



STATE OF CONNECTICUT  
STATE DEPARTMENT OF EDUCATION



September 9, 2013

Anita Russell  
Director of Special Services, Pre-K-12  
Glastonbury Public Schools  
Gideon Wells School  
1029 Neipsic Road  
Glastonbury, CT 06033

Vanessa Taragowski, Director  
ACES  
350 State Street  
North Haven, CT, 06473

Jennifer Laviano, Esq.  
Law Offices of Jennifer Laviano  
76 Route 37 South  
Sherman, CT 06784

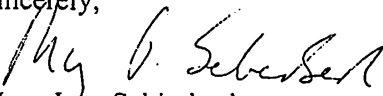
Re: M [REDACTED] M [REDACTED]  
C13-0496

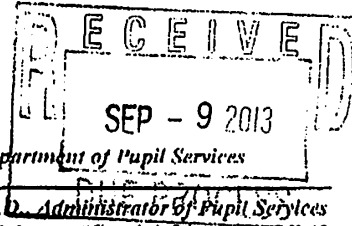
Dear Ms. Russell, Ms. Taragowski and Attorney Laviano:

This office is in receipt of information that documents compliance with the required corrective action issued in the above-referenced complaint report. Accordingly, the complaint is closed.

If you have any questions, feel free to call if you have any questions at 860-713-6943.

Sincerely,

  
Mary Jean Schierberl  
Education Consultant



Linda Roberts, Ph.D. Administrator of Pupil Services  
Anita Russell, Director of Special Education, PK-12  
Gideon Welles School - 1029 Neipsic Road, Glastonbury, CT 06033  
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Sept. 6, 2013

Mary Jean Schierberl  
Education Consultant  
CT State Department Of Education  
Box 2219  
Hartford, CT 06145

Re: M [REDACTED] M [REDACTED] D.O.B. [REDACTED]  
C13-0496

Dear Attorney Schierberl,

I am writing to respond to your letter of August 30, 2013 and received in this office on 9/3/2013, requesting information on whether [REDACTED] have been contacted to schedule a visit to ACES.

A letter of referral (attached) from the District was written and sent to ACES on August 1, 2013, with a copy sent to parents. In a telephone conversation with Ms. Taragowski, I understand that parents called to schedule a visit to ACES over the summer, when the Village School staff was on vacation, and so unavailable to plan a visit. Parents did subsequently make another contact with the office staff at the school, and were encouraged to come in at the start of the school year, so that they could observe instruction and routines.

I learned through Ms. Taragowski that parents had scheduled a visit for Friday, September 6, 2013. [REDACTED] called to cancel that appointment, and a new meeting date was set for Monday, September 9, 2013. As I am now aware of the date of the visit, I will meet the family at the Village School, as indicated in my original letter.

Sincerely,

A handwritten signature in black ink that reads "Anita Russell".

Anita Russell  
Director of Special Education

STATE OF CONNECTICUT DEPARTMENT OF EDUCATION

SPECIAL EDUCATION – DUE PROCESS UNIT

[REDACTED] :

Student : May 20, 2013

v. :

Glastonbury Board of Education :

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STATE COMPLAINT<sup>1</sup>

Parents, [REDACTED] (hereinafter “Parents”), assert that their district, the Glastonbury District (hereinafter “District”) violated the Individuals with Disabilities Education Act (hereinafter “IDEA”) with respect to their daughter, [REDACTED] (hereinafter “[REDACTED]”). **20 U.S.C. Section 1400, et. seq.** The District intentionally withheld and continues to withhold information, which the Parents sought and continue to seek to allow them to contribute to [REDACTED] “individualized education program” (hereinafter “IEP”) and planning and placement meeting (hereinafter “PPT”), **20 U.S.C. Section 1414(d)(1)(A)(i)**. Specifically, the District denied the Parents a “local education agency” (hereinafter “LEA”) referral to observe another placement recommended by an independent education evaluator. **20 U.S.C. Section 1401(19)**.

The District’s denial to issue this LEA referral violates the IDEA’s strong statutory

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<sup>1</sup> The Parents have substantive IDEA claims regarding their disagreement with the IEPs offered during the time frames in question and the provision to [REDACTED] of FAPE. The Parents do not assert or waive them herein, as they are properly presented through a Due Process Hearing which can not be pending simultaneously with a Complaint, and if necessary to be filed, will be filed separately after the conclusion of this Complaint process.

language empowering parents as equal members contributing to the development of their child's education plan. Further, the District's action also violates the clear public policy promulgated in a newly proposed regulation by the Connecticut State Department of Education (hereinafter the "Department"). **Proposed New Conn. Agencies Regs. Section 10-76d-17(11)**. Last, the District's denial of such referral is an act of retaliation against the Parents for vigorously advocating their IDEA rights on behalf of [REDACTED] **29 U.S.C. Section 794(a)**.

### FACTUAL BACKGROUND

[REDACTED] is a seven-year-old girl who suffers from a seizure disorder. She experiences seizures numerous times daily. She qualifies for an IEP under the IDEA, and currently, [REDACTED] attends CREC in Coltsville, CT, an LEA placement made through her IEP. Since that placement was made, there have been numerous concerns expressed by the Parents to the district because, despite the proximity of CREC to Glastonbury, the district's transportation has been on numerous occasions unnecessarily long.

In preparation for [REDACTED] Annual Review to plan a program for the ESY 2013 and the 2013-2014 school year, an independent evaluation was obtained with Drs. D'Eramo and Powers with the Center for Children with Special Needs (hereinafter "CCSN"). As part of that evaluation, it was recommended by CCSN that a program that not only as experience with behavioral programs, but also with medically fragile students such as [REDACTED], be explored. Based on these considerations, as well as believing that a program such as ACES could meet [REDACTED] unique needs, [REDACTED] Parents expressed their desire to observe ACES.

Unfortunately, ACES's policy prohibits any observations without an LEA referral. Consequently, on December 22, 2012, [REDACTED] Parents, through their attorney, requested an LEA referral by the district to visit ACES. This request was made via e-mail to the District's

attorney. **See, Exhibit A**, E-mail correspondence from Parents' attorney, Jennifer Laviano, to the District's attorney, Susan Freedman, dated December 22, 2012). Additional e-mail correspondence regarding exact ACES's location occurred between the attorneys. **Id.**

On January 28, 2013, the District's attorney notified the Parents' attorney that their request to observe the ACES educational program was denied on two grounds. **See, Exhibit B**, E-mail correspondence between Attorneys Freedman and Laviano. First, that [REDACTED] current placement at CREC is an appropriate one at which she is making progress. Second, that [REDACTED] drive to ACES would be longer than her current travel time to CREC. In response, the Parents' attorney contacted the District's attorney proffering to execute a release that the District neither waive its position that [REDACTED] was already in an appropriate placement, nor its position regarding travel time, in order to facilitate the LEA referral. **Id.** The District continued to refuse the Parents' request to observe ACES even with the proffered release. **See, Exhibit C**, E-mail correspondence from Attorney Laviano to Attorney Freedman, dated February 4, 2013.

During this same time frame, [REDACTED] triennial and annual PPT meetings were to be consolidated into one meeting. **See, Exhibit D**, E-mail correspondence to the parties from the District's Instructional Specialist, outlining the agenda for the Feb. 6<sup>th</sup> meeting dated January 23, 2013. All parties attended such meeting on February 6, 2013. At the February 6, 2013 PPT, the Parents again, through counsel, reiterated their request to observe ACES. [REDACTED] noted that she did not feel that she could properly consider her options without seeing the program, and in fact did not know whether ACES would meet [REDACTED] needs, but since it was a placement recommended by CCSN they felt they needed to see the program in order to ascertain its appropriateness and the appropriateness of the IEP offered by the district. The district, through counsel, stated that it "usually" prefers to assist Parents in such disputes, and often will execute

LEA referrals even if the district doesn't agree in order to facilitate such information, but in this case the district "felt strongly" that the ACES placement was inappropriate due to its distance and the district's concerns about travel time. The Parents noted that [REDACTED] ride is already long because of the transportation issues they have had with the district, and reiterated that they simply wished to have information on which to make decisions about the IEP. The district again denied their request.

### GROUNDS FOR COMPLAINT

Given these facts, [REDACTED] Parents assert three grounds for this Complaint. First, the District violated the IDEA by withholding information from the parents necessary for them to meaningfully participate in the development of their child's IEP prior to, during, and after [REDACTED] triennial and annual PPT meeting on February 6th and continuing into the present. Second, there is a proposed Connecticut regulation, anticipated to go into effect in July of 2013, requiring parental access to private educational placements for parents to observe and to consider placement. **Proposed New Section 10-76d-17(11)**. While this proposed regulation has not yet been effectuated, the State's intention to incorporate this into its special education regulations bolsters the underlying public policy of the IDEA to provide all members of a student's IEP team with equal access to information regarding the "continuum of alternative placements." **34 C.F.R. Section 300.115(a)**. Why then, should the District seek to thwart such a beneficial public policy? The last ground for this complaint is the Parents' assertion that the District's denial of their request is an act of retaliation against the Parents for lawfully asserting their IDEA rights, and for expressing their disagreement about the appropriateness of [REDACTED] transportation to and from CREC. **29 U.S.C. Section 794(a)** and **34 C.F.R. Part 104.61 & Part 105** (regarding procedural safeguards and nondiscrimination enforcement by the US Department of Education).

The IDEA is replete with references regarding parents' involvement as equal and contributing members to their child's educational placement and/or plan. This is especially true for references which delineate the parents' role in formulating the student's IEP. See, 20 U.S.C. **Section 1400(14)(d)(1)(B)** (Congressional purpose of IDEA outlining "ensuring rights of children with disabilities and parents of such children are protected;..."), **Section 1414(d)(B)(i)** (description of the IEP team which includes parents), **Section 1414 (d)(C)** (parent's need to agree to another IEP team member's absence), **Section 1414(d)(3)(A)(ii)** (IEP shall consider "the concerns of the parents for enhancing the education of their child;" emphasis added), **Section 1414(d)(4)(A)(ii) (III)** (IEP shall be revised, as appropriate, with information provided "to" or "by" the parents), **Section 1414(5)(A)(i)**(discussing the alternative for LEAs and parents to engage in multi-year planning regarding the student), **Section 1414(e)** [LEA shall ensure that parents are part of the IEP team making placement decisions for the student(emphasis added)] and **Section 1414<sup>\*</sup>(f)** (parents' input is so vital, this Section establishes alternative methods for parents to be present, i.e. video conferencing or conference calls). The Connecticut statute and regulations regarding PPT meetings also require PPT members to "review existing evaluation data on the child, including evaluations and information provided by the parent or guardian of the child." **Conn. Gen. Stat. Ann. Section 10-76ff(b)(1) (2013) and Conn. Agencies Regs. Section 10-76d-12.** Case law also upholds parental involvement in the IEP development. See , Honig, California Superintendent of Public Instruction v. Doe, et al., 484 U.S. at 312-3, 108 S. Ct. at 598 (1988) (highlighting Congress's intention to "guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate."); School Comm. of Town of Burlington, Massachusetts, et al. v. Dept. of Education of Massachusetts, 471 U.S. at 368-369. 105 S. Ct. at

2001-02 (1985) [“the Act emphasizes the participation of the **parents** in developing the child's educational program and assessing its effectiveness. See §§ 1400(c), 1401(19), 1412(7), 1415(b)(1)(A), (C), (D), (E), and 1415(b)(2); 34 CFR § 300.345 (1984)” (emphasis added)].

Although the Parents in this instance attempted to exercise their right to information well before the IEP/PPT, the District’s refusal to grant them access to ACES curtailed their ability to contribute, meaningfully, to their daughter’s IEP. This sort of curtailment is exactly what Congress and this State wish to prevent. Parents are uniquely situated to understand how their child will progress in a given educational placement. When there is information relevant to considering a student’s placement, it should be considered by all parties, who are equally contributing to formulating the student’s educational plan/placement.

In this instance, the District retains the knowledge of the components of the ACES program. At present, it also retains the authority to issue a “LEA referral” to grant the parents access to this same information. This District has refused to share with the Parents salient information regarding ACES citing, in essence, it alone knows what is proper for [REDACTED] and the Parents’ questions/curiosity is unfounded, irrelevant and dismissed, even in the face of an independent evaluator’s recommendation of the ACES program.<sup>2</sup> The District’s actions in this instance substituted its own conclusion before even stepping into the IEP meeting, which is not only a concern from a “predetermination” perspective, but creates an uneven playing field in which the Parents are not able to access the same information regarding the continuum of alternative placements as is the district.

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<sup>2</sup> Of note, the district has not disagreed with the CCSN evaluation and in fact, relied upon it in numerous instances in the development of the IEP.



Hopefully during this summer, many proposed regulations from this Department will be effectuated. One of these regulations states:

*Each private special education program shall have policies and procedures which permit parents of enrolled and prospective students to visit the program and observe students on a reasonable basis in order for the parents to participate meaningfully in PPT meetings.*  
**Proposed New Conn. Agencies Regs. Section 10-76d-17(11) (emphasis added).**

This proposed regulation is on point with the instant situation. Public policy as interpreted by this Department favors granting access to the “continuum of alternative placements.” **34 C.F.R. Section 300.115.** It is axiomatic that unless all members of the PPT have equal information, they cannot equally contribute. In the end, when parents are prevented from garnering further information to contribute meaningfully to their child’s IEP/ PPT, their child suffers.

In this circumstance, ACES is considered to be a public alternative in the “continuum of alternative placements.” **Id.**

Given the stated federal and state policy that parents participate, on an equal footing with the District and other members of a student’s IEP/PPT, the Parents believe the District’s attempt to foreclose their inquiry demonstrates an act of retaliation against them by the District in violation of **Section 504** of the Rehabilitation Act. **29 U.S.C. Section 794(a)** and Lillibask ex Rel. Mauclair v. Sergi, 193 **F. Supp. 2d** 503 (D. Conn. 2002) (Parent’s assertion of retaliation by the Redding District wrongly decided in a motion of summary judgment. This claim should have gone to the jury for its consideration). The Parents, through their attorney, agreed to execute a waiver acknowledging the District’s position regarding the appropriate nature of [REDACTED] current placement as well as their concern over the travel time to ACES. Still the District refused to provide a LEA referral to the Parents.

This refusal appears to be designed only to impede the Parents from gathering further information to consider the “appropriateness” of her current placement, in retaliation for the ██████ expressed concerns over time about the appropriateness of the transportation provided by the district to and from CREC. In essence, the district has made a specific decision to depart from its usual custom of permitting such waivers to facilitate an LEA referral to THIS family because they do not wish to receive additional complaints from them about transportation to a facility that is farther away from the current placement. In addition, the district is aware that the Parents have expressed concern on numerous occasions about ██████ placement at CREC and whether it is the appropriate place for her. If the Parents were allowed to observe ACES, they may have information that demonstrates the inappropriateness of the current CREC placement. If this is the case, the Parents can (and would) proceed through the proper administrative and hearing processes to determine the outcome of this disagreement. Yet, the district is ensuring that only it has access to information about the very remedy the Parents might be seeking through a Due Process Hearing. Again, the District seems to be substituting its own judgment regarding the outcome of ██████ Parents’ observation. If the District is steadfast in its belief that CREC is an appropriate placement where ██████ is making progress, then why preclude the Parents from a further investigation, which was recommended by the Independent Educational Evaluator? Further, the district has not expressed ANY concerns about whether ACES itself might be appropriate for ██████ in fact, they have indicated “no issues with ACES.” Their sole concern is distance, even though travel from Glastonbury to North Haven should be able to be accomplished with one hour’s drive as required by Connecticut regulations. This, therefore, reveals the true motivation of the district in departing from its usual agreement to permit such LEA referrals: they do not want to place ██████ at ACES because they are concerned that they

would not be able to provide proper transportation as required by law, and they know that the [REDACTED] have exercised their right to disagree with the transportation they have provided in the past.

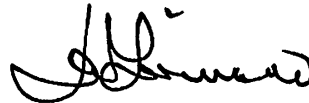
In sum, the District is worried the Parents will prefer ACES to CREC or simply, that the District wishes to end the Parents' inquiry for further information regarding their daughter's placement. Both courses punish the Parents for inquiring further regarding ACES and vigorously promoting their rights to contribute, as meaningful members of their daughter's IEP Team. There has been no policy or procedure cited by the district regarding this observation request, despite the fact that ACES (and CREC for that matter) is public alternatives along the continuum. The District's refusal to provide the LEA referral demonstrates retaliation against the Parents' advocacy on behalf of [REDACTED].

### CONCLUSION

[REDACTED] Parents seek further information regarding an alternative program, ACES. They sought this information in a timely manner before their daughter's IEP/PPT meeting, so that they would have time to observe the program recommended by CCSN and be able to meaningfully participate in [REDACTED] IEP development. The District's refusal to grant the LEA referral to allow the Parents to observe the ACES program violates the IDEA, the spirit of the newly proposed state regulation and **Section 504** of the **Rehabilitative Act**. The District's rationale for its refusal is a pretense for both discouraging the Parents from seeking further information which may lead to further legal action, as well as a punishment for vigorously pursuing their daughter's rights under the federal and state laws regarding special education and related services, including most particularly transportation. Both Congress and this Department understand that the District's

“policies and procedures” to determine parental access to public schools should not be abused in an effort to quash Parents’ reasonable information gathering and assertion of their legal rights. For these reasons and the above-stated reasons, this Department should require the District to allow the Parents access to ACES through an LEA referral.

Respectfully Submitted,



Jennifer D. Laviano

Cc:



Susan Freedman, Esq.