

September 12, 2014

Attorney Craig Meuser
Chinni & Meuser LLC
30 West Avon Road
Avon, CT 06001

Attorney Christina D. Ghio
The Law Office of Christina D. Ghio, LLC
P.O. Box 186
Cheshire, Ct 06410

Re: [REDACTED]
Complaint No. 15-0038

Dear Attorney Ghio and Attorney Meuser:

The Bureau of Special Education (BSE) is responding to the complaint filed with this office on July 14, 2014 by Attorney Christina D. Ghio (the Attorney) on behalf of [REDACTED] (the Parent) and [REDACTED] (the Student) against the Southington Public Schools (the District). In the complaint the Attorney alleged that the planning and placement team (PPT) had, on April 29, 2014, agreed to the following items but did not include them on the Prior Written Notice (page 3) and/or the summary page (page 2) of the Student's Individualized Education Program (IEP):

1. The District will residentially place the Student at the Grove School for the 2014-2015 school year;
2. The goals and objectives will be continued for the 2014-2015 school year although after a pragmatic language assessment is completed, additional goals and objectives may be needed;
3. The Student will participate in Grove's transitional program.

Issue: 34 CFR Section 300.503 requires that Prior Written Notice be provided to parents whenever a school district proposes to initiate or change, or refuses to change, the identification, evaluation, educational placement or the provision of a free, appropriate public education (FAPE) to a child. The written notice must include (among other things) a description of actions proposed or refused by the agency, an explanation of why the agency proposed or refused to take an action, a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; a description of other options that the IEP Team considered and the reasons why those options were rejected. Has the District violated this regulation by refusing to list the items numbered above on the Prior Written Notice and/or summary pages of the IEP?

The following documents were reviewed for this report:

- 1) 10-76d of the Connecticut General Statutes
- 2) 34 CFR Part 300 of the Federal Register
- 3) Southington Public Schools' response to the Bureau's letter of inquiry including the following documentation:
 - a. IEP dated 8/13/2014
 - b. Settlement Agreement dated 8/23/2013

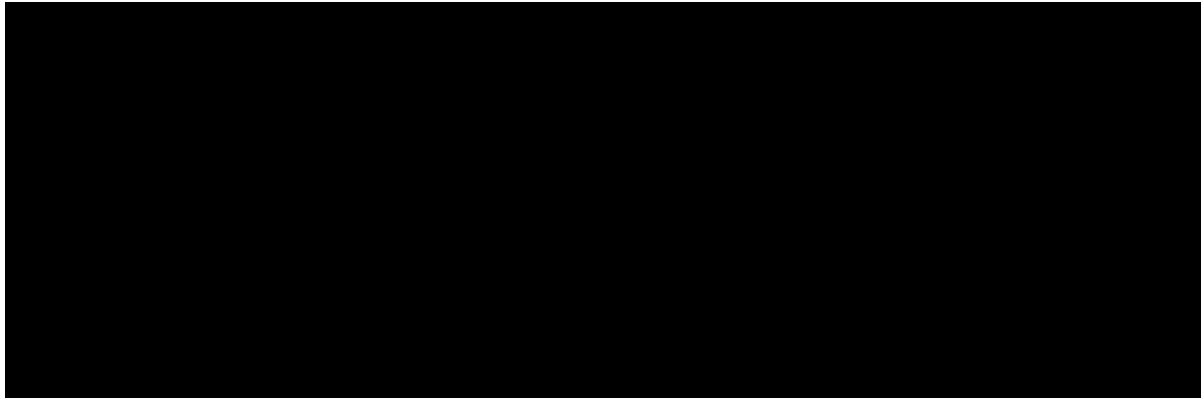
4) Attorney's letter of complaint received by the Bureau of Special Education on July 14, 2014 and the following:

- a. IEP dated 4/29/2014; CD recording of the 4/29/2014 PPT meeting
- b. Electronic mail (email) between Attorneys Meuser and Ghio
- c. Letter dated May 19, 2014 from Attorney Ghio to Attorney Meuser

Findings of Fact:

1. The Student is 18 years old and has a primary disability of emotional disturbance for special education purposes. The District and Parent entered into a Settlement Agreement dated 8/23/2013. The Agreement provides, in pertinent part, the following:

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2. The PPT convened on 4/29/2014. The PPT recommendations included that the Student's placement at Grove would continue through 8/21/2014 and that the team would reconvene by August 15 to review the Student's progress and finalize a transition program for the 2014-2015 school year. The Prior Written Notice lists the following 5 actions proposed:

- Continue goals and objectives through August 2014;
- Completion of 12th grade requirements by August 2014;
- Placement in a 2014-15 program for transition purposes;
- Referral to DMHAS for agency support at program completion; and
- Continue IEP through August 2014.

The Prior Written Notice does not set forth any other options considered and rejected. A review of the recording of the April PPT indicates that there was extensive discussion of the Student's progress and needs. There was also discussion about Grove's transition program and where the Student might be living while participating in this program during the 2014-2015 school year. The PPT seemed to agree that the Grove transition program, which is residential, was appropriate and that the Student would most likely be attending. However, another PPT meeting was planned for August during which the Student's progress would be reviewed, her goals and objectives would be reviewed and revised as needed and the program for the 2014-2015 school year would be finalized.

3. After receiving the 4/29/2014 IEP, Attorney Ghio wrote to Attorney Meuser on 5/19/2014 and stated that there were inaccuracies in the IEP including that the team had agreed that the Student's placement and program for the 2014-2015 school year would be in Grove's transitional program as

a residential student, and that the goals and objectives may be added to after a pragmatic language evaluation was received.

4. In a 6/19/2014 email to Attorney Ghio, Attorney Meuser stated that the District "...does not believe that a "program" at Grove School was designed or agreed upon at the April 29th PPT...Nevertheless, in response to your direct questions from yesterday's conversation I can state that Southington does not object to the Student continuing her residential placement at Grove School when she receives her transition services through the IEP in the 2014-2015 school year. Such details as what goals/objectives will be targeted in the 2014-2015 IEP, the level and frequency of direct and indirect services; the proportion of academic and employment elements in the transition program and the site or sites of her community experiences must be discussed and finalized at the August 2014 PPT."

5. The PPT reconvened on 8/13/2014. The first page of the 8/13/2014 IEP notes that the Student's current enrolled school is Grove as is the Student's school next year. The PPT recommendations include the following:

- The Student continues to qualify for Special Education as a student with an emotional disturbance; and
- Continue placement at Grove School for the 2014-2015 school year ending June 2015.

The Prior Written Notice lists "Revise IEP" and "Complete SLP/Pragmatics Assessment" as action proposed and does not set forth any other options considered and rejected.

Conclusions:

1. There is no statutory or regulatory basis that would allow the Connecticut State Department of Education (CSDE) to exercise jurisdiction over Settlement Agreements; the CSDE can not enforce such private agreements. The parties can, however, seek enforcement through the court system. It is noted, however, that the Agreement [REDACTED]

2. Attorney Ghio argues that during the April PPT meeting, there was discussion and agreement that the District would support the Student as a residential student at Grove but that this was not included in the Prior Written Notice. The recording of the meeting indicates that the team largely agreed that the Grove transition program, which is residential, was appropriate; however, both the April IEP and the recording of the meeting indicate that the program for the 2014-2015 school year was not finalized at this meeting. An August PPT meeting was planned to review the Student's progress, review and revise her goals and objectives as needed and finalize her program. It would not be a violation of 34 CFR Section 300.503 to not include portions of a PPT discussion, even if some consensus had been reached, when the discussion and consensus was about a program or placement that had not yet been finalized through the PPT process. This is especially true when the IEP notes, as here, that the team would be reconvening before the next school year began to finalize all aspects of the program. Therefore, the District has not violated 34 CFR Section 300.503 by not including residential placement at Grove in the 4/29/2014 Prior Written Notice as an agreed upon option.

Please contact me at (860) 713-6938 if you have any questions or concerns regarding this letter.

Sincerely,

Gail K. Mangs
Education Consultant
Bureau of Special Education

Pc: File
Karen Smith, Interim Superintendent
Southington Public Schools