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May 22, 2012

Supt. Robert McIntyre
Barrington School District
400 Nayatt Road
Barrington, RI 02806

BY FAX AND MAIL

Dear Superintendent McIntyre:

This is a follow-up to my May 11, 2012 letter to you, and the subsequent conversation we had in response to that letter, regarding your school district's plans to allow a select number of out-of-town students to pay tuition to attend Barrington public schools. At the time, I was under the impression that the school district was going to exclude all special education students from participating. You apprised me that you were not, in fact, proposing such a ban, but that you instead were proposing to charge those students higher tuition – apparently more than four times higher – than the tuition that would be charged to other out-of-town students. I advised you that, although we had not done any specific research on that issue, I thought that such a plan would still violate the anti-discrimination laws cited in my letter to you.

We have now done some research, and I wanted to make you aware that my initial views have been borne out. Any attempt to charge special needs students a higher tuition in order to participate in the school's planned non-resident attendance program would be a clear violation of Section 504 of the Rehabilitation Act of 1973 and similar laws prohibiting public schools from discriminating against students with disabilities.

In fact, the U.S. Department of Education's Office for Civil Rights addressed this very issue in an opinion letter in 1999. That letter, from Assistant Secretary for Civil Rights Norma Cantu, stated in no uncertain terms:

"Under the public school regulations for §504, the Department cannot envision a situation where charging a higher non-resident tuition to a student with disabilities than to a student without disabilities, would not violate the §504 regulations. Public school programs, including public school choice programs that utilize non-resident tuition formulae, must ensure that students with disabilities are not subjected to discrimination on the basis of their disability." *Letter to Bocketti*, August 6, 1999, 32 IDELR 225.

Under the circumstances, there is no lawful basis for proceeding with an out-of-town tuition program that would treat students with disabilities differently from other applying students. We therefore strongly urge the school district to abandon any efforts to charge disparate tuition rates based on special education status.

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I have read an occasional reference to nearby Massachusetts communities implementing that state's school choice law. But nothing in that statute, so far as we aware, imposes an extra financial burden on parents of special education students for taking advantage of their school choice options. Rather, as the OCR letter makes clear, special education students cannot, under the law, be discriminated against in school programs like these. We trust that the school district will act accordingly.

Thank you in advance for your consideration of this information. We hope that you find it useful.

Sincerely,

Steven Brown
Executive Director

cc: Patrick Guida, School Committee Chair