UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Dianna Wentzell
Commissioner of Education
Connecticut State Department of Education
165 Capitol Avenue
Hartford, Connecticut 06106

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OFFICE OF THE COMMISSIONER
OF STATE DEPT OF EDUCATION

Dear Commissioner Wentzell:

I am writing in reference to the September 7, 2016 lower court decision in *Connecticut Coalition for Justice in Educational Funding, Inc., et. al v. Jodi M. Rell, et. al*, No. XO7HHDCV145037565S (hereafter, *Rell* decision), that the State has appealed to the Connecticut Supreme Court. The purpose of this letter is to express the Office of Special Education Programs' (OSEP) concerns with those parts of the *Rell* decision that potentially impact Connecticut's future compliance with Part B of the Individuals with Disabilities Education Act (IDEA). Specifically, we write to remind the State of two of its fundamental obligations under the IDEA: first, to ensure that *all* children with disabilities residing in the State who need special education and related services, regardless of the severity of their disability, are identified, located and evaluated; and second, to ensure that a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet each child's unique needs and prepare them for further education, employment, and independent living is made available to such children.

On September 8, 2016, constituents' concerns regarding this decision and the impact that this ruling would have on students with disabilities were brought to our attention. In response, OSEP has had several conversations with Connecticut State Department of Education (CSDE) staff about the ruling, including the specific language in the *Rell* decision related to special education. In part, the *Rell* decision states that "...the education appropriate for some students with disabilities may be extremely limited because they are too profoundly disabled to get any benefit from an elementary or secondary school education." The decision states that "schools [should] identify and focus their efforts on those disabled students who can profit from some form of elementary and secondary education." Finally, the court ordered the State to "submit new standards concerning special education which rationally, substantially, and verifiably link special education spending with elementary and secondary education."

When the IDEA was reauthorized in 2004, Congress noted that "[d]isability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element to our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities." 20 U.S.C. 1400(c)(1). The IDEA requires the State to provide special education and related services to children with a broad array of physical, emotional, and intellectual impairments and conditions; children who have intellectual disabilities, specific learning disabilities, hearing and visual impairments,

speech or language impairments, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, and other health impairments. 20 U.S.C. 1401(3)(A)(i); see 34 CFR §300.8(c).

Under the implementing regulations for IDEA, a child with a disability is defined as a child evaluated in accordance with 34 CFR §§300.304-300.311 as having a disability, and who, by reason thereof, needs special education and related services. 34 CFR §300.8(a)(1). The definition in 34 CFR §300.8(c) includes thirteen disability categories and, as applicable, requires that the impairments "adversely affect[] a child's educational performance." 34 CFR §300.8(c); see 34 CFR §300.307- 300.309. OSEP has repeatedly explained that a child's "educational performance," as that phrase is used in the IDEA, encompasses both academic and nonacademic areas. See, *e.g.*, *Letter to Anonymous*, 60 IDELR 47, at 1-2 (February 29, 1012) (a child with Asperger's Syndrome may need special education and related services "in the affective areas, social skills, and classroom behavior"); *Letter to Anonymous*, 55 IDELR 172, at 2 (Jan. 13, 2010) (students with "high cognition" may be IDEA-eligible where the disability that affects social skills and behavior); *Letter to Lybarger*, 17 IDELR 54, at 2 (Sept. 14, 1990) (the phrase "educational performance" includes "academic" and "non-academic areas," and thus "means more than academic standards as determined by standardized measures"); *Letter to Dublinske*, 211 IDELR 202 (May 30, 1980) (a child's poor communication skills may fall within "educational performance," even if there is no impact on the child's academic performance).

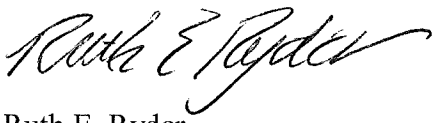
Likewise, an individualized education program (IEP) must identify the specialized instruction and related services that will address *all* of a child's academic and nonacademic needs, including behavioral, emotional, physical, and functional to ensure that the student is afforded a FAPE. *E.g.*, *Cedar Rapids Community Sch. Dist.* v. *Garret F.*, 526 U.S. 66, 75-79 (1999) (school required to provide nursing assistance to ventilator-dependent student); *Irving Independent School District* v. *Tatro*, 468 U.S. 883, 891–894 (1984) (school must provide personnel to assist with clean, intermittent catheterization in order for a student with a disability to attend school); *Lenn* v. *Portland Sch. Committee*, 998 F.2d 1083, 1089 (1st Cir. 1993) (an IEP must target "*all* of a child's special needs," [citation omitted], whether they be academic, physical, emotional, or social."). Courts have repeatedly recognized that an IEP must address a child's nonacademic needs. *E.g.*, *Timothy W.* v. *Rochester, N.H. Sch. Dist.*, 875 F.2d 954, 960-962 (1st Cir.), cert. denied, 493 U.S. 983 (1989) (an IEP must provide programming to address motor skills of a child who had multiple, physical disabilities and intellectual disability); *Polk* v. *Central Susquehanna Intermediate Unit 16*, 853 F.2d 171, 173-174, 183 (3d Cir. 1988) (IEP's central focus was teaching motor and life skills for a child with severe physical disabilities), cert. denied, 488 U.S. 1030 (1989).

Therefore, we are concerned with those portions of the *Rell* decision that suggest that a school district need not provide programming or services to all IDEA-eligible children in all areas of need. The lower court gave the example of a child in a coma to assert that "extensive services are not always required." Such an extreme scenario is *not* comparable, as the court implied, to children with severe disabilities. The measure of educational progress required to ensure a FAPE will depend on the impact of the child's disability and his or her capabilities. See *Board of Education of the Hendrick Hudson Central School District* v. *Rowley*, 458 U.S. 176, 192, 202, 207 (1982) (hereafter *Rowley*). It may be that an appropriate program for a child with more significant or severe disabilities will include many skills that are not part of a traditional,

elementary or secondary academic program or curriculum. However, once a child is determined eligible under the IDEA, the State and local education agency must provide that child a FAPE. *Rowley*, at 192, 207; *Timothy W.*, 875 F.2d at 962. Contrary to the lower court's view, Connecticut and its school districts may not choose to provide special education and related services only for those students whom local educators believe may ostensibly benefit more from a traditional, elementary or secondary academic program. Rather, they have an obligation to provide special education and related services to all eligible children with disabilities, including children with more severe or significant disabilities. It is OSEP's expectation that CSDE will continue to ensure that evaluations, IEPs, and other FAPE protections and requirements are implemented in the State in accordance with Part B of the IDEA and its regulations.

We appreciate your immediate attention to this important matter. If you have any questions or would like to discuss this issue further, please contact Ken Kienas, OSEP State Lead for Connecticut, at 202-245-7621.

Sincerely,



Ruth E. Ryder
Acting Director
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