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872 MAIN STREET P.O. BOX 258 WILLIMANTIC, CT 06226-258

TELEPHONE (860) 456-1761 OR 1-800-413-7796 (CLIENT TOLL-FREE LINE)

FAX (860) 456-7420

E-MAIL WILLIMANTIC@CONNLEGALESERVICES.ORG

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AUG - 6 2014

JOELEN J. GATES
MANAGING ATTORNEY
OFFICE

August 6, 2014

ANNE LOUISE BLANCHARD
LITIGATION DIRECTOR

CATHERINE CUSHMAN
CHERYL DIANE FEUERMAN
BET GAILOR
JILLIAN L. GRISWOLD
REBECCA LOOS
SAMUEL T.D. NEVES, JR.
ROYAL STARK
WENDY W. WANCHAK
ATTORNEYS AT LAW

State Department of Education
Bureau of Special Education
P.O. Box 2219 - Room 364
Hartford, CT 06145-2219

CAROLE MASTERS
VOLUNTEER ATTORNEY

Dear Sir or Madam:

LAUREL J. FREEMAN
PARALEGAL

THOMAS W. CRATTY, JR.
VOLUNTEER PARALEGAL

HEROILDA RIOS
KENNETH MAISONET TIRADO
LEGAL ASSISTANTS

ADMINISTRATIVE OFFICE
62 WASHINGTON STREET
MIDDLETOWN, CT 06457
(860) 344-0447

RICHARD F. ORR
BOARD CHAIR

STEVEN D. EPPLER-EPSTEIN
EXECUTIVE DIRECTOR

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BRIDGEPORT, CT 06604

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WATERBURY, CT 06702

872 MAIN STREET
WILLIMANTIC, CT 06226

SATELLITE OFFICES

5 COLONY STREET
MERIDEN, CT 06451

98 SOUTH MAIN STREET
SOUTH NORWALK, CT 06854

29 NAEK ROAD, SUITE 5A
VERNON, CT 06066

Please accept this letter as a complaint filed against the Enfield Board of Education ("Board") pursuant to 20 U.S.C. §1400 *et seq.* of the Individuals with Disabilities Education Act (IDEA) and Connecticut special education laws (C.G.S. §§ 10-76a to 10-76h inclusive). This complaint is filed on behalf of [REDACTED] ("parent") and her minor child, [REDACTED] ("student"). [REDACTED] alleges the Board violated state and federal special education laws when it failed to implement child find procedures, and failed to provide an appropriate trial placement for diagnostic purposes.

Relevant Facts:

In support of her allegation, [REDACTED] provides the following facts:

1. [REDACTED] was born on [REDACTED]
2. [REDACTED] is a [REDACTED] student diagnosed with: [REDACTED] Major Depressive Disorder, moderate with Anxious Distress, moderate; Anxiety; and Post Traumatic Stress Disorder.
3. When [REDACTED] was in seventh grade at JFK Middle School in Enfield he received grades ranging from a D in English to a C+ in Math in his four core academic subjects. Comments on his report card in his core subjects noted that his behavior affected his performance, his effort had declined, and he was missing seven or more assignments for the term. [REDACTED] accumulated two disciplinary offenses for skipping and profanity, and he was absent for twenty-three days.
4. In eighth grade (at JFK Middle School) [REDACTED] received two Ds (History and English), a C+ in Math and a C- in Science. He was absent for thirty-five days and accumulated nine disciplinary offenses for a variety of behaviors including skipping, fighting,



insubordination and [REDACTED] [REDACTED] was expelled in [REDACTED] as a result of the accumulation of disciplinary offenses culminating in the last incident [REDACTED]. He attended a school based tutorial program for the remainder of the year.

5. [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

6. [REDACTED]
[REDACTED]'s
[REDACTED]
[REDACTED]

7. [REDACTED]
[REDACTED]
and he resumed the expulsion tutoring program.

8. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9. [REDACTED] received homebound instruction [REDACTED] then returned to the expulsion tutoring program for the remainder of the year. The period of his expulsion ended in [REDACTED] but the Board and parent agreed to extend [REDACTED]'s time in the tutoring program rather than transition him to Enfield High School at the end of the school year. This decision was based on the difficult circumstances [REDACTED] had experienced during the year [REDACTED]. [REDACTED] received final grades of C or C- in Math, English, History and Science and accumulated 19 absences for the year.

10. During the 2013-14 school year, [REDACTED] entered the 10th grade at Enfield High School enrolled in all regular education classes but on a shortened day (1:00 p.m. dismissal).
[REDACTED]
[REDACTED]

11. When [REDACTED] returned to school he began accumulating multiple tardies and was marked absent from numerous classes every week. On December 5, 2013, [REDACTED] received Out of School Suspension (OSS) for five days for insubordination/disrespectful behavior.
[REDACTED]
[REDACTED]

12. When [REDACTED] returned to school in January, 2014 he received OSS for one day for insubordination/disrespectful behavior.

13. [REDACTED]
[REDACTED]
[REDACTED]

14. [REDACTED] continued to struggle with his attendance and on February 24, 2014, the Board suspended him again (OSS) for four days for skipping class. On February 28, 2014, the Board shortened [REDACTED]'s day even further to an 11:00 a.m. dismissal. He continued to accumulate numerous absences during March and April, 2014.

15. In [REDACTED] was admitted to the [REDACTED] overnight to be observed for signs of depression and anxiety. On [REDACTED] was seen by his primary care physician for anxiety.
16. On May 1, 2014, the parent requested a referral to a PPT (Planning and Placement Team) for evaluation. A PPT meeting was held on May 14, 2014, at which time the Board reported that [REDACTED] was failing all his core academic subjects. The parent shared with the team that [REDACTED]'s anxiety was very high and he was having trouble remaining in class for more than twenty or thirty minutes. The parent informed the Board that [REDACTED] had been diagnosed recently with multiple mental health disorders and offered to provide the Board with copies of a recent court-ordered evaluation and an assessment conducted by [REDACTED]'s primary care physician. The Board agreed to explore the feasibility of conducting a BASC (Behavioral Assessment System for Children) and agreed to reconvene the PPT in June, 2014 to review the evaluative data.
17. On June 10, 2014 the PPT reconvened. The Board had been unable to conduct a BASC because no staff member felt they knew [REDACTED] well enough to complete the assessment. The parent provided the Board with copies of the [REDACTED] (Evaluation) conducted by the [REDACTED] and a consultative note from [REDACTED]'s physician from the April 28, 2014 office visit. The parent also shared with the team detailed information regarding the [REDACTED]
[REDACTED]
18. The PPT agreed a diagnostic placement would be appropriate in order to gather more evaluative data about how [REDACTED]'s current diagnoses and recent traumas may be affecting his educational performance. The team discussed the possible need for neurological information given [REDACTED] in February and a psychiatric assessment with regard to how his emotional issues interfere with learning. Additionally, the team discussed the need to evaluate [REDACTED]'s behaviors to determine if they result from an emotional disturbance.
19. As to the location of the diagnostic placement the Board offered one option - the self-contained special education classroom located in the Enfield High School. This classroom is staffed by one teacher and one paraprofessional whose primary responsibility is to engage the students in completing work assignments and implementing the goals of their education plans. Social work support is offered for a maximum of 30 minutes per week on an as needed basis. The social worker sees the students outside of the classroom and provides no imbedded services within the classroom, nor does he engage in any small group therapy. The school psychologist conducts assessments as needed but she also does not maintain regular hours within the classroom for therapy or observation purposes.
20. The parent disagreed with the recommendation of the Board arguing that the self-contained classroom did not have the staff expertise or sufficient services available to provide diagnostic information regarding the student. The parent requested placement in a clinical therapeutic setting with imbedded social and psychological services so that diagnostic assessments and measurements could be performed. The parent suggested a program such as the Joshua Center in Enfield or the Manchester Memorial Hospital as appropriate diagnostic placements. The school psychologist, speaking on behalf of the Board, responded she did not have authority to approve such a placement and that the

parent's request would be presented to Cynthia Stamm, the Director of Pupil Services for the Enfield Public Schools.

21. The school year ended shortly after the PPT meeting and to date, the parent has received no decision from the Board regarding her request for a diagnostic placement outside of the self-contained special education classroom in Enfield High School.

Nature of the Problem:

A. The Board Failed to Comply with Child Find Requirements

All local public educational agencies are required to perform "Child Find" procedures in order to identify, locate and evaluate children with disabilities to determine if they need special education and related services. *20 U.S.C. §1412(a)(3)*. This duty is triggered when a school board has reason to suspect a disability, not just when there is factual knowledge of a qualifying disability. *Regional School District No. 9 v. Mr. & Mrs. M*, 53 IDELR 8 at 10 (D.Conn. 2009). Under Child Find, states must have in effect policies and procedures to ensure children with disabilities are identified and evaluated. *34 C.F.R. §300.1*. Connecticut's policies and procedures require school boards to make "prompt referral" to a planning and placement team any child who has been suspended repeatedly, or whose behavior, attendance or progress in school is unsatisfactory or at a marginal level of acceptance. *§10-76d-7(c) of the Regulations of Conn. State Agencies*.

In this instance the facts demonstrate the Board failed to comply with Child Find requirements starting in the JFK Middle School when the student was in seventh grade.¹ At that time, [REDACTED]'s grades began to decline, his behavior began to affect his performance and he was absent twenty-three days. Despite his poor performance and his status as a truant, the Board failed to refer [REDACTED] to a PPT for evaluation. In eighth grade, [REDACTED]'s grades, behavior and attendance all declined further. In response, the Board suspended [REDACTED] nine times (five out-of-school and four in-school) before expelling him [REDACTED]. No referral was made to a PPT for evaluation at any time during his eighth grade year. In ninth grade, [REDACTED]'s behavior became even more erratic and unpredictable. He required [REDACTED] and extended tutoring in the expulsion program, but still the Board did not refer him to a PPT. Lastly, in tenth grade when [REDACTED] was placed in a regular educational program and began almost immediately having problems with [REDACTED] attendance, grades, and behaviors the

¹ / The parent is aware that complaints filed pursuant to the Complaint Resolution Process must allege a violation that occurred not more than one year prior to the date the complaint is received. *34 C.F.R. §300.153(c)*. However, States may choose to accept and resolve complaints regarding alleged violations that occurred outside the one-year timeline. *Federal Register, Vol.71, No.156 (August 14, 2006) p. 46606*. In Connecticut, the one-year limitation applies but there is no prohibition on the consideration of evidence from outside the one-year timeline. In fact, Connecticut regulations specifically allow consideration of evidence outside the time limitation in due process hearings (*see §10-76h-4(b) of the Regulations of Conn. State Agencies*). Accordingly, facts presented herein that occurred prior to the one-year limitation should be considered as relevant to understanding the Board's most recent actions.

Board did not refer to a PPT. It was not until the parent, through her attorney, requested a PPT meeting in May, 2014, did the Board finally schedule a meeting.

Given this egregious failure to act despite the clear mandate in Connecticut regulations that school boards “shall” refer in a “prompt” manner, the Board must be found in violation of Child Find requirements.

B. The Board Failed to Provide an Appropriate Diagnostic Placement

On June 10, 2014 the PPT for [REDACTED] [REDACTED] reconvened to review additional evaluation materials provided by the parent and to discuss the need for further assessment. The team agreed to look more closely at the issue of a possible neurological impairment based on the facts that [REDACTED] had [REDACTED] [REDACTED] and had scored below average on a recent neuropsychological assessment performed by [REDACTED]. Similarly, the team agreed to evaluate [REDACTED]’s behaviors in the context of his recent self-reports of anxiety and depression. The PPT was in agreement that in order to collect the necessary data to evaluate these areas [REDACTED] should attend a diagnostic placement at the start of the next school year. However, instead of considering diagnostic programs that could address the concerns raised by the PPT the Board offered only one option, the high school’s self-contained special education classroom. When asked to consider other alternatives, the Board indicated it did not have the authority to approve placement in an outside program.

A trial placement for diagnostic purposes can be used as part of the initial evaluation of a student in order to assess the needs of the child when the data that is available is insufficient to determine eligibility or to develop the child’s IEP (Individualized Education Program). *§10-76d-14 of the Regulations of Conn. State Agencies*. Connecticut regulations are clear that a “trial placement for diagnostic purposes is an *evaluation*” (*Id.*, emphasis added). In order to *evaluate* the student diagnostic goals and objective must be specified in writing, and the team must meet at least once every ten school days to discuss the child’s progress. *Id.* Moreover, because this placement is part of an *initial* evaluation it must be full and individualized and assess the student in all areas of suspected disability (20 U.S.C. §1414(a)(1)(A); 20 U.S.C. §1414(b)(3)(B)), and the Board is required to use technically sound instruments to assess both cognitive and behavioral factors. 20 U.S.C. §1414(b)(2)(C).

In this instance, although the PPT identified the need for neurological data as well as behavioral data as it relates to anxiety and depression, no diagnostic goals and objectives were written to address those needs. Instead the Board offered a program that employs staff who are not competent to conduct such evaluations. The self-contained classroom at Enfield High School is staffed by a certified teacher and a paraprofessional. Neither individual has expertise or training in evaluating neurological impairments or behaviors related to anxiety or depression. Rather the

purpose of the self-contained class is to implement students' IEPs and run a behavior modification program to help students develop better decision-making skills.²

Clearly when presented with the issue of placing the student in a diagnostic program, the Board defaulted to the most expedient and convenient option available. No other consideration was given when the parent requested a program that could actually perform evaluations and collect the data required to understand [REDACTED]'s needs. Instead, the Board said the parent's request would have to be sent to "central office." The Board's response is in direct conflict with its duty to provide services to meet the unique needs of the student. Under 34 C.F.R. §300.321(a)(4) the public agency must include on the PPT a representative who is knowledgeable about the availability of resources of the public agency. This regulation has been interpreted to mean the school's representative has the authority to commit agency resources and ensure the services described in the IEP will actually be provided. *Federal Register, Vol. 71, No. 156 (August 14, 2006) p. 46670*. Here, the Board identified the unique needs of the student (i.e., to gather evaluative data regarding neurological impairments and anxiety/depression related behaviors) but then refused to commit the resources to ensure services would be provided to meet those needs. The Board's proposal is not an appropriate diagnostic placement and does not address the needs identified by the PPT.


Proposed Resolution:

The parent proposes the Board undertake the following corrective actions. First, the Board must identify an appropriate diagnostic program that is qualified to perform the requisite evaluations needed by the PPT to determine the student's eligibility for special education and related services. The Board should be directed to secure the placement as soon as possible but in any event no later than the start of the 2014-15 school year.

Second, the Board should be required to provide compensatory education for the period of time when it disregarded its obligations under Child Find. Whether in the form of tutoring, on-line learning, or extended school year services, the student should receive additional services to make up for the numerous months when he was struggling and his educational needs were overlooked.

Thank you for your attention to this matter. Please feel free to contact me should you have questions.

Very truly yours,



Catherine E. Cushman
860-786-6353

c: Cynthia Stamm, Director of Pupil Services, Enfield Public Schools & [REDACTED], Parent

² / Although a social worker and the school psychologist are available on an as-needed basis, neither individual keeps regular hours in the self-contained classroom observing the students or measuring their diagnostic goals and objectives.



STATE OF CONNECTICUT
STATE DEPARTMENT OF EDUCATION



October 6, 2014

Cindy Stamm
Director of Pupil Services
Enfield Public Schools
820 Enfield Street
Enfield, CT 06082

Re: [REDACTED]
C15-0078

Dear Ms. Stamm:

This office is responding to the complaint filed with this office by Attorney Catherine Cushman against the Enfield Public Schools on behalf of the above-referenced student. The complaint was filed on August 6, 2014. The complaint inquiry letter set forth the issues to be investigated as follows:

Issue 1: Regulations of Connecticut State Agencies (RCSA) § 10-76d-7 requires the prompt referral to a planning and placement team (PPT) of any student who demonstrates unsatisfactory attendance, behavior or academic performance. 34 CFR § 300.111 (Child Find) mandates that the state have in effect policies and procedures to ensure that all children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state, and children with disabilities attending private school, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated.

Questions: Over the last year, did the district convene a PPT in response to the student's unsatisfactory attendance, behavior or academic performance? When did the team meet over the last year? Provide all paperwork related to PPT meetings held in the last year, the student's report card, attendance, and discipline reports.

Issue 2: RCSA § 10-76d-14 sets forth the requirements regarding trial placements for diagnostic purposes.

Questions: Did the district develop diagnostic goals? Did the team meet at least once every 10 school days to review the placement? Did the evaluation assess the student in all areas of suspected disability? Did the team suspect that the student might have a neurological or behavioral disability? Did the evaluation assess the student in those areas?

Issue 3: 34 CFR § 300.321(a)(4) provides that the PPT must include a district representative who has the authority and knowledge to commit district resources. **Question:** Did the PPT that met on June 10, 2014 have such a representative?

The following were reviewed: complaint; Enfield's response to the complaint inquiry letter dated September 5, 2014; individualized education program (IEP) dated June 10, 2014; Catholic Charities Education Report [REDACTED] transcript; discipline record; report card; attendance; planning and placement team (PPT) notice dated May 5, 2014; [REDACTED] tutoring invoices; Enfield High School (EHS) student handbook; EHS 2013-14 school calendar; and [REDACTED] invoices.

Findings of Fact:

1. The student is 16 years old and was in grade 11 at Enfield High School during the 2013-14 school year. He has not been identified as eligible for special education services. A review of the student's attendance record shows that he was skipping classes at the beginning of the 2013-14 school year. He missed 4 weeks of school [REDACTED]

[REDACTED] the student resumed skipping classes. This pattern of poor attendance continued throughout November and into December.

2. The student had 6 disciplinary referrals last year. The first occurred on November 27, 2013 and resulted in an in-school suspension. The student had left school grounds. On December 5, 2013, the student was disrespectful in the hallway and was suspended out-of-school for 5 days as a result. By mid-December, the student [REDACTED] The student returned to EHS on January 6, 2014. On January 7, 2014 he again disrespectful in the hallway and as a result, was suspended out-of-school for one day. [REDACTED]

[REDACTED] He skipped class on February 24, 2014 and received a four day out-of-school suspension. The student's attendance continued to be poor into February and March. On March 21, 2014 he was suspended for behavior related to drugs/alcohol/tobacco. On March 27, 2014 he used profanity in the classroom and received a one-day in-school suspension. He was not allowed to attend school after May because his grade 10 physical examination was not provided as required by state law.

3. Catholic Charities conducted an evaluation of the student on [REDACTED] A PPT convened on June 10, 2014 to review the Catholic Charities evaluation and consider the student's eligibility for special education. Andrew Longey, Assistant Principal, was the administrator at the meeting. The student's mother attended the meeting. Additionally, a regular education teacher, school psychologist and guidance counselor attended. The student was invited but did not attend. The team recommended that an initial evaluation of the student be conducted to include a diagnostic placement to start in September, a psycho-educational evaluation and a social work evaluation. The parent and school members of the PPT did not agree on the location of the diagnostic placement. The school personnel were of the opinion that placement in a self-contained class at the high school was appropriate and this is the placement that the diagnostic IEP includes. The IEP includes one goal: to "increase on task behavior in the classroom." The meeting notes do not document that the team suspected the student had a neurological impairment. The student's mother and Attorney Cushman believed the student would not buy into the high school placement because he would feel there was a stigma attached to being seen as "special education." They believed the appropriate placement would be at the Joshua Center, [REDACTED] and one with a therapeutic component. In the complaint, Attorney Cushman states that the school psychologist said the team did not have the authority to approve a placement at the Joshua Center and that she would present the parent's request to Ms. Stamm, the Director of Special Education. This statement is not documented in the IEP minutes. The parent was provided with prior written notice that the team refused to place the student in a diagnostic placement at the Joshua Center. In its response to the complaint, Ms. Stamm states that Mr. Longey had the authority to commit district resources and could have approved the requested placement.

4. According to the high school's student handbook, once a student accumulates 5 absences in a semester course or 10 absences in a yearlong course, school administrators issue a warning to the parents that the student is in danger of losing course credit as a result of his or her attendance. Students who exceed 10 absences in a semester course or 20 in a yearlong course lose course credit. The student earned one credit last year.

Conclusions:

Child Find is an important responsibility of a public school district. If educators are not diligent in carrying out their Child Find responsibilities, schools are certain to overlook students in need of special education. Under the IDEA and state requirements, districts have an affirmative duty to identify, locate, and evaluate all students who need, or are suspected of needing, special education and related services. This duty is not dependent on the parent asking for an evaluation. Failing to meet Child Find requirements is a matter of serious concern that can deprive a free and appropriate public education to a student who should have been identified.

Meeting Child Find obligations isn't always a clear-cut process for a district. When a student is demonstrating unsatisfactory attendance, behavior or academic performance, the student must be referred promptly to a PPT. That team, including the parent, must review relevant information about how the student is functioning in school, including information provided by the family and if, after that review, the team suspects the student may have a disability that would require special education and related services, the team must design an evaluation of all areas of suspected disability, obtain parental consent and conduct the evaluation. If, after the review of student information, the team determines that it does not suspect that the student has a disability and so does not recommend an initial evaluation, the team must provide the parent with written notice of that determination and the basis for the determination.

1. RCSA § 10-76d-7 states, in part, "Provision shall be made for the prompt referral to a planning and placement team of all children who have been suspended repeatedly or whose behavior, attendance or progress in school is considered unsatisfactory or at a marginal level of acceptance." Given that the district's policy is to issue a written warning to the student and the student's parents when the student misses 5 classes for a semester course and to deny course credit to any student who misses more than 10 classes, it is concluded that the student demonstrated what the district considered unsatisfactory attendance early in the school year and should have been referred to a PPT to consider whether or not the team suspected that the student had a disability and might require special education services well before the PPT was convened in June of 2014. Corrective action is required, (see below).

2. At the time the complaint was filed, the diagnostic placement had not begun. The IEP does include a diagnostic goal. State regulations provide for trial placements for diagnostic purposes to be part of an initial evaluation of a student. In addition to the diagnostic placement, a psycho-educational and social work evaluation will be conducted. No conclusion is reached that the trial placement violates state requirements. The parties are reminded that if the student's parents disagree with the evaluation results, they may request a publicly funded independent evaluation. No violation is found and no corrective action is required.

3. It is concluded the district convened a PPT in June that included a district representative who was knowledgeable about district resources and so, the PPT had all required members. But, apparently, Mr. Longley didn't know he could commit district resources as evidenced by the school psychologist statement that

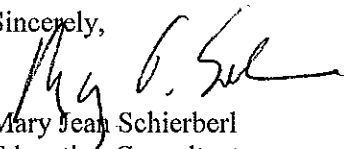
the PPT didn't have the authority to place the student at the Joshua Center for the diagnostic placement. The district is found to be in violation of 34 CFR § 300.321(a)(4). Corrective action is required.

Required Corrective Actions:

1. Within ninety days of the receipt of this report, the district must provide evidence to this office of the provision of training to Enfield High School staff regarding the requirements of RCSA 10-76d-7 to promptly refer students to PPT whose behavior, attendance, including truant behavior, or progress in school is considered unsatisfactory or at a marginal level of acceptance.
2. If this student is determined to require special education and related services, the team must consider the impact that the delay in referring the child to a PPT has had on the student's receipt of a free appropriate public education and offer the student appropriate compensatory education services. While not an exact calculation, the student should have been referred to a PPT in October in response to his unsatisfactory attendance and eight months passed before the PPT met and recommended an evaluation. This investigator must be informed of the team's decision. If the team cannot agree on compensatory services, this investigator must be told and she will make the determination.
3. District staff must receive training on compliance with 34 CFR § 300.321 and specifically, what each team member's role and authority is. Documentation that this training has occurred and who received the training must be provided to this office no later than November 5, 2014.

I will be monitoring the district's compliance with the required corrective actions. Please feel free to call. 860-713-6943.

Sincerely,


Mary Jean Schierberl
Education Consultant

Cc: Catherine Cushman, Esq., Connecticut Legal Services
Dr. Jeffrey A. Schumann, Superintendent of Schools