



STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION



September 25, 2013

Dr. Stephen Falcone, Superintendent
Darien Public Schools
35 Leroy Ave
Darien, CT 06820-4416

Re: Investigation of Special Education Program

Dear Dr. Falcone:

The Connecticut State Department of Education ("CSDE") has concluded its investigation into the Darien Public Schools' ("Darien" or "the district") special education program. This report supplements the preliminary report dated July 18, 2013, and is in response to the petition dated March 20, 2013, in which a group of Darien parents alleged that the district systematically violated parental rights under the Individuals with Disabilities Education Improvement Act ("IDEA").

This report sets forth additional findings of the CSDE, Bureau of Special Education ("BSE") investigation of Darien's special education policies, procedures and practices and addresses input received from parents and district staff, a review of the district's individualized education program ("IEP") electronic system ("IEP Direct™"), and an analysis of complaint procedures data. The report provides: (1) findings and conclusions of the investigators; (2) findings of violations of federal and state statutes and regulations; and (3) corrective actions required to be taken by the district.

Parent Input Findings and Conclusions

As part of the CSDE's investigation, Darien was required to distribute a notice from the CSDE that offered three different opportunities for parents to give input on the district's special education services to parents of students receiving special education services. The notice was sent to parents via e-mail followed by a hard copy sent through the U.S. postal service. The CSDE subsequently directed the district to expand the distribution of the informational notice to: (1) parents of students currently in the special education referral process; (2) parents of students exited from special education after July 1, 2012; (3) parents of students unilaterally placed at private placements after July 1, 2012; and (4) parents of students who were found ineligible for special education services after July 1, 2012.

A meeting between approximately one hundred parents and four BSE staff members was held on Monday, June 10, 2013, from 4:00 to 6:00 p.m. in the Common Room at Tokeneke Elementary School. To inform Connecticut's federally funded parent training and information ("PTI") center of potential issues for training and information for parents and families of students with disabilities, the executive director of the state's PTI center, the Connecticut Parent Advocacy Center ("CPAC"), also attended the meeting.

Many of the parents who chose to speak voiced concerns over decisions to reduce IEP service hours, not feeling valued as an equal member of the planning and placement team ("PPT"), and excessive delays in the determination of extended school year ("ESY") services. Allegations of IEP services

being changed by the district without a PPT meeting, predetermination of eligibility or ineligibility for special education services, and inaccurate or missing information on student IEPs were also made. Parents also commented on education funding issues, difficult transitions from the Birth to Three system and a lack of district oversight on compliance. In addition, parents expressed that they felt that many in the Darien community had a negative attitude towards special education.

CSDE and CPAC staff did not comment on specific issues, and the parents in attendance were informed that the information gathered at the meeting would be used to inform the CSDE's investigation, as well as potential corrective actions and recommendations.

In addition to attending the June 10, 2013, meeting, parents also had the option of submitting written comments to the CSDE and/or having a private telephone interview with a BSE staff member. Approximately 40 different parents submitted comments in writing or spoke to BSE staff on the telephone, representing roughly six and one half percent of families with children receiving special education services in Darien during the 2012-13 school year. These parents were evenly divided in their appraisal of the district's special education program. Around half of the input received through these means was supportive of the district. For example, parents providing positive feedback commented on the district's dedication to educating students with disabilities, feeling like a valued member of the team, agreeing that appropriate supports and services were being provided to their children, interpreting a decrease in supports/services as a positive step, collaborating with knowledgeable and professional staff and having generally positive experiences overall. In contrast, about half of the parents providing written and verbal input via the telephone expressed concerns with the district's special education services. In addition to issues raised at the June 10th meeting, parents reported longstanding displeasure with the district's special education program, district staff's manipulation of evaluation reports toward a predetermined eligibility decision, feeling unsure that appropriate decisions were made during the 2012-13 school year, inconsistency in the delivery of services and a decrease in input from team members, specifically special education teachers and related services staff, at PPT meetings.

District Staff Input Findings and Conclusions

In addition to soliciting input from Darien parents, the CSDE also offered special education teachers and related services personnel an opportunity to comment on the district's special education program either through the submission of written comments or via telephone interview. The CSDE directed the district to inform its staff members of these options by distributing a letter from the CSDE dated May 24, 2013, via e-mail. Staff members were informed that they would not be required to identify themselves.

The majority (approximately 80 percent) of input the CSDE received from the 20 Darien special education and related services staff was in support of the special education administration and changes to the district's special education procedures during the 2012-13 school year. A number of staff comments were specific to Deirdre Osypuk, Darien's Director of Special Education. Many staff members, including both new and veteran personnel, commented on feeling supported and empowered by Dr. Osypuk, who was described as fair, professional and knowledgeable. Some of these staff reported that they did not feel constrained in any way, and it was suggested that school staff might not always talk freely at PPT meetings because they felt intimidated by the presence of an advocate and/or attorney at the meeting. Additionally, these staff reported that Dr. Osypuk promoted IEP services that were based on data and in the children's best interests and were excited to get standardized procedures

designed to build consistency in practices across the district. Many staff members said that they did not interpret the “unified front” language in the training material to mean that a preapproval or predetermination of services was required. One staff member, although supportive of changes being made by the special education administration during the 2012-13 school year, suggested that building administrators, who may facilitate PPT meetings, could benefit from more training in special education law.

Approximately 20 percent of district staff who provided written or verbal input did not support the changes made by special education administration during the 2012-13 school year. These staff members reported that Dr. Osypuk “micromanaged” and showed a lack of respect to the staff, discounted the staff’s professional judgment, challenged how services were being documented, provided guidance that was confusing due to ongoing revisions and “gave a directive to exit students from special education.” Staff members also reported that IEPs that required consultation services were altered outside the PPT process, information on IEPs was changed after the PPT meetings, and students with diverse needs were inappropriately grouped together for instruction to save costs.

While the majority of staff had positive comments about Darien’s special education program, serious allegations were made by some staff members. Reports of altering services on IEPs outside the PPT process without an amendment are consistent with claims made by some of the parents. A decision to exit a student from special education outside the PPT process is inconsistent with the requirements of IDEA and represents a violation of the statute. Corrective actions have been assigned to address these concerns (see page 8).

IEP Document Review Findings and Conclusions

Allegations that IEPs were inappropriately changed were made by both parents and district staff. The district reported that only allowable changes to IEPs were made since the changes were limited to the correction of clerical errors and requests from parents to amend the student’s record. Furthermore, district staff reported that some of the changes were made in an effort to improve the district’s compliance with required special education data reporting to the CSDE.

In order for the CSDE to investigate this issue, Darien was required to provide BSE staff with access to the district’s electronic IEP system. The district responded promptly and provided two IEP Direct™ user names and passwords.

It appears that district practice for the processing of IEP documents during the 2012-13 school year included the student’s case manager creating a draft copy of the IEP in the IEP Direct™ system. Special education administrators would review the draft document and communicate with case managers as needed to ensure the IEP accurately reflected what occurred at the PPT meeting. Special education administrators would then complete the document “finalization” step required by the IEP Direct™ system.

A review of the student IEPs in this electronic system by BSE staff confirmed that changes were made to IEPs after the documents were “finalized.” While some changes appear to be allowable technical edits, other changes look to be substantive in nature. The CSDE considers a technical edit to be a change that does not alter the substance of the IEP or services to the child. Technical edits may be used to correct minor clerical errors such as a misspelling. A substantive change is one that alters the substance of the IEP or services to the child, for example, changing the content of a student’s

goals/objectives. Substantive changes may only be made by a PPT or through an IEP amendment. If parent and district agree to use an amendment, the parent has the right to be provided with a revised copy of the IEP with amendments incorporated upon request. In all cases, if a change is made to a student's IEP, the district must ensure that the child's PPT is informed of the change. Good practice would also include providing an updated copy to the parent even if it is not requested and placing a revised copy of the IEP in the student's educational record. It is concluded that these actions did not occur consistently and corrective action has been assigned (see page 8).

Specific changes on student IEPs noted through the CSDE's review of the district's IEP Direct™ system include but are not limited to the following areas:

- reason for meeting;
- PPT recommendations;
- content of meeting summary;
- most recent evaluation date;
- next annual review date;
- next projected meeting date;
- next reevaluation date;
- district assessment accommodations;
- behavior intervention strategies;
- supports to school personnel;
- length of school year;
- time with nondisabled peers;
- responsible staff;
- implementer title;
- transition services; and
- service start/end dates.

The CSDE was able to determine that changes in these areas were made after the finalization of the IEP as they appear in red and are tagged with the time, date and system user's name. However, any changes made between the creation of the document and finalization of the IEP were not viewable due to a lack of archived electronic drafts.

Due to this limitation in the capacity of the IEP Direct™ system, CSDE staff were not able to ascertain the extent of each change and determine if the change was technical or substantive in nature. However, a BSE staff review of documentation submitted for the administrative complaint process confirmed that substantive changes to IEPs were made by the district outside the PPT/amendment process during the 2012-13 school year. This activity is in violation of the IDEA and corrective actions have been assigned (see Page 8).

Finally, when reviewing IEPs in the IEP Direct™ system, BSE staff also noted an excessive amount of time passing between the PPT meeting date and the finalizing date of many IEPs, which may be the result of the district's procedures for processing IEP documents. The requirement is that parents receive a full finalized copy of the IEP document within five days after the PPT meeting to develop, review or revise the IEP. Based on this review, this timeline was not consistently met. Corrective action has been assigned (see page 8).

Complaint Procedures Data Analysis Findings and Conclusions

BSE staff completed an analysis of complaint procedures data for Darien in the following three areas: administrative complaints; mediations; and hearings. Data were reviewed for the 2010-11, 2011-12 and 2012-13 school years. The review of data revealed the following:

In 2010-11 there was one complaint filed with the BSE against Darien. The complaint was subsequently dismissed by the BSE. During the 2011-12 school year, no complaints were filed against the district. There were fourteen complaints filed by eleven separate individuals during the 2012-13 school year. Information on the complaints filed during 2012-13, including the issues for the complaints in which noncompliance was identified, is summarized in Table 1.

Table 1

Complaints filed in 2012-13 against Darien Public Schools		
Complaint #	Outcome/Status	Issue(s) for which Corrective Actions Assigned
13-0144	Dismissed by the BSE (settled in mediation)	
13-0215	Completed – 2 findings of noncompliance	<ul style="list-style-type: none"> • Physical Restraint: Notification and Training
13-0225	Completed – 0 findings of noncompliance	
13-0226	Withdrawn by Complainant	
13-0249	Completed – 3 findings of noncompliance	<ul style="list-style-type: none"> • Failure to implement IEP • Procedural Safeguards Violation • Independent Consultant
13-0250	Completed – 2 findings of noncompliance	<ul style="list-style-type: none"> • Failure to implement IEP • Procedural Safeguards Violation
13-0270	Withdrawn by Complainant	
13-0282	Withdrawn by Complainant	
13-0283	Withdrawn by Complainant	
13-0322	Withdrawn by Complainant	
13-0398	Dismissed by the BSE	
13-0423	Completed – 2 findings of noncompliance	<ul style="list-style-type: none"> • Failure to implement IEP • Procedural Safeguards Violation
13-0425	Completed – 2 findings of noncompliance	<ul style="list-style-type: none"> • Failure to implement IEP • Procedural Safeguards Violation
13-0500	Dismissed by the BSE	

Clearly, there was a substantial increase in the number of complaints filed against the district during the 2012-13 school year when compared to the two previous years. Five of the fourteen complaints (36 percent) resulted in corrective actions being assigned to Darien due to eleven separate instances of noncompliance. All eleven of the findings of noncompliance identified through the written complaint process in 2012-13, were addressed through corrective actions assigned to the district by the complaint investigators. Four of the five complaints for which the investigator made a finding of noncompliance and assigned corrective actions had similar issues: students' IEPs not being implemented; and procedural violations. It is concluded that increased district oversight on physical restraint practices, special education procedural requirements and IEP implementation, is warranted to ensure the district's future compliance with federal and state regulatory requirements.

While this complaint analysis does not suggest a systemic failure of the district’s ability to implement an appropriate special education program, these data along with inappropriate guidance found in previously reviewed district training materials, the notation of changes made to IEPs, and information received through the parent and staff input represent a number of IDEA violations and may explain the sharp increase in the number of complaints filed during the 2012-13 school year.

The number of mediations requested during 2012-13, also increased dramatically. There were fourteen requested mediations during the 2012-13 school year, up from six mediation requests in each of the two previous years. In 2010-11, four of the six mediations were settled with an agreement and two were not. In 2011-12, three mediations were settled, one was not settled and two requests were withdrawn. Eight of the fourteen mediations requested during the 2012-13 school year were settled with an agreement, four were not settled, one was withdrawn and one has not yet occurred (see Table 2).

Table 2

Year	Total # of mediations	# of mediations settled with agreements	# of mediations without agreements*	# of mediation requests withdrawn	# of mediations still pending
2010-11	6	4	2	0	0
2011-12	6	3	1	2	0
2012-13	14	8	4	1	1

*These numbers do not represent agreements that were made between the parties after the actual mediation session.

Due process hearing request numbers remained fairly constant over the past three years. There were eight hearing requests filed by parents in 2010-11, four requests filed in 2011-12, and six in 2012-13. All of the hearing requests over the past three years were eventually withdrawn by the parents who filed them.

District Reference Groups (“DRG”)* are developed by the CSDE as a way to cluster similar communities. Though there can be differences among districts in any one DRG, it is one way to look at a district’s data compared to other districts. When compared to similar districts in DRG A, Darien had the highest number of written complaints among the nine districts for the 2012-13 school year. Darien was above the DRG average in both the number of mediation requests and due process hearing requests filed in 2012-13 (see Table 3).

Table 3

	Darien	DRG A Average	DRG A Range
# of Complaints filed in 2012-13	14	2.8	Low = 0 High = 14
# of Mediations requested in 2012-13	14	8.1	Low = 2 High = 16
# of Due Process Hearings requested in 2012-13	6	4	Low = 0 High = 10

*The DRG is a classification system in which districts that have public school students with similar socioeconomic status (“SES”) and need are grouped together. Districts in DRG A include Darien, Easton, New Canaan, Redding, Ridgefield, Weston, Westport, Wilton and Region 9.

In conclusion, while these data demonstrate that the district did not obstruct parents' access to the procedural safeguards required by the IDEA, the recent increase in the number of written complaints and requests for mediations filed with the CSDE during the 2012-13 school year suggests that many parents had concerns over procedural and programmatic issues that they felt could not be satisfactorily resolved at the district level.

Determination of Violations of Federal and State Statutes and Regulations

The petition from Darien parents filed in March 2013 alleges that parents in the district were systematically excluded from special education deliberations concerning their children.

The federal regulation at 34 C.F.R. §300.501(b) states that the parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a free and appropriate public education ("FAPE") to the child. Additionally, the regulation clarifies that a "meeting" does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The terms "preparatory activities" and "proposal" are not defined in regulation; however, any activity that precludes the parents' full participation in meetings with respect to the identification, evaluation, educational placement, and the provision of FAPE to the child would be a violation of the regulations.

In the preliminary report issued in response to this investigation and dated July 18, 2013, the CSDE assigned corrective actions to the district related to the revision of training materials that were used during the 2012-13 school year due to guidance that was inconsistent with state and federal special education law. As noted in the report dated July 18, 2013, some of the guidance contained in the special education training materials prohibits the parents' right to full participation in meetings, and therefore, is inconsistent with 34 C.F.R. § 300.501(b). Additional corrective actions have been assigned (see page 8).

While it appears that the district's overall special education program is designed to provide FAPE to eligible students, additional areas of concern were identified.

- The federal regulation at 34 C.F.R. § 300.324(a)(4) states that when making changes to a child's IEP after the annual PPT meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene a PPT meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. While the regulation does not differentiate between technical edits and substantive changes, it is concluded that the district made substantive changes to IEPs without convening a PPT meeting or using a mutually agreed to amendment and failed to comply with this regulatory requirement.
- Regulation of Connecticut State Agencies ("RCSA") § 10-76d-13 states that a full copy of the IEP shall be sent to the parents within five days after the PPT meeting to develop, review or revise the IEP. Based on data reviewed through the district's electronic IEP system, it is concluded that the district failed to comply with this regulatory requirement.

Summary of Findings and District Actions

As it was previously established, some of the information in the district's special education training materials was inconsistent with state and federal special education laws, and as a result, there is the potential that some PPT decisions made between July 1, 2012, and April 29, 2013, and subsequently the provision of FAPE to the student for whom the PPT meeting was convened, were adversely affected by this guidance.

In addition, as it was established that changes were made to some student IEPs outside the PPT/amendment process, any change that was substantive in nature would not be allowable and should be reviewed and documented by a properly constituted PPT.

Given the systemic issues revealed by this investigation, the CSDE will maintain access to the district's IEP Direct™ system to monitor random student IEPs at multiple points throughout the 2013-14 school year. One component of this monitoring will be a review of the number of days between the PPT meeting date and the finalization date of the IEP document to ensure the district's compliance with RCSA § 10-76d-13. The CSDE will be requesting information from the district related to this monitoring activity as needed.

The district has informed the CSDE that it has retained Attorney Susan Gamm as an independent consultant who will be responsible for reviewing and investigating allegations that individuals employed by the Darien Public Schools violated special education laws during the 2012-13 school year. Specifically, the investigation is designed to focus on allegations of:

- unlawful predeterminations regarding individual student programs;
- unlawful changes to the IEPs of students outside of the PPT and/or without the signed amendment permitting such changes outside the PPT;
- unlawful development and/or implementation of systemic procedures or practices designed to deprive students of identification of eligibility for special education services and/or educational services or supports;
- unlawful development and/or implementation of systematic procedures or practices designed to deprive parents of meaningful participation in the development of IEPs;
- improper or unlawful activity regarding data reported to the CSDE and/or the United States Department of Education; and
- any other issue determined by the investigator and the district (Darien Board of Education).

The CSDE accepts this action on the part of the district as an appropriate response to the issues of concern related to this investigation and expects to review any recommendations provided to the district by Attorney Gamm. If Attorney Gamm's report indicates any additional areas of concern regarding compliance with state and/or federal requirements for special education, the BSE will follow up accordingly.

Furthermore, Darien has informed the CSDE that the district will be offering parents two options to address concerns over the potentially adverse impact of incorrect training materials and/or IEP changes. First, a parent who has such concerns may contact his or her building administrator to discuss the concerns and, if appropriate, revise his/her child's IEP through the allowable amendment process to address those concerns. Additionally, parents would have the option to request that a meeting be convened with Darien staff before an impartial person knowledgeable in special education

matters to present evidence informally and receive a prompt nonbinding recommendation from the impartial person as to whether and how to resolve the parent concerns. Although specific details of these processes have not been provided by Darien, the CSDE accepts this action on the part of the district and expects to review any informational documents developed by the district informing parents of these options.

Required Corrective Actions

As a result of the findings made during the investigation and the actions already taken by the district, the CSDE orders the following corrective actions:

- To ensure that parents have the most recent version of the IEP document available for their review, by October 9, 2013, the district must provide each parent whose child receives special education and related services with a copy of his/her child's most current IEP printed from the IEP Direct™ system.
- The district is required to notify its special education and administrative staff on the requirements of RCSA § 10-76d-13 (noted on page 7). The district must provide evidence of the staff notification (e.g., e-mail text and distribution lists) to the CSDE no later than October 9, 2013.
- For any parent who believes that his/her child's special education program was impacted by inappropriate guidance provided to district staff, or a substantive change was made to the student's IEP outside of the PPT/amendment process since July 1, 2012, that parent may request a PPT meeting and has the option of having a PPT facilitator* present at the meeting. The district is required to honor the parent's request for the meeting without undue delay and must locate, schedule and cover the expense of the PPT facilitator, if so requested by the parent, for one PPT meeting per student occurring between October 21, 2013, and March 21, 2014. Furthermore, if the PPT determines that the student's program was adversely impacted by inappropriate district guidance or by a substantive change made outside the PPT/amendment process, the PPT must consider the need for compensatory services if it is also determined that FAPE for the student was compromised. Darien shall compile a list of all parents who request a PPT facilitator along with the results of the PPT meetings. The district shall provide the CSDE with these data upon request.

*A PPT facilitator is a person who has knowledge of special education law and has completed the CSDE-sponsored PPT facilitation training. The CSDE will provide Darien with a list of trained facilitators. The district and the parent also have the option of mutually agreeing to another individual to serve as a PPT facilitator.

- The district must develop an informational notice, including a description of the PPT facilitator's role and the opportunity for parents to request a PPT facilitator, and distribute the notice to all parents of school age children in the district by October 18, 2013. A copy of the notice must be submitted to the CSDE for approval no later than October 9, 2013.
- The district is required to provide training to all central office and school administrators on the requirements of 34 C.F.R. § 300.324. The district must provide evidence of that training to the CSDE no later than December 31, 2013.

- The district must provide the CSDE with a copy of Attorney Gamm's investigation report within three days of receipt by the Darien Board of Education.

Documents related to the above corrective actions should be mailed, e-mailed or faxed to:

Michael J. Tavernier
CT State Department of Education
165 Capitol Avenue, Room 369
Hartford, CT 06106
michael.tavernier@ct.gov
Fax: 860-713-7051

Sincerely,



Charlene Russell-Tucker
Chief Operating Officer

CR-T:mtt

cc: Stefan Pryor, Commissioner of Education
Andreana Bellach, Attorney
Andrew Feinstein, Attorney
Jay Brown, BSE Consultant
Gail Mangs, BSE Consultant
Mary Jean Schierberl, BSE Consultant
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