March 20, 2013

Commission Stefan Pryor
Department of Education
State of Connecticut
165 Capitol Avenue
Hartford, CT 06106

RE: Complaint against Darien Public Schools about systematic exclusion of Parents from Special Education deliberations concerning their children.

Dear Mr. Commissioner:

Attached please find a group complaint from parents of children with disabilities in the Darien Public Schools regarding the Darien District's Special Education Administration.

Sincerely,

Catherine Savage
323 Noroton Ave
Darien, CT 06820
203-803-3808

Molly van Wagenen
30 Richmond Drive
Darien, CT 06820
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Re: Complaint against Darien Public Schools
About systematic exclusion of Parents from
Special Education deliberations concerning
Their children

Dear Mr. Commissioner:

We are parents of children with disabilities in the Darien Public Schools. We write to request that you convene a hearing, pursuant to 20 U.S.C. §1413(d)(1) to withdraw funds from the Darien Board of Education for its systematic violations of parental rights under the IDEA. We recognize that this is a drastic remedy and one that has never been invoked in Connecticut. Nevertheless, the extent of wrongdoing and violation of the rights of students with disabilities by the Darien Public Schools warrants serious consideration by the State Department of Education, pursuant to its supervisory responsibility over local education authorities pursuant to the IDEA.

The Individuals with Disabilities Education Act (IDEA) "confers upon disabled students an enforceable substantive right to public education." *Honig v. Doe*, 484 U.S. 307, 310 (1988). The statute ensures "that the rights of children with disabilities and parents of such children are protected." *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 538 (2006). The core of the statute "is the cooperative process that it establishes between parents and schools. ... Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process, ... as it did upon the measurement of the resulting IEP against a substantive standard". *Rowley v. Hedrick*

Hudson School District, 458 U.S. 176, 205-206 (1982*)*. "The central vehicle for this collaboration is the IEP process." *Weast v. Schaffer*, 546 U.S. 49, 53 (2005). The "IEP is more than a mere exercise in public relations, it forms the basis of the handicapped child's entitlement to an individualized and appropriate education." *GARC v. McDaniel*, 716 F.2d 1565, 1571 (11th Cir. 1983). "Envisioning the IEP as the centerpiece of the statute's education delivery system for children with disabilities and aware that schools had all too often denied such children appropriate educations without in any way consulting their parents, Congress repeatedly emphasized throughout the Act the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness." *Honig, 484 U.S. at 331.*

Connecticut has decided to accept federal IDEA funds and its "rules, regulations, and policies [must] conform to the purpose of [the IDEA]." 20 U.S.C. § 1407(a). Further, it must, and has, submit "a plan that provides assurances to the Secretary [of Education] that the State has in effect policies and procedures to ensure that the State meets" a variety of conditions, 20 U.S.C. §1412(a), including that Individualized Education Programs are "developed, reviewed, and revised for each child with a disability in accordance with [20 U.S.C. §1414]", 20 U.S.C. §1412(a)(4), and that "children with disabilities and their parents are afforded the procedural safeguards required by [20 U.S.C. §1415], 20 U.S.C. §1412(a)(6). The State Department of Education "is responsible for ensuring" that these requirements are met and that all education programs for children with disabilities in the State, including all such programs administered by any .... local agency under the general supervision of individuals in the State who are responsible for education programs for children with disabilities and meet the educational standards of the State educational agency." 20 U.S.C. §1412(a)(11). Local school board are only eligible for

federal funds if “The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under [20 U.S.C. §1412]. 20 U.S.C. §1413(a)(1).

“If the State education agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency ... is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local education agency ... until the State educational agency is satisfied that the local educational agency ... is complying with that requirement.” 20 U.S.C. §1413(d)(1). Further, the State Department of Education may use funds that would otherwise have been available to the local board of education to provide special education to children in the area served by that local school board if the local school board “is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);” 20 U.S.C. §1413(g)(1)(B).

We write to ask you to convene a hearing promptly, pursuant to 20 U.S.C. §1413(d)(1), to determine whether the Darien Board of Education is failing to comply with the requirements of the IDEA. At such hearing, we will produce copious documentary and testimonial evidence that the Darien Board of Education has systematically excluded parents from the IEP Team process and has acted to defeat the collaborative team process mandated by 20 U.S.C. ¶1414(d)(3).

Attached please find a memo sent out from Deirdre Osypuk, Darien’s special education director, to special education staff in the district. You will note that this memo misstates the law in numerous instances. In #1, the memo suggests placing extraordinary and unjustified

restrictions on private evaluators having school personnel fill out rating forms on students. Specifically, there in nothing in the law that requires a release to be filled out on the school district's form. And, there is no rational reason to prevent the use of copies of rating forms. In #2, the use of the uninformative "O" as an annual rating on an IEP goal or objective is inconsistent with state guidance on the issue. In #4, the memo misstates the state's guidance on when extended school year services are appropriate and significantly and improperly restricts the availability of ESY. In #5, the memo directs unqualified staff to conduct feeding and swallowing services on children with disabilities. Item #6 directly undermines the rights of parents to be able to deal with their child's service providers by precluding the attendance of occupational therapists at team meetings, by eliminating occupational therapy consultations, and by severely limiting occupational therapist participation at PPT meetings. Item #7 creates an unwarranted limitation for adaptive physical education. Item #9 cuts the nurse out of decisions concerning homebound instruction, despite the clear language of the Connecticut regulation. Item #10 precludes the reporting of age and grade equivalents on tests, which provide extremely valuable information to parents.

Perhaps, most egregious is item #11 eliminating the team nature of PPT meetings. This memo provides that school staff must go into a meeting with a united front, with all differences worked out in advance. This is predetermination, something clearly forbidden under the IDEA. Predetermination occurs when the district fails "to give sufficient, if any, consideration to the opinions of those persons who know [the Student] best, such as his doctors and teachers," as well as parents. *Taylor v. Board of Education*, 649 F. Supp. 1253, 1258 (N.D.N.Y. 1986). It is the case that

> Procedural flaws do not automatically require a finding of a denial of FAPE. However, procedural inadequacies that result in the loss of educational

> opportunity, *Burke County Board of Education v. Denton*, 895 F.2d 973,982 (4th Cir. 1990), or seriously infringe the parents' opportunity to participate in the IEP formulation process, *Roland M. [v. Concord School Committee*, 910 F.2d 983,] 994 (1st Cir 1990); *Hall [v. Vance County Board of Education*, 774 F.2d 629,] 635 (4th Cir. 1985), clearly result in a denial of FAPE.

W.G. v. Board of Trustees of Target Range School District No. 23, 960 F.2d 1479, 1484 (9th Cir. 1992). In *Target Range*, the court found that the district "clearly did not comply with the procedures required by the IDEA," *id.*, in that it "independently developed the IEP that it presented to [the parents], without the input and participation of [the parents], [the Student's] regular education teacher, or any representative of [the Student's current placement] in direct violation of 20 U.S.C. § 1401(a)(19)." *Id.*

The 6th Circuit found improper predetermination in *Deal v. Hamilton County Board of Education*, 392 F.3d 840 (6th Cir. 2004), stating:

> The district court erred in assuming that merely because the Deals were present and spoke at the various IEP meetings, they were afforded adequate opportunity to participate. Participation must be more than a mere form; it must be meaningful. *W.G.*, 960 F. 2d at 1485; *see also [Ms. C. v.] Knox County Schools*, 315 F.3d 688,] 694-95 (6th Cir. 2003) (stating that school officials must be willing to listen to the parents and must have open minds). Despite the protestations of the Deals, the School System never even treated [the parent's proposed placement] as a viable option. Where there was no way that anything the Deals said, or any data the Deals produced, could have changed the School System's determination of appropriate services, their participation was no more than after the fact involvement. *See Spielberg*, 853 F.2d at 259.

392 F.3d at 858. Where, as here, the school system approaches the PPT meeting as a united front, there is no opportunity for the parent's proposals to be considered as a viable option. The Osypuk memo mandates illegal pre-determination.

Beyond this memo, we understand that ten complaints have been filed with the State in the last few months concerning the policies of the Darien Board of Education and no fewer than five due process complaints have been pursued. Virtually all of these complaints revolve around

similar issues: either the Darien Board of Education unilaterally withdrew services previous provided for in the child's IEP or the Darien school system excluded the parents from involvement in the IEP process. Certainly these complaints can and will be handled in the ordinary process. Yet, at a certain point, the volume of similar complaints should alert the State Department of Education to systematic wrongdoing and should, under the statute, trigger the State to conduct a hearing concerning such systematic violations of parental rights under the IDEA.

We look forward to hearing from you promptly concerning our request for a hearing under 20 U.S.C. §1413(d)(1).

Sincerely yours,

Memo from Dr. Osypuk, Director of Special Education

Darien District

Building Consistency of Sped Practices District Wide

11/6/12

1. **Is it okay for staff to complete rating scales requested by outside evaluators, doctors, etc.?**

Answer: Yes, if the following conditions are met:

1. We have a signed release (on Darien form) from parent to do so. Original should be kept for our records and copy to parent.
2. Person requesting provides the rating scale.
3. Original rating scales only. No copies.
4. Once rating scale is completed, we send directly to doctor, evaluator, etc.

2. **Is it okay to use "O" when grading "close-out" (annual) IEP goals/objectives?**

Answer: Yes, as long as you qualify it with: Progression towards mastery and provide a specific data point to indicate how close the student is to mastery.

3. Procedure for **outside evaluations** brought in by parents for general ed students:

1. Ask parent if they suspect a disability and would like to make a referral to special education? If no, then:
2. Check report for diagnoses. If there is a diagnosis, then school should refer to special education. If there is no diagnosis indicated and the school does not have any concerns, then no referral to sped is necessary.

4. **ESY**

a. Decisions should not be made until after Feb. or April break. Until then check off: ESY not required.

b. Must have data to indicate regression and failure to recoup within 6-8 weeks. This involves 3 data points:

   i. Right before a school break

   ii. Upon return from school break

   iii. 6-8 weeks after returning from school break

c. Data must be linked to specific IEP g/o

5. **Feeding/Swallowing Team**

    a. We no longer have one due to members leaving district or electing to no longer serve.

    b. For current IEP's that have F/S services, OT and SLP on case should provide these services.

    c. Going forward, please refer all F/S concerns to nurse who will then obtain a release to speak to the doctor to obtain orders. If no orders provided, then school staff will only feed students foods they deem to be safe for the student to swallow.

6. **OT's**

    a. No longer available to attend any team meetings except in exceptional cases approved by sped admininstrator.

    b. Going forward, consult needs to "as needed" and driven by case manager. Most consultation should occur via phone and/or email. There should be few, if any, regularly scheduled consult meeting times. Any current IEP's that have specified consult times will need to occur until IEP expires.

    c. Will only be available to attend PPT 2 (Eligibility PPT), Annuals, Triennials. Any recommendations for OT observations, consultation, testing need to be discussed first with the OT before recommending at PPT.

7. **APE**

    a. Should not be considered for any student who does not qualify for PT.

    b. If qualifies for PT and is being considered for APE, there must be a prior discussion with a sped administrator.

8. **Extended School Day or Home Service (EDS)**

    a. Going forward, PPT must ask the following questions to determine eligibility:

        i. Is EDS or home service required for the student to make progress on IEP g/o?

        ii. Is EDS or home service required for the student to access his/her specialized instruction?

9. All requests for **homebound** should be directed to Dr. Osypuk. There are no longer any forms that need to be filled out. Nurses are no longer involved.

10. Report Writing

   a. There should not be any reference to diagnosis, classification, or eligibility in our reports. This must be a PPT decision.

   b. Do not report age or grade equivalents. Scaled scores and percentiles only.

11. PPT's

   a. Unified front – if changes are going to be recommended, differences among team members need to be worked out **prior** to PPT

   b. Prep paperwork (grades, teacher reports, proposed g/o, etc.) need to be given to the building admin at least **1 day prior** to the PPT

12. AT

   a. All requests for evals need to be discussed with sped admin first

   b. Consultation will be case mgr driven

   c. AT Coor will only attend PPT's for which she is reporting on an evaluation.

13. THI and TVI

   a. THI + TVI will only attend PPT's for students they provide direct service.

   b. If you are considering consult, observation, or direct service you need to speak with THI or TVI first before recommending their services at a PPT.