

TRANSMITTED VIA ELECTRONIC MAIL AND U.S. MAIL

October 25, 2013

Mary Jean Schierberl, Esq.
State Department of Education
Bureau of Special Education
Due Process Unit
P.O. Box 2219, Room 359
Hartford, CT 06145

COMPLAINT (Redacted Version)

RE: xxxxxx
Center for Children's Advocacy

Dear Attorney Schierberl:

The Center for Children's Advocacy ("CCA") files this state complaint on behalf of the parents and guardians of xxx, xxxx, xxxx, xxxx, and xxxx. xxxxx is [REDACTED] years old and acts on her own behalf.

CCA is a non-profit legal advocacy organization in Connecticut whose mission is to promote and protect the legal rights and interests of poor children who are dependent upon the judicial, child welfare, health and mental health, education, and juvenile justice systems for their care. In accordance with our mission, CCA also files this complaint as an organizational complainant against the Bridgeport Public Schools ("BPS") on behalf of students with suspected disabilities who BPS has failed to evaluate and/or identify for eligibility for special education and related services through an Individualized Education Plan (IEP). This complaint also concerns those students with disabilities who have IEPs that BPS has failed to fulfill. *See* §§34 C.F.R. 300.151(a) (1) and 300.153(a) (state complaints may be filed by an organization).

BPS's omissions and commissions in this matter constitute violations of the Individuals with Disabilities in Education Act ("IDEA"), §504 of the Rehabilitation Act of 1973, and corresponding state law and regulations.

I. Legal Violations

Bridgeport Public Schools (“BPS”) has shown a pervasive and systemic practice of failing to initiate referrals to Planning and Placement Team meetings for children who have shown multiple indicia of potential disability. Further, BPS has demonstrated a similar pattern of failing to implement Individualized Education Plans (“IEPs”) developed by PPTs within a timely manner.

The Complaint alleges that BPS has violated federal and state law, as well as Connecticut state regulations, in the following ways:

1. Violation of Child Find

The Complaint alleges that BPS has violated federal and state law by failing to adhere to the Child Find requirements by:

- A. Systemic failure on behalf of BPS staff to ensure a student’s prompt referral to a planning and placement team where the child is suspected of having a disability, and/or student’s progress in school has been considered unsatisfactory or marginal as required by 20 U.S.C. §1412(a)(3)(B), 34 CFR §300.11, C.G.S. §10-76d (a)(1), and Conn. Agencies Reg. §10-76d-7(c) (XX xxxxxx)
- B. Systemic failure to accept and process a referral from a student’s guardian to determine the student’s eligibility for special education and related services in accordance with 20 U.S.C. §1414 (a)(B), 34 CFR §300.301(b), C.G.S. §10-76d (a)(1) and Conn. Agencies Reg. § 10-76d-7 (a)(3) (XX xxxxx)

2. Denial of a Free and Appropriate Public Education (FAPE) by

- A. Systemic failure to implement Individualized Education Plans within an appropriate time frame in accordance with 20 U.S.C. §1414(d)(2)(A), CFR §300.323(c)(2), C.G.S. §10-76d (a)(8)(A)(E) and Conn. Agencies Reg. §10-76d-13(a)(1).

II. Facts Upon Which Complaint is Based

XXX

XXX is a [REDACTED] student presently attending Harding High School (“Harding”) in Bridgeport. XXX presently resides at xxx in Bridgeport, Connecticut. During the 2011-12 school year he was enrolled at Paul Laurence Dunbar Elementary School (“Dunbar”) in Bridgeport where he was repeating the sixth grade. At the end of the 2011-12 school year, XXX was promoted to the seventh grade (XXX Ex. 1). However, during the summer of 2012, BPS

contacted XXX's mother and informed her that XXX would be attending the ninth grade at Harding High School. XXX's mother voiced concerns about her son experiencing academic difficulties throughout elementary school and him not being ready for promotion to the ninth grade when he hadn't even completed seventh or eighth grades. She also noted XXX's retention in the sixth grade and the fact that when he finally completed the sixth grade he did so with a "C" average.

A review of xxx'S academic record shows that during the period from November 2010 to June 2012, XXX experienced 43 discipline referrals (XXX Ex. 2) while he attended Dunbar. In addition, XXX scored below basic in all areas of the fifth grade Connecticut Mastery Test (XXX Ex. 3). Despite these serious academic and behavioral concerns, BPS failed to hold a referral PPT.

During the 2012-13 academic year, XXX attended the ninth grade at Harding and failed four of the five subjects in which he was enrolled (XXX Ex. 4). In addition, he began to exhibit serious truancy issues. For example, he did not attend Physical Science for an entire quarter (XXX Ex. 2). Despite these severe and long-lasting issues with grades and attendance, BPS failed to hold a referral PPT. XXX is presently repeating the 9th grade at Harding.

In sum, BPS failed to meet their obligation for a prompt referral to a planning and placement team where XXX's progress, attendance, and behavior in school was considered unsatisfactory or marginal as required by C.G.S. §10-76d (a)(1), and Conn. Agencies Reg. §10-76d-7(c). Ultimately, at the urging of undersigned counsel, BPS held a PPT on October 10, 2013.

XX

XX is a [REDACTED] student enrolled at Harding in Bridgeport. XX presently resides at xxx, Bridgeport, Connecticut. In December 2010, following a period of hospitalization at [REDACTED], [REDACTED] ([REDACTED]) for suicidal ideations and self injurious behavior, XX's mother contacted BPS to request a Planning and Placement Team Meeting ("PPT"). BPS held a PPT sometime in December 2010, but XX's cumulative record does not contain a copy of these minutes. BPS held a second meeting sometime in the spring of 2011, but similarly, minutes for this meeting were neither recorded nor maintained in XX's cumulative file. At both meetings, the parent shared clinical summaries provided by [REDACTED] which detailed the nature and extent of XX's psychiatric impairments. Despite this evidence, BPS denied the parent's request to refer the child for evaluations. BPS staff determined that evaluations were not necessary as the child would not be found eligible for services due to her passing grades in all subjects. However, XX's eighth grade report card for 2010-11 shows that during the third quarter her teacher noted that XX was in danger "of failing the academic year" and had a total of three "Fs" in written expression/language arts, science, and physical education (XX Ex. 1).

From December 2010 to February 2012 XX continued to experience multiple and frequent hospitalizations for her psychiatric disability which negatively impacted her attendance and participation in the general education curriculum. Specifically, for academic year 2011-12, XX

failed 5 of the six courses in which she was enrolled (XX Ex. 2). In academic year 2010-11, she accumulated a total of 27 absences and she accumulated 28 absences for academic year 2011-12 (XX Ex. 3). In addition, she began to exhibit problem behaviors at school related to her disability, which included multiple absences, leaving the classroom and school building without permission, self-injurious behavior at school and at home, and her failing grades (XX Ex. 4, pp. 2-3). Despite these long-term and significant concerns, the school failed to hold a referral PPT.

From May to December 2012, XX was hospitalized multiple times to treat her psychiatric conditions, including depression, suicidal ideations and mania, culminating in a prolonged hospital stay at [REDACTED] and subsequently at [REDACTED] during the entire fall 2012 semester. At the parent's request, BPS held a PPT in December 2012 at which time BPS refused to refer the child for evaluations, citing XX's passing grades while at [REDACTED] as precluding eligibility. Similarly, BPS' cumulative file did not contain minutes for this meeting.

At the December 2012 PPT, the parent provided evidence of the child's multiple and prolonged hospital stays for her psychiatric disability and their impact on her ability to attend school. The child's therapist offered additional testimony regarding the child's significant anxiety, hyper-vigilance, and paranoia originating from a potential return to the school building where she was also subject to bullying. BPS rejected the parent's request for evaluations and identification as a special education student and maintained the 504 plan from September 2012 (XX Exhibit 5, pp. 1).

Based on concerns for XX's safety during the school day and her belief that the district was unable to provide adequate services that would prevent the child from engaging in self-injurious behaviors (including XX's propensity for leaving the school building without the school's or parent's knowledge), XX's mother made a formal request for homebound instruction on January 22, 2013. On the same date, XX's psychiatrist offered a written summary of the child's diagnosis, level of functioning, and how it impacted her ability to remain in school safely (XX Ex. 6). Despite this prompt correspondence, BPS did not hold a referral PPT for XX until undersigned counsel became involved with the case and requested one from BPS. The referral PPT was eventually held on March 7, 2013 (XX Ex. 7).

At the March 7, 2013 PPT, BPS arranged for XX to receive homebound instruction and referred the child for evaluations to determine her eligibility for special education and related services (XX Ex. 8).

In sum, for a period of over two years, BPS failed to accept and process a referral from the student's guardian to determine the student's eligibility for special education and related services in accordance with C.G.S. §10-76d (a)(1) and Conn. Agencies Reg. § 10-76d-7 (a)(3). BPS also failed to meet their obligation for a prompt referral to a planning and placement team where XX's progress in school was considered unsatisfactory or marginal as required by C.G.S. §10-76d (a)(1), and Conn. Agencies Reg. §10-76d-7(c).

XX

XX is a [REDACTED] student enrolled at Harding in Bridgeport. XX presently resides at XXX, Bridgeport, Connecticut. During the 2011-12 academic year XX failed six of the nine courses in which he was enrolled in during the school year (XX Ex. 1). Despite this red flag, BPS failed to refer him for evaluations pursuant to Conn. Agencies Reg. § 10-76d-7.

During the summer of 2012, XX, MD [REDACTED] diagnosed XX with Major Depressive Disorder and Panic Disorder with Agoraphobia, and was prescribed medication and follow-up psychiatric treatment (XX Ex. 2). At the start of the 2012-13 academic year XX attended Harding for only one day and then refused to return to school. As a result of XX's difficulties and his diagnosis, his parents requested homebound instruction in September 2012, which BPS provided sometime thereafter. XX remained in homebound instruction for the entirety of the 2012-13 academic year (XX Ex. 3).

On June 5, 2013 undersigned counsel requested a PPT on behalf of XX's mother. BPS did not respond to this request (XX Ex. 4). On June 21, 2013, sixteen days after BPS received the written request, undersigned counsel made a second request for a PPT. This request also went unanswered (XX Ex. 4). On July 1st, 2013, twenty six days after the original request, undersigned counsel received a response from a board of education designee inquiring about the availability to schedule a PPT. The PPT met on July 16, 2013. The PPT referred XX for evaluations to determine his eligibility for special education (XX Ex. 5).

In sum, BPS failed to meet their obligation for a prompt referral to a planning and placement team where the XX's progress in school was considered unsatisfactory or marginal as required by C.G.S. §10-76d (a)(1), and Conn. Agencies Reg. §10-76d-7(c).

XX

XX is an [REDACTED] student who is currently enrolled at Bassick High School in Bridgeport. XX presently resides at XXX, Bridgeport, Connecticut. In her three years in high school she has only accumulated 50 credits towards the 124 credits required for graduation (XX Ex. 1). During the 2011-12 academic year XX failed two of her six courses, despite very good attendance. During the 2012-13 academic year she failed five of the seven courses in which she was enrolled. During the 2012-13 academic year, XX personally asked Assistant Principal XXX for assistance in terms of accommodations to access the curriculum. Specifically, XX communicated experiencing tremendous difficulty in understanding and processing the information presented in math and language arts. Despite her request for additional supports, the BPS and its designee failed to hold a referral PPT meeting to discuss whether XX should be evaluated for a suspected learning disability.

On April 18, 2013, an educational advocate from [REDACTED] working with XX and unaffiliated with undersigned counsel requested the convening of a meeting on behalf of the child's guardian to discuss their concerns related to XX's failing grades and truancy. At this meeting, XX's English Language Learning teacher revealed concerns that XX's reading level for both her native and acquired English language skills were at or close to a second grade level. She also shared her opinion that these deficits were due to a possible learning disability. Despite

these stated concerns, BPS did not refer XX for evaluations to determine her eligibility for special education. The advocate followed up with BPS staff regarding these concerns on April 26, 2013, April 30, 2013, and May 17, 2013. Finally after several attempts BPS convened a second meeting on May 24, 2013. At this meeting the advocate reiterated her concerns about XX's failing grades and a suspected disability and requested that XX be referred for evaluations. Despite this request, BPS refused to hold referral PPT.

On August 28, 2013, undersigned counsel assumed representation of the client's educational case and requested the convening of a PPT. BPS held a PPT on September 24, 2013 and as a result the team recommended that XX be referred for evaluations to determine her eligibility for special education (XX Ex. 2).

In sum, BPS failed to meet their obligation for a prompt referral to a planning and placement team where the XX's progress in school was considered unsatisfactory or marginal as required by C.G.S. §10-76d (a)(1), and Conn. Agencies Reg. §10-76d-7(c). For more than two years, BPS had ample information to warrant the convening of a referral PPT and it failed to hold one absent the threat of litigation.

XX

XX is a [REDACTED] boy who is identified as a student with an emotional disturbance. XX currently resides at XXX, Bridgeport, Connecticut.

On October 18, 2011, BPS convened a PPT wherein it recommended a therapeutic placement for XX due to significant behavior issues in the regular education environment. Shortly thereafter, BPS enrolled XX at the [REDACTED] ([REDACTED]). In December 2012, [REDACTED] asked XX to leave. A January 11, 2013 PPT officially "terminated" that placement (XX Ex. 1). District officials told XX's guardian that XX would receive homebound tutoring. However, according to XX's guardian, tutoring did not commence until the last week of February. BPS next placed XX at the [REDACTED] School at [REDACTED] in Milford, CT on March 12, 2013. However, BPS failed to provide transportation for the first two weeks, thus requiring XX's guardian to make the twenty-mile round-trip drive every day. On April 5, 2013, XX was transported to the hospital from school due to self-injurious behavior. On April 29, 2013, BPS held a PPT at which time the meeting recorder noted that XX would be withdrawn from the [REDACTED] School and would soon be placed at the [REDACTED] ([REDACTED]) (XX Ex. 2).

On May 1, 2013, XX entered [REDACTED]. During XX's stay at [REDACTED], various professionals from [REDACTED], the Department of Children and Families (hereinafter "DCF") and the Probation Department sent XXX, BPS's out-of-district supervisor, a large volume of emails attempting to facilitate and asking for assistance with XX's educational planning and transition back to Bridgeport. On May 10, xxx, Educational Consultant for DCF, requested copies of XX's records from xxx (XX Ex. 3). According to subsequent communications, BPS sent an incomplete IEP and incomplete psychological report in response. On May 15, xxx (XX's Case Manager at

█████ again emailed XXX requesting a full set of XX's records (XX Ex. 4). Neither XXX nor XXX ever received the full set of XX's records.

On May 24, 2013, Solnit held a PPT for XX at which BPS did not attend. At this PPT, the team agreed that XX required a "12-month IEP," with the understanding that this plan would ensure that XX would receive extended school year (ESY) services (XX Ex. 5). XXX, Clinical Program Manager at █████, reported that she felt XX would require a clinical day school upon discharge (Id.).

On May 31, 2013, █████ discharged XX home, with no school placement having been arranged. Between May 30, 2013 and July 2, 2013, XXX, Probation Officer XXX and Probation Supervisor XXX repeatedly called and emailed Ms. XXX in order to secure an educational placement for XX

On July 22, 2013, undersigned counsel emailed Ms. XXX and her supervisor, Rob Arnold, Executive Director of Specialized Instruction for BPS, asking for an immediate remedy to address the delay of the provision of educational services to XX (XX Ex. 6). On July 26, 2013, XX was placed into Bridgeport juvenile detention. Arnold advised undersigned counsel on this date that XX would receive tutoring as soon as he entered the detention facility (XX Ex. 7). This tutoring consisted of one hour per day and lasted for less than two weeks. As of the date of this complaint, XX has yet to receive any additional services by BPS as a remedy for the eight weeks of education he did not receive in June and July 2013.

After prompting by undersigned counsel, BPS held a PPT on August 26, 2013 to discuss XX's placement. At this PPT, BPS placed XX in an in-district self-contained therapeutic program. XX's guardian agreed with this plan.

BPS staff was unable to account for the serious delays in providing XX educational programming after his expulsion from █████ and again upon his return to the community from █████. In total, BPS denied XX educational programming for more than four months of the total school year.

In sum, BPS failed to implement XX's IEP within any reasonable time frame both after he left █████ and after he returned to the community from █████, in violation of 20 U.S.C. §1414(d)(2)(A), CFR §300.323(c)(2), C.G.S. §10-76d (a)(8)(A)(E) and Conn. Agencies Reg. §10-76d-13(a)(1).

XX

XX is a █████ student with an identification of "Intellectual Disability" who entered Dunbar School in Bridgeport at the start of the 2012-2013 school year as a transfer from Manatee County, Florida. XX presently resides at XXX, Bridgeport, Connecticut. XX had been placed in a self-contained classroom in █████ Elementary School in Manatee County (XX Ex. 1). XX's guardian shared this information with BPS before XX even started school at Dunbar. However, BPS informed XX's guardian that he would be placed in a regular education

classroom at Dunbar, despite the recommendations of the most current IEP from Florida placing him in a self-contained classroom. BPS unilaterally placed R.E in this inclusive setting without convening a PPT and without employing the procedural safeguards to invoke a “change in placement.”

XX demonstrated behavior issues from the start of the school year while placed in the regular education environment. BPS issued three out-of-school suspensions during the year, two of which spanned five days (XX Ex. 2). In addition, the school called his guardian frequently to report behavior issues and often asked that he be picked up early. In light of these constant behavioral incidents, XX’s guardian continued to request that he be placed in a more appropriate setting. That request was never explored.

At a January 14, 2013 PPT, XXX, BPS school psychologist, observed that XX had been working on a kindergarten level in his resource room. Mr. XXX observed that in his regular education class, XX was “not able to fill in the content information” of a class exercise and thus, “[XX] had much idle time where he did nothing but sit looking around the room or talking to peers quietly at times when he had to work independently” (XX Ex. 3). XX’s “ability to access the educational lesson in the regular mainstream setting without much accommodations and modifications is limited” (Id.). The cognitive testing administered by Mr. XXX showed that XX “is functioning significantly below age and grade expected levels” with a Full Scale IQ of 46. XX showed “no cognitive strengths” and demonstrated “very limited” adaptive ability (Id.).

Despite these findings, BPS continued to insist that XX’s educational services were adequate within the regular education setting. At an April 23, 2013 PPT, the team made no significant changes to XX’s IEP (XX Ex. 4). At a May 20, 2013 PPT, attended by undersigned counsel, XX’s regular education teacher, XXX, shared that XX was not benefitting from being in her regular education class, and hadn’t benefitted for the entire year. Further, XXX shared that XX often did not receive the full amount of his special education service hours because the special education teacher often had meetings to attend.

At a May 20th PPT, XX’s guardian also shared with the team that a few weeks prior, XX had actually climbed out of a school window, during the school day, and walked home to their house. Incredibly, *no one at the school was aware* that this had happened. The principal and assistant principal said that a substitute teacher must have been in his classroom when it occurred and that it was *never reported to them*. XX’s guardian expressed her extreme concern for RE’s safety due to this incident, and suggested that Dunbar staff was not equipped to supervise XX adequately.

Upon review of XX’s limited academic and behavioral progress, and in light of the information shared by Ms. XXX and XX’s guardian, the school team agreed to place XX in a self-contained therapeutic classroom for the 2013-2014 school year. The team also agreed to provide XX with Extended School Year services (XX Ex. 5).

At a June 4, 2013 PPT also attended by undersigned counsel, Assistant Principal XXX confirmed that XX had indeed climbed out of a school window, based on her discussion with XX and two

other classmates. During the week previous to the PPT, XX had displayed more behavior issues, as he disrespected a substitute teacher and was sent home by Dunbar staff.

In sum, BPS failed to implement XX's IEP as written from his Florida school within any reasonable time frame in violation of 20 U.S.C. §1414(d)(2)(A), CFR §300.323(c)(2), and C.G.S. §10-76d (a)(8)(A)(E) and Conn. Agencies Reg. §10-76d-13(a)(1).

Center for Children's Advocacy's Resolution Attempts

CCA files this also as an organizational complaint because CCA has attempted to resolve the issues of the complainants and those similarly situated through direct advocacy and collaboration with BPS.

CCA first formally addressed Superintendent Vallas, Executive Director of Specialized Instruction Robert Arnold, and other district personnel, about these systemic concerns on April 9, 2013. CCA again met with Superintendent Vallas and Rob Arnold on May 6, 2013, and outlined CCA's concerns regarding the violation of corresponding State and Federal statutes pertaining to the provision of special education services. CCA then drew up an Action Plan which CCA presented to Mr. Arnold, and which he approved on May 23, 2013 (CCA Ex. 1). Despite this plan, which has not been fully implemented, there has not been substantial improvement in the provision of services to children with disabilities in Bridgeport.

Therefore, having exhausted every alternative for an effective resolution of these serious violations, CCA is compelled to file this formal complaint in order to obtain relief and remedies on behalf of the complainants and all Bridgeport children with disabilities whose needs are not being met. The complainants are representative of any Bridgeport child who meets the criteria for PPT referral according to Child Find laws and regulations, which includes all children "who have been suspended repeatedly or whose behavior, attendance, including truant behavior, or progress in school is considered unsatisfactory or at a marginal level of acceptance" (Conn. Agencies Reg. §10-76d-7(c)).

III. Requested Remedies

The students, parents, and the Center for Children's Advocacy request that Bridgeport Public Schools be required to:

1. Within 30 days, BPS must initiate PPTs to identify appropriate compensatory education services and begin to provide those services to each complainant determined eligible for special education services, due to denial of FAPE as a result of failure to evaluate and implement appropriate services;

2. Within 30 days, BPS must initiate PPTs to identify appropriate compensatory education services and begin to provide those services to each complainant whose IEP was not implemented within an appropriate amount of time;
3. Within 60 days, BPS must provide a corrective action plan to ensure the district is complying with all relevant federal and state laws and regulations regarding the identification and evaluation of students who are suspected by the school or guardian of operating under a disability that adversely impacts the students' education, to include:
 - A. Within 60 days, BPS must contract with an approved educational expert, as identified by the State Department of Education to provide training regarding Child Find obligations, including referrals to Planning and Placement Team meetings and recommendations for evaluations, and determinations of eligibility for special education services. These trainings should be provided to: special education teachers, case managers, evaluation teams, related service providers, school administrators, administrative staff, and all other staff involved in handling referral requests.
 - B. Within 60 days, BPS must issue revised policies to school administrators and special education personnel regarding the need to comply with the mandates of corresponding state and federal law regarding identification and referral of students for evaluation of a suspected disability including the requirement to inform parents of such and documenting its efforts in pursuing such obligations.
 - C. Within 60 days, BPS must publish the corrective action plan to all parents or guardians of children who attend BPS.
4. BPS must submit to three years of independent monitoring of the corrective action plan by SDE or other appropriate entity using objective outcome measurements with incremental adherence to compliance during the three year period.
5. Within 120 days, BPS must conduct file reviews for all BPS students who meet the criteria for PPT referral according to Child Find laws and regulations, and who have not been evaluated to determine eligibility for special education services in accordance with Connecticut State Regulation timelines at the time the correction action plan is implemented.
6. Any other such relief as may be deemed appropriate.

Please feel free to contact us if you have any questions or concerns. Thank you in advance for your assistance.

Sincerely,

Kathryn Scheinberg Meyer, Esq.
Staff Attorney
Center for Children's Advocacy
2470 Fairfield Avenue
Bridgeport, CT 06605
(203) 223-8975
kmeyer@kidscounsel.org
CCA Juris No. 419897

Edwin D. Colon, Esq.
Staff Attorney
Center for Children's Advocacy
2470 Fairfield Avenue
Bridgeport, CT 06605
(203) 223-8975
ecolon@kidscounsel.org
CCA Juris No. 419897

cc:

Robert Arnold, Executive Director of Specialized Instruction, Bridgeport Public Schools
Paul Vallas, Superintendent, Bridgeport Public Schools
Attorney Gail Mangs, Connecticut State Department of Education

Attachments:

XXX Ex #1

XXX Ex #2

XXX Ex #3

XXX Ex #4

XX Ex #1

XX Ex #2

XX Ex #3

XX Ex #4

XX Ex #5

XX Ex #6

XX Ex #7

XX Ex #8

XX Ex #9

XX Ex #10

XX Ex #1

XX Ex #2

XX Ex #3

XX Ex #4

XX Ex #5

XX Ex #1

XX Ex #2

XX Ex #1

XX Ex #2

XX Ex #3

XX Ex #4

XX Ex #5

XX Ex #6

XX Ex #7

XX Ex #1

XX Ex #2

XX Ex #3

XX Ex #4

XX Ex #5

CCA Ex. #1