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Morna A. Murray J.D.
Commissioner
Connecticut Department of Developmental Services
460 Capital Avenue
Hartford, Conn. 06106

Dear Commissioner Murray:

The memorandum from Commissioner Morna Murray J.D. dated October 2, 2015 requests input from the public concerning the future of Southbury Training School ("STS"). The Commissioner indicates in her memorandum that she intends to use the recommendations and comments to make recommendations about the future of STS. I am writing to provide some comments and recommendations.

I was counsel for the plaintiff class members in the Mansfield Training School lawsuit (*C.A.R.C. v. Thorne*, No. H78-654) and currently serve as counsel for the class members living at STS in *Messier v. Southbury Training School*. As a result, I am familiar with the actions taken by the State in response to the *C.A.R.C. v. Thorne* lawsuit, and the studies conducted by DDS to determine whether transferring Mansfield residents to community settings enhanced the lives of Mansfield residents. I am also familiar with the actions taken during the remedial phase of the *Messier* lawsuit and the extent to which the STS residents transferred to community settings have benefitted from those transfers. Finally, I am familiar with the studies conducted by the Connecticut Legislature, such as Provision of Selected Services for Clients with Intellectual Disabilities (1/12) and Planning for the Needs of Aging Individuals with Developmental Disabilities' (12/08) to evaluate whether placing individuals with intellectual disabilities in segregated settings, such as STS, is more costly for the taxpayers of Connecticut and better for DDS clients

Recommendation # 1: DDS Should Not Rely On An Informal Survey to Determine Whether STS Residents Should Move to Integrated Settings

It is surprising that DDS is requesting input from the public on the future of Southbury Training School and expresses an intent to rely on that input to formulate official recommendations about the future of Southbury Training School. DDS has conducted several surveys in the past that requested the same or similar information. All were conducted for the purported purpose of determining what was best for those individuals institutionalized at STS. However, as the federal court in *Messier* determined, state officials knew what the results would be – all would say they wanted their family member to live at STS for the rest of their lives - and conducted the study for the purpose of convincing legislators that STS residents should stay in that facility rather than trying to determine what was the proper thing to do under the law. Further, public officials were aware that the results of the surveys and the way they were using them were misleading. *Messier v. Southbury Training School*, 562 F. Supp. 2d 294, 332-334 (D. Conn. 2008). The federal court found the survey misleading and that public officials improperly relied on such surveys to justify unnecessarily segregating STS residents. *Messier v. Southbury Training School*, 562 F. Supp. 2d 294, 329-334 (D. Conn. 2008). This was particularly true given the fact that studies conducted by DDS during the community placement of Mansfield Training School residents concluded that the institutional residents benefitted from community placement “in every way we know how to measure” and that the opposition of parents and guardians to community placement soon disappeared after Mansfield residents moved to the community and experienced growth and development their family members never thought possible. DDS’s Longitudinal Studies also showed that placing mentally disabled citizens in the community is far less expensive than institutionalizing them in a segregated institution. This Longitudinal Study was commissioned by DDS and its results were embraced for many years.

The results of the DDS Longitudinal Study is consistent with studies conducted more recently by the Connecticut Legislature. See, for example, *Provision of Selected Services for Clients with Intellectual Disabilities* (January 2012) (finding that placement of DDS clients in STS is much more expensive than placing them in private group homes, that the quality of services in the community is the same or better than services at STS, and that DDS should move away from using institutions to care for persons with Intellectual Disabilities). These studies were conducted using accepted methodologies and a far better indicator of what direction DDS should take than an informal survey of questionable reliability and validity that is now being conducted by DDS.

Recommendation #2: DDS Should Base Its Recommendation Based On the Known Benefit Community Placement Will Have On STS Residents and On The State’s Legal Obligation to Provide Its Services To Disabled Citizens In The Most Integrated Setting Appropriate to The Needs of STS Residents

Another surprising aspect of the DDS memorandum is that it suggests that under federal law the State of Connecticut is free to conduct another survey and make another decision about the future of Southbury Training School without regard to its legal obligation to provide State services to STS residents in the most integrated appropriate. In fact, the Americans with Disabilities Act prohibits states from offering services to residents of Southbury Training School in segregated settings. The *Messier* court held that under federal law a state must “administer services programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” *Messier*, 562 F. Supp. 2d at 321, quoting 28 C.F.R. § 3. Pt. 35.130(d). As the Court recognized in *Messier*:

Congress, in enacting the ADA, and the Attorney General, in issuing regulations in interpreting the ADA, have made the judgment that mentally retarded individuals should live in the most integrated setting that is appropriate to their needs.

Messier v. Southbury Training School, 562 F. Supp. 2d 294, 326.

As the *Messier* court found “STS is not an integrated setting. It is a segregated institution in which all residents are mentally disabled.” *Id.* And under the ADA, serving disabled individuals in unnecessarily segregated settings is a form of discrimination. *Id.* at 321. In short, while it is clear that under the ADA and the *Messier* Settlement Agreement individual residents or their guardians may choose to decline a particular accommodation (community placement) offered by the State, a public policy decision based on public comment to institutionalize a group of STS residents for the long term would be inconsistent with the American’s with Disabilities Act. While individual STS residents may decline the offer of a particular community placement, the controlling legal obligation of the State is to serve STS residents in community settings. This is particularly so since the STS professionals have made a judgment that, with the exception of a handful of terminally ill individuals, all of the STS residents can live and prosper in the community. The State of Connecticut may not segregate a large group of individuals at STS for the rest of their lives simply because some residents have turned down the opportunity to move to a particular community residence.

This was the basic message in the *Messier* Remedial Expert’s Report Regarding the Future of Southbury Training School. In light of the fact that the population is rapidly declining, the professional staff at STS have determined that almost all STS residents can move to the community, and the clear benefit derived by STS residents that have moved to the community, the Remedial Expert recommended a “carefully planned process for the closure of Southbury Training School. While the *Messier* Settlement Agreement does not require closure, it does provide a framework for the State to follow the Remedial Expert’s recommendation in that it provides for an orderly mechanism for making professional judgments relating to community placement for all STS residents, an opportunity for parents

and guardians to decline particular community placements offered by the State and an opportunity for the State to challenge guardian opposition if the STS professionals believe that the guardian's opposition is not consistent with what the team believes is in the best interest of the STS resident with respect to community placement. This approach – including the planned closure of STS over time using the *Messier* Settlement Agreement framework – is the one that the Commissioner should carefully consider, adopt and recommend.

Respectfully submitted,

A handwritten signature in cursive script that reads "David C. Shaw".

David C. Shaw, Esq.