

RESPECT NEEDED!

A REPORT ON ORR CREEK SCHOOL SPECIAL EDUCATION

MAY 12, 2010

Summary

The 2009-2010 Grand Jury, (GJ), conducted an investigation of a complaint concerning Orr Creek School. This led to an overview of Special Education and the complexities involved in providing Federal and State mandated services.

While the investigation confirmed some allegations in the complaint, it also revealed many of the challenges of mandated services. For Mendocino County Office of Education, (MCOE), and County school districts, these challenges are amplified by the current economic crisis. State cuts to education budgets and impending layoffs create employee frustration and anxiety regarding job security and viability.

All students deserve a free and appropriate education. Special education services are costly by comparison to those of general education. Costs escalate substantially with the increasing severity of the disability. This is due to the lower student-to-staff ratio, the number of specialists and other staff involved with individual students along with specialized equipment and curriculum supplies.

There is concern that the public is not generally aware of the consequences of these unfunded or underfunded government mandates, which provide for special education services. Special Education costs impact the available funds for general education.

Methods

One GJ member was recused from this investigation in order to avoid any perceived conflict of interest.

The GJ reviewed budget information, Special Education Local Planning Areas, (SELPA), requirements, and conducted interviews with management, administration, certificated and classified staff involved in providing special education services throughout the County.

Background

In 1975, the Federal Government enacted the "*Rehabilitation Act*", which was followed and expanded upon by the "*Individuals with Disabilities Act*", (IDEA), in 1990. These laws "*mandated*" that all school districts and County school offices join to form geographical regions of sufficient size and scope, to provide "...*a free and appropriate public education*", to meet all the special education services to special needs students residing within a particular region's boundaries. Geographical regions, known as

SELPA's, are responsible for developing a local plan and allocating funds to provide special education services.

The Federal Government committed to pay 40 percent of all special education costs. Between 1977 and 2010 the Federal Government has consistently underfunded its mandate, providing only seven to 15 percent of the promised revenues. Because these special education services are mandated, State and Counties are required to make up the fiscal shortfall out of education's general funds. Special Education mandates encroach on general education funds.

The State has never completely funded special education. However, it has done a better job in funding its mandates than the Federal Government. Given the State's current fiscal crisis, the future of State funding of special education is uncertain.

Orr Creek School is a specialized school for moderate to severely disabled students, has a two-classroom facility serving approximately 16 youth with dual diagnoses, and represents a partnership between MCOE, and the Health and Human Services Agency, (HHS). MCOE provides all education-related services and HHS provides all health and mental health-related services. It is also important to note that MCOE and HHS shared in the costs of building the Orr Creek School facilities.

Findings

1. The complaint cited multiple incidents at Orr Creek School and other locations regarding health and safety issues, poor communications, and low morale throughout the special education provider system.
2. Orr Creek has two classrooms: one for students with emotional disturbances and the other for students with developmental disabilities.
3. The group of developmentally-disabled Orr Creek students reside in group homes managed by *Turning Point*, a Fresno County agency.
4. Orr Creek utilizes Certificated and Classified personnel, mental health professionals, and staff from *Turning Point*.
5. The Mendocino County Federation of School Employees, (MCFSE), contract covers all "Certificated" personnel, (classroom teachers), and "Classified" personnel, (e.g., classroom aides, Para-professionals, clerical support staff, etc.), within the County.
6. Special education teachers are credentialed in special education.
7. Severe budget cuts took place this year and are projected for the future.
8. MCOE Certificated and Classified employees are particularly concerned about the viability of their jobs.
9. Respondents reported a lack of transparency and team-building efforts (e.g. ignoring multiple requests for information, growing perception that their concerns and ideas are irrelevant, etc).
10. Incidents of insensitive and disrespectful communications were reported: i.e., issuing layoff notices in front of peers and students.

11. Staff alleged that management was unwilling to problem-solve and consider cost-saving suggestions.
12. Certificated and Classified personnel are hesitant to utilize their union contracts' grievance procedures fearing retaliation by management. There were reports of some individuals being singled out for speaking their minds.
13. Concern was expressed that Certificated and Classified staff will be subject to salary decreases and layoffs without proportional decreases in management staff and their salaries.
14. MCFSE contracts and grievance procedures provide employees with a process and resources to resolve conflicts with management. Employees reported experiencing retaliation if they utilized this process.
15. Both of the current MCFSE contracts, (Certificated and Classified), stipulate a grievance procedure ranging from informal to formal steps, up to and including mediation and binding arbitration. The informal first step includes the employee attempting to resolve the issue with their supervisor. If unsuccessful, the next step is filing a formal grievance.
16. The mediation and binding arbitration clauses in the current 2009-2010 contracts are the result of an interim agreement between MCOE and MCFSE. Prior to the addition of this interim agreement the final arbitrator was the MCOE Superintendent of Public Schools.
17. At the end of the 2009-2010 school year the MCFSE contracts are due for renegotiation.
18. In 2009, "no more than five", grievances were filed, none of which were related to special education or its staff.
19. In one instance a teacher filed a written complaint with their supervisor about a serious health and safety issue. The employee refused to return to work until the issue was resolved. The supervisor responded and the issue was corrected. A formal grievance was never filed as the issue was resolved in the informal step.
20. It is against labor law for management to single out or threaten retaliation upon, any employee for speaking out or filing a grievance.
21. The Deputy Superintendent/Special Education Director received a "*Notice of Compensation and Assignment Reduction*", as did all MCOE managers.
22. In the 2009-2010 school year some Special Education staff received notices of possible reassignment based on seniority. One Certificated teacher and one Classified staff member were laid-off due to the closing of Trinity School in Ukiah.
23. MCOE Board of Education Meetings are held during the work day, when Certificated and Classified staff, parents and working community members are unable to attend. Other County school districts have school board meetings at a time when staff and parents can attend.

Findings - Special Education

24. The goals of SELPA are to ensure that an appropriate continuum of programs and services are available to each student with exceptional needs, and that these programs are provided in the "least restrictive environment", with an ultimate objective to mainstream these students.

25. Each SELPA must have an administrative unit who is responsible for receiving and distributing funds. The SELPA, which includes all school districts and MCOE, is responsible for ensuring that every student receives the necessary mandated services.
26. The SELPA Chief Administrator for MCOE is the Deputy Superintendent who is responsible for:
 - Ensuring program availability for all students with disabilities,
 - Curriculum/Program development support,
 - Community advisory committee support,
 - Management Information System,
 - Transition planning,
 - Legal assistance,
 - Personnel development,
 - Budget planning and review,
 - Evaluation,
 - Interagency coordination,
 - Fiscal management,
 - Program specialists,
 - Community awareness,
 - Compliance with all State and Federal laws and regulations. This was formerly the responsibility of the State and has been recently assigned to SELPA.
27. Students identified as eligible for special education, with parental approval, must have an Individualized Education Plan, (IEP), identifying the specific services to be provided as well as educational goals and objectives for that student. Mendocino County has approximately 13,600 students. Thirteen percent of these students have IEPs, (~1,760). Approximately three percent of the students with IEPs are considered severely disabled, (~53).
28. The budget for Mendocino SELPA, a consortium including all County school districts and MCOE, is between \$16-\$17 million dollars.
29. Providing special education programs and services is very costly, with costs increasing exponentially with the increasing level of severity of the disability. The average yearly cost to educate a general education student is approximately \$6,500. The average yearly costs to educate a special education student can be between \$8,000 and \$85,000, and in some instances, more. Over the past 30 years the Federal Government has consistently underfunded its mandates, promising to pay 40 percent of costs, but only contributing between seven to 15 percent of their commitment.
30. Each school district has its own special education budget allocated by SELPA. Since special education services are mandated, MCOE and each of the County school districts are required to make up for the fiscal shortfalls out of district or County general funds.
31. If MCOE or a school district were to eliminate mandated services that had been agreed upon through the IEPs, they would risk losing Federal and State funding. Prior to such a sanction corrective actions could be ordered by the State, following a compliance investigation.

32. Parents have access to due process hearings by the California Department of Education if they feel their school district is not providing the special education services their child requires.
33. When a student's special education needs cannot be met within the County, placement and/or services are identified and provided out-of-County at the expense of the district and SELPA. In most instances, this is done in partnership with other County agencies including Mental Health, Probation, Social Services and the Redwood Regional Center.
34. Sending students out-of-County is more costly than providing the mandated services within the County.
35. Financial responsibility for students requiring residential placement is vastly complex. Factors include: the student's original residence, the placement agency, the residence location of the parent or guardian, student's residential and non-educational costs, and the legal authority defined by Federal and State laws and educational codes.

Recommendations

The Grand Jury recommends that:

1. MCOE and MCFSE shall issue a joint message to all covered employees and management reinforcing the fact that contracts are jointly negotiated in good faith, and agreed to and supported by all parties. Certificated and Classified employees shall review their contracts and use without fear of retaliation, the resources provided in those contracts. (Findings 5, 8-20, 22)
2. all future contracts between MCOE and MCFSE shall retain the mediation and binding arbitration clauses conducted by a neutral mediator/arbitrator. (Findings 14-17)
3. any effort on the part of management to discourage an employee from speaking out, utilizing their grievance procedure, or singling out employees for doing so, should immediately be acted upon by both MFSCE and MCOE, as a violation of labor law. (Findings 5, 8-20, 22)
4. MCOE management and administration shall maintain their policy of taking proportional reductions in salary and benefits whenever salary reductions are required of Certificated and Classified staff. (Findings 14-17)
5. in light of impending layoffs and school closings, MCOE should examine its administrative/management staffing levels to determine if proportional reductions in staff and reorganization are in order. (Findings 7, 13, 17, 21-22)
6. MCOE Superintendent shall improve communications with employees, by ensuring respectful, transparent and honest dialogues on a monthly basis. (Findings 1, 6, 8-14)

7. MCOE shall ensure that management staff is considerate and professional (e.g., by not issuing layoff notices in front of students and peers). (Findings 1, 9-12, 20)
8. MCOE and SELPA need to educate the general public on the complexities of providing special education and the consequences of unfunded or underfunded mandated services by airing the meetings on local media access channels. (Findings 7, 23-37)
9. MCOE shall schedule meetings at a time that will allow Certificated and Classified personnel and the general public the opportunity to attend. (Findings 9, 23)
10. MCOE shall create and maintain a personnel oversight committee consisting of the MCOE human resources director, a MCFSE officer, and a MCOE trustee. This committee should act as an additional recipient of all MCOE employee complaints, at the first informal stage of the grievance process. (Findings 1, 9-12, 14-16, 20)

Discussion

These are difficult economic times and very stressful for all employees in the field of education. Layoffs and budget cuts are continuing at unacceptable and alarming rates. Education budgets have been among the hardest hit. Increasing concerns regarding job viability and future economic security create stress and morale issues, even in the best working environments. This is not unique to Mendocino County. The GJ hopes that MCOE, MCFSE, and employees will take extra efforts to communicate respect, empathy and sensitivity during these difficult times.

There are problems with communications and trust between MCOE administration and staff. Management should consider this opportunity to evaluate communications with all employees, ensuring they are transparent, respectful, and focused on promoting a team environment, rather than opposing camps. Respect and sensitivity are most effective, particularly with something as life-changing as a layoff notice. Logic and common sense dictate employees' input should be solicited and valued, especially on issues that pertain to them. It can only improve communications.

Through their current jointly negotiated MCOE and MCFSE contracts, Certificated and Classified personnel have tools, protections and processes to specifically address and resolve conflicts. These processes have proven effective when utilized. Employees should use their negotiated contracts and processes to resolve the problems addressed in the complaint. A contract appropriately used and administered creates an effective balance of power.

The recommendation that the parties retain the mediation and binding arbitration clauses in future contracts, is based upon several common sense factors:

- Neither management nor a union should have the role of final arbitrator. A final arbitrator should be a neutral party, having no stake in the outcome.
- A neutral arbitrator levels the playing field for all parties.
- Use of a neutral arbitrator eliminates any perception of impropriety on either part.
- A binding arbitration clause, because of its costs, may serve as a motivational factor for both sides to resolve issues prior to the need for arbitration.

MCOE and SELPA administration find themselves in a dilemma. Special education services are extremely important and tremendously costly. The education of general education students is equally important. Underfunded mandates reduce funds needed to provide all students with a quality education. All children are our future and deserve a quality education.

While the GJ cannot require the State or Federal Governments to honor their fiscal commitments, it is hoped by increasing public awareness of the seriousness of challenges faced by MCOE, SELPA and County school districts, County residents will take action to engage in the process of creative solutions to develop and provide support for the quality education of all children within Mendocino County.

Required Responses

Mendocino County Superintendent of Schools (All Findings; All Recommendations)

Deputy Superintendent of Schools/SELPA Chief Administrator (All Findings; All Recommendations)

Mendocino County Board of Education Trustees (All Findings; All Recommendations)

Director of Special Education/Orr Creek School Principal (Findings 1-4, 9-12, 20-37; All Recommendations)

Requested Responses

Mendocino County Federation of School Employees (All Findings; All Recommendations)