



NEW FAIRFIELD PUBLIC SCHOOLS
DEPARTMENT OF PUPIL PERSONNEL SERVICES
56 Gillotti Road, New Fairfield, CT 06812
203-312-5774 www.newfairfieldschools.org

Ms. Katherine Matz
Director of Pupil Personnel Services

Ms. Melissa Busnel
Special Education Supervisor

MEMORANDUM

TO: New Fairfield Board of Education
New Fairfield Board of Finance

FROM: Katherine Matz, Director of Pupil Services, New Fairfield Public Schools
Andy Bellach, Shipman & Goodwin LLP

DATE: October 12, 2022

RE: Summary of Special Education Responsibilities

The New Fairfield Board of Education (the “Board”) takes seriously its responsibility to meet the educational needs of all of its students. This memorandum summarizes the Board’s obligations in the area of special education and highlights the effective practices the New Fairfield Public Schools (the “District”) implements to identify and meet those needs.

Legal Framework of Special Education in Connecticut

Since approximately 1967, Connecticut school districts have been responsible for educating students with disabilities. *See generally*, Connecticut General Statutes Section 10-76d. Congress established the first national special education law in 1975. *See generally*, Education for All Handicapped Children Act of 1975. The special education law was renamed in 1990 to the Individuals with Disabilities Education Act (known as “IDEA”) and reauthorized in 1997 and 2004. The central tenants of the law have remained unchanged throughout each reauthorization: children who are identified with a disability requiring specialized instruction

are entitled to a free appropriate public education (FAPE) in the least restrictive environment; and the provision of a FAPE is accomplished through the development and implementation of the student's Individualized Education Program (IEP). Each eligible student's IEP is developed by a multi-disciplinary team, known as the Planning and Placement Team (PPT) in Connecticut, that includes the parents or guardians of the student, the student's general education teacher, special education teacher, school psychologist or (another staff member who can interpret the educational implications of evaluation results), and any other person with knowledge or special expertise regarding the student (this may include a speech and language pathologist, occupational therapist, physical therapist, behavior analyst, assistive technology specialist, or other education professionals). The special education laws do not provide a bright line standard of an appropriate educational program. The special education laws establish a process by which a substantively appropriate IEP is developed by the PPT.

Procedural Requirements: "Child Find" and Evaluation of Students

One of the critical procedural requirements of the special education laws is the responsibility to locate, evaluate, and identify students who may require special education (known as "child find"). In addition to the general requirement of child find established in federal law, Connecticut law requires school districts to convene a PPT for any student whose behavior, attendance, or progress in school is considered to be unsatisfactory or at a marginal level of acceptance. See Connecticut State Regulations Section 10-76d-7. The "child find" obligation extends to all children residing in New Fairfield, including children who are home schooled, homeless children, children attending private schools and children who are wards of the state. At the heart of the child find responsibility is the requirement that the school district evaluate the educational needs of children with a suspected disability. The evaluation must be comprehensive and individualized with the purpose of assisting the PPT in determining whether a student requires special education.

Connecticut adopted additional requirements for school districts when considering special education eligibility for students who may have a specific learning disability and require special education. Connecticut now requires school districts to implement SRBI (scientific, research-based instruction), for the purpose of providing school districts with "new criteria for identifying specific learning disabilities and determining a student's eligibility for special education services will involve a major shift in educational practices for many school districts." To be eligible for special education, a student must have one or more of the disabilities listed in the special education laws and such disability must adversely affect the student's educational performance, resulting in the need for special education. The categories of exceptionality to

qualify for special education are: autism, deaf-blindness, hearing impairment (including deafness), intellectual disability, multiple disabilities, orthopedic impairment, other health impairment (including other health impairment – ADD/ADHD), emotional disability, specific learning disability (including specific learning disability – dyslexia), speech or language impairment, traumatic brain injury, and visual impairment (including blindness).

The District takes seriously its responsibility to locate, evaluate and identify students who may require special education services. The District currently provides special education to support the needs of approximately 400 students. In the 2021-2022 school year, the District held more than 1,000 PPT meetings in collaboration with our families to support our students with special education needs.

Substantive Requirements: The Provision of FAPE to Students with IEPs

Once a child is found to have a disability and require specialized instruction to learn, the District is obligated to develop and implement a free appropriate public education, known as FAPE. FAPE is a central tenet of the IDEA. The law defines a free appropriate public education as special education and related services that

- (A) have been provided at public expense, under public supervision and direction, and without charge,
- (B) meet the standards of the State educational agency,
- (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and
- (D) are provided in conformity with the Individualized Education Program (IEP) required under [this law].

As set forth above, the first requirement of FAPE is that the educational program must be provided by the school district without financial cost to the family or student. In New Fairfield, the District, through the Superintendent of Schools, submits its budget estimate for the resources needed to support students, including students with disabilities, in the upcoming school year to the Board in January. The Board submits its budget request to the New Fairfield Board of Finance for the upcoming school year starting in March. There are times that the District is not able to fully anticipate the needs of students at the time of the Board's submission of the proposed budget. For example, the District must provide a FAPE to each special education student residing in the Town of New Fairfield even if the student was not a resident at

the time that the district established its budget. In addition, the needs of students can change substantially and without warning. The District is also responsible for reviewing and revising a student's IEP if the student's needs change during the course of the school year. The District has experienced an increase in the intensity and complexity of student needs, including, but not limited to, social, emotional and behavioral needs that require the implementation of more-intensive programming.

The District anticipates that, consistent with the state of Connecticut, these trends will continue in the coming school year. New Fairfield has experienced a continuous increase in the number of students identified for special education; this increase accelerated following the COVID-19 pandemic. The increase in the number of special education students puts pressure across our systems and staffing. This includes the number of formal meetings (Planning and Placement Team meetings) and informal team meetings that we hold, the number of triennial reevaluations we conduct, the number of students who require out of district placement, and the number of certified and licensed special education staff that must be hired, supervised, and evaluated. Following the pandemic and consistent with the rest of the state, we have experienced an increase in the level of need of students, which has resulted in higher numbers of referrals to special education each year, and a greater need for specialist evaluations (such as psychiatric, neuropsychological, literacy, and transition) and consultations (such as BCBA-D, Dyslexia specialists, and school refusal/phobia services). The need for these evaluations and consultations is determined by the Planning and Placement Team (PPT), which is responsible for developing the student's individualized education program.

Each student's individualized education program (IEP) must provide an educational program reasonably calculated to enable a child to make progress in light of the child's circumstances. *See Endrew F. v. Douglas County School District*, 137 S.Ct. 615 (2017). The determination of an appropriate educational program must be based on the student's unique learning needs. The PPT is responsible for evaluating and determining the needs of the student in numerous areas of educational performance, including language arts, math, other academic areas; communication skills; motor skills; social, emotional and behavioral functioning; health needs; hearing and vision; and transition and post-secondary opportunities. The PPT identifies the specific skills that the student needs to develop to access and make progress in the general education curriculum. The PPT must also discuss and determine the frequency and duration of the specialized services that the student requires to build those identified skills. The school district must also ensure that, to the maximum extent appropriate, students with disabilities are educated with students who are non-disabled (this is known as the "least restrictive environment"). Special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability

is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Importantly, school districts must provide a continuum of supports and services that will allow the student to benefit from the special education, including supplementary aids and services and out of district placements. The continuum includes general education class, general education class with specialized supports (“push in” special education and/or related services), resource room (“pull out” supports), specialized classes, out-of-district day program, out-of-district residential programs, and home instruction. The continuum of supports and services may include a variety of non-academic services required for a student with a disability to access and make progress in their educational program, such as physical therapy, psychiatric services, separate schooling, residential services, specialized transportation, and other services. Some examples of the continuum of supports available within the District’s public schools include specialized instruction in reading, writing, and math skills; executive functioning; social, emotional, and/or behavioral functioning (such as counseling and behavior-based supports); speech and language skills; gross motor skills; fine motor skills; and transition skills (such as independent living and employment-related skills).

If a student is not able to access and benefit from the individualized educational program developed for or implemented in the District’s schools – even with enhanced staffing, specialized supports, and any other supplementary aids or support – the PPT must consider moving along the continuum of services to a more restrictive placement, such as an out-of-district school. District educators and parents generally want students with IEPs to be educated with their nondisabled peers in their local public school. If placement in a private day school or residential setting is required to provide a FAPE to a student with an IEP, then a school district must provide such services at no cost to the family. The Connecticut State Department of Education oversees a process for reviewing and, as appropriate, approving private schools to implement the IEPs of Connecticut students. These facilities are referred to as approved private special education programs. The District currently educates 17 students in such programs. As discussed above, placement at an approved private special education program is made only when the PPT determines that a student’s needs cannot be met in a less restrictive setting (general education or special education setting within the public school) even with the provision of supplementary supports or services. When referring a student to an out-of-district program, the District follows a comprehensive process to ensure the student is placed in the least restrictive environment in which the student can learn and grow: Researching state-approved programs that specialize in the needs of the student; providing a complete set of updated educational records (as appropriate to the student) to the program for their admissions team to review; speaking with the Admissions Director (or equivalent) to discuss the needs of the student and the supports and services available to determine whether the school can implement the IEP and/or serve as

an appropriate educational placement; considering the cohort of students with whom the student would be educated to ensure an appropriate educational placement; touring the program (typically with the family and/or student), including viewing the classroom and other physical locations in which the student would be educated; holding a PPT meeting once an appropriate placement is determined; convening a PPT meeting approximately 30 days following the initial placement to review the student's transition to, and progress in, the educational placement. The District takes seriously its responsibility to monitor the provision of special education to its students who are educated at approved private special education programs. This includes communication with families of students who are placed at such programs; communication with the director of the program and/or lead staff for the student; and visits to the programs and classroom observations of these students. In addition, the District monitors the implementation of each student's IEP through regular progress reporting aligned to the individualized goals and objectives. At least annually, the District convenes a PPT meeting to review a student's educational program and placement, including the least restrictive educational environment for the student. During the 2021-2022 school year, four District students returned to the District's public schools from out-of-district placements.

Dispute Resolution

Parents are central participants in the PPT process. The special education law strongly encourages parents and educators to engage in a productive dialogue with the goal of reaching consensus regarding the child's program. The law also recognizes that there are times when consensus is not achieved. Federal and state law provide several ways in which families and school districts may resolve disputes regarding a student's special education program, including requesting mediation, filing a state complaint, and filing a request for an impartial due process hearing. Parents may request mediation through the Connecticut State Department of Education. Mediation is a voluntary process of dispute resolution. There are two types of mediation: formal mediation with a mediator appointed by the Connecticut State Department of Education; and informal mediation between the parents and their local school district. The District utilizes both forms of mediation. In the 2021-2022 school year, the District engaged in informal mediation with four families and formal mediation with three families.

Parents may also access the Connecticut State Department of Education complaint resolution procedure. If the parents file a written complaint with the CSDE, a complaint resolution officer investigates the complaint and issues a written decision. The decision is not binding, and parents who disagree can subsequently file for a due process hearing if they

disagree with the complaint resolution. The New Fairfield Public Schools did not have any state complaints filed in the 2021-2022 school year.

Parents who disagree with the school district's program may also seek formal resolution through an impartial hearing officer appointed by the State Department of Education. Before proceeding to a due process hearing, the special education laws require that parents and school officials hold a "resolution session" with the goal of finding a mutually acceptable resolution to the dispute. If the parties resolve the dispute through the resolution session, the parties' agreement must be reduced to writing and signed by the parties (typically in the form of a document known as a "settlement agreement"). If the resolution session does not result in an agreement, the dispute will proceed to an impartial "due process" hearing before a hearing officer appointed by the Connecticut State Department of Education. These hearings are generally lengthy. In recent years, these hearings have involved multiple days of testimony of school staff and other witnesses. Significantly, the law provides parents who prevail on one or more issues in hearing to seek payment of their attorneys' fees. Further, if the parents or school district are not satisfied with the decision of the hearing officer, either party may appeal the matter to federal or state court. The appeal process is similarly lengthy, typically spanning many months.

Conclusion

The District and Board wish to acknowledge the tireless efforts of our talented teachers and staff who work collaboratively with families and students to provide high-quality, individualized instruction to students with disabilities. The District and Board remain steadfast in their support of the education of students with disabilities in the least restrictive educational environment. This commitment to inclusion and its positive educational outcomes is reflected in the fact that only 2.5% of all District students with IEPs are educated outside of the District's public schools (compared with 8.3% of all students with IEPs across the state). The District and Board wish to thank the community, including the Board of Finance, for its continued support of the District's educational program, including its special education services and supports.