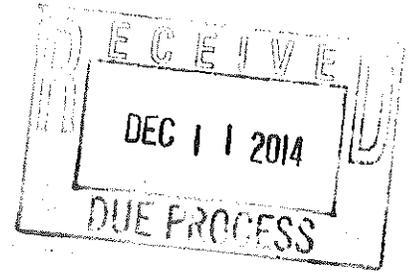




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December 10, 2014

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VOLUNTEER ATTORNEY

Dear Sir or Madam:

LAUREL J. FREEMAN
PARALEGAL

HEROILDA RIOS
KENNETH MAISONET
LEGAL ASSISTANTS

Please accept this letter as a complaint filed against the Two Rivers Magnet Middle School (TRMMS) and the Manchester Board of Education (“Manchester 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 above referenced educational agencies violated state and federal special education laws when they failed to implement child find procedures and violated the parent’s right to procedural safeguards.

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

Relevant Facts:

ROSS H. GARBER
BOARD CHAIR

STEVEN D. EPPLER-EPSTEIN
EXECUTIVE DIRECTOR

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211 STATE STREET
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NEW BRITAIN, CT 06051

153 WILLIAMS STREET
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98 SOUTH MAIN STREET
SOUTH NORWALK, CT 06854

29 NAEK ROAD, SUITE 5A
VERNON, CT 06066

In support of her complaint, the parent provides the following facts:

1. [REDACTED] was born on [REDACTED]. He resides at [REDACTED].
2. [REDACTED] is a [REDACTED] student diagnosed with ADHD (Attention Deficit Hyperactivity Disorder). (Attachment A)
3. The student attended public schools in the Town of Manchester from [REDACTED]. He began attending TRMMS in Grade 6.
4. In seventh grade (2012-13) at TRMMS, [REDACTED] was disciplined 28 times including three in-school suspensions. Disciplinary offenses included a wide variety of behaviors such as disorderly conduct, skipping class, insubordination and disruption (Attachment B). In the Spring of his seventh grade year [REDACTED] was diagnosed with ADHD (Attachment A). A referral to a planning and placement team (PPT) never occurred during the student’s seventh grade year.
5. In eighth grade (2013-14), within the first four months of school, [REDACTED] accumulated four disciplinary incidents resulting in nine days



of suspension (Attachment B). His grades for the second quarter were mostly in the "Below Goal" range (Attachment C). By March 5, 2014, [REDACTED] had accumulated three more disciplinary offenses and received nineteen additional days of suspension. In total, the student was removed from the classroom setting for twenty-eight (28) days for behavioral conduct.

6. On January 28, 2014 a "Student Referral Worksheet" was completed by [REDACTED] at TRMMS. Three areas of concern were noted including: 1) academic: student was unmotivated and work completion/preparedness was a major issue; 2) attendance: student was leaving class and not returning for twenty minutes at a time; 3) emotional/behavioral: student was apathetic/defiant and not taking ownership of his behavior (Attachment D). No referral to a PPT occurred by either TRMMS or the Manchester Board as a result of this referral worksheet.
7. During his eighth grade year, the parent contacted her son's guidance [REDACTED] at TRMMS, [REDACTED] on several occasions in the fall to discuss [REDACTED]'s difficulties at school. [REDACTED] informed the guidance counselor that [REDACTED] had been diagnosed with ADHD the previous Spring and they were trying a medication to address his behaviors. The guidance counselor replied that [REDACTED] did not qualify for special education. [REDACTED] requested that [REDACTED] be permitted to see the school social worker or work with a mentor but her requests were denied.
8. In February, 2014 [REDACTED] approached the TRMMS [REDACTED] and asked that [REDACTED] be evaluated for special education services. A referral to a PPT was made on March 4, 2014 by the Manchester Board (Attachment E) and a PPT meeting was scheduled for March 13, 2014.
9. On March 10, 2014 the Manchester Board notified the parent that a hearing had been scheduled for March 14, 2014 for the purpose of considering the expulsion of her son (Attachment F).
10. A PPT meeting occurred on March 13, as previously scheduled, and the team agreed to evaluate the student. The parent signed consent for assessment in the areas of cognitive/processing, behavior/attention/social emotional, achievement, and developmental history. The parent also requested that [REDACTED] be placed on a §504 Plan while being evaluated for special education services (Attachment G). This request was denied by Alexia Kalogianes, Manchester Special Education Supervisor, who indicated the parent would need to wait for the results of the special education referral process.
11. On March 14, the expulsion hearing occurred. The parent informed the hearing officer that she had requested an assessment for special education services. The hearing officer stopped the hearing and asked the representatives from TRMMS and the Manchester Board to verify if a referral for special education services had been made. A telephone call was made and the hearing officer was informed that the referral process had been started. The hearing officer determined the hearing could not continue until after completion of the assessment and the expulsion proceeding terminated.
12. At the expulsion hearing the parent was informed the Manchester Board would place [REDACTED] in the New Horizons program for a 45 day placement while he was being evaluated. The parent was told the student would attend school in the evening from 4:00 p.m.– 8:00 p.m. four nights per week and would receive tutoring from 8:00 a.m. – 12:00 p.m. five days per week.

13. Immediately following the aborted expulsion hearing, the principal of TRMMS, Robert McCain, informed the parent that [REDACTED] could not return to TRMMS. He indicated it was in the best interest of the school to expel [REDACTED] from the TRMMS program. He further stated that attending a magnet school is a "privilege" and the privilege could be revoked at any time. These comments were overheard and later transcribed by a therapist who attended the hearing in support of the parent (Attachment H).
14. The student began attending the New Horizons program at the Manchester Regional Academy (MRA) approximately one week after the expulsion hearing. The parent was informed by the principal of MRA, Bruce Thorndike, that there would be a meeting every two weeks and at the end of the 45 day period there would be a meeting to discuss where [REDACTED] would attend school.
15. Neither the bi-weekly meetings nor the meeting at the end of the 45 day period ever occurred. In addition, the Manchester Board did not provide any of the tutoring services that had been described at the expulsion hearing. At the end of the 45 day period the parent received a letter from the principal stating that [REDACTED] was now a "registered" student at the New Horizons program (Attachment I).
16. On April 29, 2014 a PPT meeting was held to review the evaluation results. The Manchester Board determined that [REDACTED] was not eligible for special education because he did not require specialized instruction outside of general education.
17. The parent disagreed with this determination and requested an independent educational evaluation (IEE) in May 2014. On June 13, 2014 Shelly Matfess, Assistant Superintendent for Pupil Personnel Services informed the parent that Manchester was only obligated to pay for the same type of evaluation which they had conducted and she provided a copy of Manchester's guidelines for independent evaluations (Attachment J).
18. The parent received no further communication from the Manchester Board about who to use or how to schedule the evaluation. The parent concluded from this response that the Manchester Board had declined her request for an IEE. Accordingly, she filed a complaint with the Connecticut State Department of Education (SDE) (Attachment K).¹
19. On July 22, 2014 the parent was informed by Ms. Matfess in a telephone call that [REDACTED] would be attending the Bentley program in the Manchester High School for the 2014-15 school year. She also informed [REDACTED] that the Manchester Board was not moving forward with the expulsion hearing. The parent was not in agreement with the school's recommendation for [REDACTED] to attend the Bentley program and indicated her interest in exploring a therapeutic school program. Ms. Matfess replied the Manchester Board would then go forward with the expulsion. This telephone conversation was memorialized by the parent in an email to Ms. Matfess (Attachment L).
20. Also on July 22, 2014 the parent requested for the second time that [REDACTED] be considered eligible for services under §504 (Attachment L). On August 25, 2014 a §504 Meeting convened at the Manchester High School. The team found the student eligible for

¹ / The complaint was withdrawn by the parent after an understanding was reached between the parent and the Manchester Board that the IEE would proceed and the student would attend the regular high school. Subsequently, undersigned counsel requested that the SDE reconsider the original complaint as there were several other issues raised by the parent that were not resolved. The educational consultant from the SDE, [REDACTED] indicated the complaint was withdrawn and could not be investigated further given certain timelines. [REDACTED] advised the parent to file a second complaint which she agreed to do herein.

services under §504 and developed a plan affording accommodations. The team also agreed to enroll the student at the Manchester High School.

21. The student continues to attend Manchester High School as of this date. He has received no disciplinary offenses and earned grades of As, Bs, and one C in his courses for the first quarter.

Nature of the Problem:

I. TRMMS and the Manchester Board Failed to Comply with Child Find Requirements

All local public educational agencies are required to perform “Child Find” measures 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. §300.111*. 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 Connecticut State Agencies (RCSA)*.

In this instance the facts demonstrate the educational agencies failed to comply with Child Find requirements starting when the student was in seventh grade.² At that time, the student showed a marked change in his behaviors. By the time he was diagnosed with ADHD in April, 2013 he had accumulated sixteen disciplinary offenses and the disruptive behaviors were increasing in intensity as the school year progressed. (Attachment B). Despite the escalating behaviors, a referral to a PPT was never discussed with the parent and never pursued by the school. Similarly in eighth grade, despite numerous behavioral incidents, declining academic performance, the parent’s requests for assistance, and a completed “Student Referral Worksheet,” no referral was made to a PPT. Only in February, 2014 when the parent spoke with Mr. Robitaille (TRMMS Dean of Students) and specifically requested a special education evaluation was a meeting scheduled.

² / 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 RCSA §10-76h-4(b)*). Accordingly, facts presented herein that occurred prior to the one-year limitation should be considered relevant as establishing the framework for evaluating the Board’s most recent actions.

Given this egregious failure to act despite the clear mandate found in Connecticut regulations that school boards “shall” refer in a “prompt” manner, the respective educational agencies must be found to have violated Child Find requirements.

II. TRMMS and the Manchester Board Violated IDEA Procedural Safeguards

The IDEA requires local educational agencies to establish procedures to ensure that students with disabilities and their parents are guaranteed procedural safeguards. 20 U.S.C. §1415(a). Among those safeguards is a requirement that before a student’s placement is changed due to a disciplinary action there must be a review to determine if the student’s misconduct was caused by or related to his disability. 20 U.S.C. §1415(k)(1)(E). In the situation where a student’s misconduct is found to be a manifestation of his disability, the IDEA requires the student be returned to the placement from which he was removed unless the parent and educational agency agree to a change of placement. 20 U.S.C. §1415(k)(1)(F)(iii). In special circumstances the school may remove the student to an interim alternative educational setting (IAES) for up to 45 school days regardless of whether a manifestation of the disability is found. 20 U.S.C. §1415(k)(1)(G). All of these procedural safeguards are available to students who are not yet eligible for special education if the local educational agency had knowledge that the youth was a student with a disability before the misconduct occurred. 20 U.S.C. §1415(k)(1)(H)(5).

7
The facts presented in this case demonstrate that both TRMMS and the Manchester Board had prior knowledge that [REDACTED] was protected by these safeguards before he was removed from his educational program. To establish prior knowledge, the parent must show that either she expressed concern in writing to the educational agency that the student was in need of special education or an evaluation, and/or, staff from the educational agency expressed specific concerns about the student to the school’s supervisory personnel. *Id.* As early as January 28, 2014 a written referral worksheet was completed by David Jones from TRMMS identifying specific concerns about [REDACTED]’s behavior, attendance and academic performance (Attachment D). This was followed by a meeting between the parent and the TRMMS Dean of Students, Patrick Robitaille in February, 2014. At that meeting [REDACTED] requested that [REDACTED] be evaluated for special education services and shortly thereafter, on March 4, 2014, a referral to determine eligibility for services was completed by Alexia Kalogianes, Manchester Special Education Supervisor (Attachment E). On March 6, 2014 [REDACTED] was given OSS for ten days for misconduct on the bus ride home and on March 10, 2014 the Manchester Board notified the parent that [REDACTED] was to appear before a hearing officer to be considered for expulsion due to his behavior on the bus. (Attachment F).

This sequence of events demonstrates that even though TRMMS and the Manchester Board had knowledge of the student’s need for a special education evaluation, no manifestation determination was made prior to removing [REDACTED] from his educational program. First the Manchester Board erroneously referred the student to an expulsion hearing. Then when the hearing was aborted, TRMMS informed the parent that [REDACTED] was not welcome back at the middle school and the Manchester Board instructed the parent that [REDACTED] would be placed at the New Horizons program for 45 days with supplemental tutoring. The basis of the placement at

New Horizons is unclear. Originally, the parent was informed by the principal of the New Horizons program that [REDACTED] was there for a diagnostic placement and that they would meet every ten days to review his progress. However, no progress meetings were scheduled (in ten-day intervals or otherwise) while [REDACTED] attended New Horizons. Moreover, a PPT meeting was not held before commencing the diagnostic placement. Therefore no diagnostic goals and objectives were ever written as required under state regulations (*see* RSCA §10-76d-14(a)). Nor was the parent given an opportunity to participate in identifying the location of the program, or the types and the amounts of services needed to conduct the diagnostic assessment. RSCA §10-76d-14(a) and (c). Finally, no meeting was held five days before the diagnostic placement ended. RSCA §10-76d-14(e).

If, on the other hand, the basis for placing [REDACTED] at the New Horizons program was as an interim alternative educational setting (IAES), TRMMS and the Manchester Board failed again to follow proper procedures. The only time school personnel may remove a student to an IAES is if the student engaged in behavior at school, on school grounds, or at a school function that involved: 1) carrying or possessing a weapon; 2) possessing or using illegal drugs or selling or soliciting controlled substances; and 3) inflicting serious bodily injury upon another person. *20 U.S.C. §1415(k)(1)(G)*. Your [REDACTED]'s behavior did not involve any of the three special circumstances justifying removal from school and placement in an IAES. Not to mention that if the placement at New Horizons was an IAES, then a PPT meeting should have convened prior to its commencement. The IDEA clearly states that the IAES "shall be determined by the IEP Team." *20 U.S.C. §1415(k)(1)(H)(2)*. Here, TRMMS and the Manchester Board unilaterally identified the setting, obviating the need for a PPT all together.

Regardless of whether the placement at New Horizons was an IAES or for diagnostic purposes, when the 45 day period ended [REDACTED] was not permitted to return to his educational program. No determination was made that the conduct that resulted in removal from TRMMS was *not* a manifestation of [REDACTED]'s disability. Therefore the two educational agencies were required to return the student to the placement from which he was removed. *20 U.S.C. §1415(d)(1)(F)(iii)*. Under the IAES exception, the 45 day period of removal is a maximum time limit unless extended by a hearing officer. (*34 C.F.R. §300.532(b)(3)*). In this case, neither educational agency filed for a hearing seeking extension of the 45 day period. Similarly, the diagnostic placement regulations require that the placement be terminated as soon as the student's needs have been determined, but in any event no later than 40 school days after the placement begins. (*RCSA 10-76d-14(d)*). Here, the parent was informed that [REDACTED] was considered a "registered" student of the New Horizons program and was scheduled to enroll in the Bentley program for the next school year. The parent was provided no opportunity for input regarding her son's school program after the 45 day period ended and no discussion of returning to TRMMS ever occurred.

Proposed Resolution:

The parent proposes the TRMMS and the Manchester Board undertake the following corrective actions. First, the student should be provided with compensatory education for the period of time when the educational agencies disregarded their 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 he struggled and his educational needs were overlooked. Second, TRMMS and the Manchester Board should be required to participate in training regarding the requirements of RCSA 10-76d-7 to promptly refer students to a PPT whose behavior, attendance, or progress is considered unsatisfactory or at a marginal level of acceptance. Third, TRMMS and the Manchester Board must undergo training regarding the protections afforded parents and students pursuant to the procedural safeguards provisions of the IDEA. Given the egregious manner in which this student was summarily removed from his public education setting and placed in a program not of his or his parent's choosing without being afforded any due process protections warrants monitoring oversight by the State Department of Education for a period of time of at least one year.

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

Very truly yours,



Catherine E. Cushman
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c: Jill Wnuk, Two Rivers Magnet Middle School
Shelly Matfess, Assistant Superintendent for Pupil Personnel Services, Manchester Board
Mrs. [REDACTED], Parent