learning.

In some cases, she said, students who required a one-to-one aide in person will not need one remotely — for instance, if that person’s primary responsibility was to help with using the toilet or moving around the building.

She said she had not heard widespread reports of noncompliance related to remote learning, including whether paraprofessionals are in place.

The “learning labs” in city R-Centers are not accessible for students with significant disabilities. Recreation and Youth Services Commissioner Daniele Lyman-Torres said it is the responsibility of the school district, not the city, to broaden access to the sites, since they are staffed by RCSD paraprofessionals.

The two sides said they are developing an updated agreement that would “accommodate the needs of children with differing abilities,” as Lyman-Torres put it.

Such accommodation is required under federal law, both the Americans with Disabilities Act and the Individuals with Disabilities Education Act.

year. Morgan instead decided to spread them out over the entire school year, as is done in most large districts.

That change bore some immediate fruit: The number of overdue annual meetings, for instance, has fallen by about 80%.

In other ways it was poorly implemented. It had the unexpected consequence of invalidating providers’ prescriptions for services, which were dated according to the previous calendar system.

According to a November 2019 report from Capital Region BOCES general counsel Michele Jones, someone at RCSD may then have improperly changed some of the information in students’ records after the fact to make the prescriptions and services line up.

Jones also wrote that the majority of students were not receiving the full allotment of services to which they were entitled, or were receiving services they were not supposed to; that parents were sometimes not notified of meetings; and that speech pathologists were being pressed into service as more general special education teachers.

Capital Region BOCES concluded its involvement in the summer, saying RCSD had not provided all the documents it requested. But Jones sent a copy of her concerns in February to the education department.

The department already had several investigations underway touching on special education in Rochester, including one related to federal aid procurement policies. It informed RCSD that the issues that Jones raised could be potentially “significant violation(s) of federal and state special education laws and regulations,” and proceeded to open its own review.

That review, along with others in New York, went dormant after COVID-19 arrived in mid-March. On Aug. 24, though, RCSD monitor Shelley Jallow wrote to request “the immediate reinstatement of the special education monitoring review activity.”

The state’s special education director, Chris Suriano, acceded to her request the same day. Suriano is the former RCSD special education chief; it is in large part his earlier vision for the district’s special education program that Morgan has sought to reverse.

Carleton said she has voluntarily reduced the number of services that her son receives because the number of transitions during the day became overwhelming for him. He learns better with paper and pencil, and she doesn’t know if it’s supposed to be her responsibility to print out everything he receives online.

“Then, with (the remote learning technology) — I don’t even know what I’m supposed to be doing on that anymore, and I’m fairly capable,” she said. “How are other families getting this? Sometimes I don’t sleep at night worrying about his fellow students.”

No consent decree

The issues Carleton, Rosner and the Education Department cited — noncompliance with individualized learning plans, lack of communication, missing documentation — are not novel. All of them, and many others, are referenced repeatedly in the voluminous filings in the court case N.N. vs. RCSD.

That is the name of the federal lawsuit the Empire Justice Center filed in July 2019. It was the culmination of several years of negotiations between the two parties, seeking a nonpunitive resolution to decades of shortcomings in special education.

In December 2018 and again in July 2019, the Rochester school board approved the outline of an agreement that would require the district to meet a series of benchmarks within three years.

Over several occasions, the parties have said that formally filing the agreement, called a consent decree, was imminent. Nearly two years later, the consent decree is still not official.

In August the school district asked a federal judge to dismiss the EJC lawsuit in its entirety.

The two sides have since continued to negotiate and svaidd in a joint statement Oct. 7 that they anticipate reaching a preliminary settlement by Oct. 15.

One key issue has been updating the agreement to take COVID-19, and the subsequent school closure, into account. Some of the benchmarks

“I find it extremely ironic that Chris Suriano is the point person in Albany evaluating what is happening in this district ... when he’s one of the people who got us in trouble in the first place,” school board President Van White said.

Fontanez went out on paid administrative leave the following day, Aug. 25; a district spokeswoman declined to give the cause. Morgan’s leave is medical and began the following week. Neither of them have returned to work, though Martinez-Davis said she expects they will both be back.

Morgan declined to comment for this article, except to say that she never saw the findings from Capital Region BOCES despite asking both former Superintendent Terry Dade and current Superintendent Lesli Myers-Small.

Fontanez declined to comment, and the state Education Department would not make Jallow available to comment. Jallow’s first monitoring report is due Nov. 1.

Martinez-Davis would not comment on the state investigation but said that the district is reviewing its practices in several areas, including special education, as part of Myers-Small’s first few months in office.

Students regressing

Sometimes when Cheryl Carleton is home with her son Matthew, she hears his room go quiet when he’s supposed to be learning remotely with his class at Edison Career and Technology High School. She opens the door and looks in and finds him asleep in his bed.

“His teacher is amazing and pretty seasoned and she’s really trying to be innovative, but our days are cut short because he just can’t do the afternoons,” said Carleton, the leader of the group of special education families in the district. “These kids are losing out on their academic time for sure.”

Learning in a pandemic was never going to be easy for students with significant disabilities. An entirely remote schedule, like RCSD has, makes it even more challenging. On top of that, advocates say, the district is failing to follow through on some basic requirements.

would have relied upon state testing that was canceled due to the pandemic, for instance.

EJC has been largely supportive of the changes Morgan instituted as chief of special education. Distinguished Educator Jaime Aquino, too, endorsed Morgan’s direction in his report.

But the department now faces a formidable set of hurdles: not only a likely set of corrective mandates from the state Education Department, but also its ongoing budget crisis and the uncertainty of when students will return to physical classrooms.

“The district is so out of compliance on so many issues that the person in that job needs to work on compliance issues at the same time they have a huge budget crunch,” said Dan DeMarle, an independent special education advocate who works with families in RCSD and elsewhere in the county. “And those two things are incompatible.”

Rosner, of AutismUp, said the combined effect of COVID-19, the missing leadership and the district’s financial situation already has led to irrevocable loss for the most vulnerable children in the city.

“The snowball effect here — we’re talking about an avalanche,” she said. “Typical students can be on pause. These kids are not on pause — they’re regressing backward and losing skills that took years and years to gain.”

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Matthew Carleton, a 14-year-old ninth grader at Edison Tech, struggles to read his school work as he has to work from home. Remote learning can be a daunting task for Matthew, who is in a special-needs curriculum. JAMIE GERMANO/ROCHESTER DEMOCRAT AND CHRONICLE

Rachel Rosner, education director for the organization AutismUp, said she has yet to speak with a single parent whose child has any access to a one-to-one aide, even remotely.

“When they’re in school, these kids need support every single minute of the school day,” Rosner said. “The parents I’ve talked to have not heard one peep from the person who’s supposed to be assigned to their child.”