

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS



5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921

Kelt Cooper
Superintendent
Consolidated School District of New Britain
272 Main Street
New Britain, Connecticut 06051

RE: COMPLAINT NO. 01-13-1219
Consolidated School District of New Britain

Dear Superintendent Cooper:

This is to advise you of the resolution of the above complaint that was filed with the U.S. Department of Education (Department) Office for Civil Rights (OCR) against the Consolidated School District of New Britain (District), alleging discrimination based on disability. Specifically, the Complainant alleged that the District failed to implement provisions of a student's (Student) Section 504 Plan during the 2012-2013 school year, including, in XXXXXXXX, extra time for assignments and exams, a second set of books and class notes, and for all classes, a Word Processor, until January 2013.

OCR opened an investigation of these allegations pursuant to our jurisdiction under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 (Section 504) and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination on the basis of disability. The District is subject to Section 504 because it is a recipient of Federal financial assistance from the Department and is subject to the requirements of Title II because it is a public entity operating an elementary and secondary school system.

Based on the allegations, OCR investigated the following legal issue:

- Whether the District failed to provide a Free Appropriate Public Education (FAPE) to the Student, thereby discriminating against him on the basis of disability, by failing to implement portions of his Section 504 Plan, in violation of 34 C.F.R. Section 104.33(a) and 28 C.F.R. Section 35.130.

Both parties expressed an interest in the prompt resolution of the concerns presented in the complaint. The Complainant told OCR that she was most interested in ensuring that the Student's 504 Plan would be implemented for the 2013-14 school year, and that teachers and providers at the District's High School receive training on the requirements of Section 504/Title II. The District acknowledged that some provisions of the Student's 2012-2013 Section 504 Plan had not been

provided; noted steps that it had already taken to address the lapse; and expressed a willingness to address any concerns that OCR might identify.

Legal Standards

The regulations implementing Section 504 and Title II require that all school districts provide a FAPE to all qualified persons with disabilities within the school districts' jurisdiction. At 34 C.F.R. Section 104.33(a), the regulation implementing Section defines FAPE as the regular or special education and related aids and services (program) that are designed to meet the individual education needs of a student with disabilities as adequately as the needs of nondisabled students are met, and that are based upon adherence to procedural requirements relating to identification, evaluation and placement of such students.

To be appropriate, education programs for students with disabilities must be designed to meet their individual needs; thus, before placing students with disabilities in any educational program, schools must carefully evaluate each student's skills and special needs. Similarly, placement decisions must be made by a team (Team) that includes people who understand the meaning of the evaluation information, including data relating to the student's disability (ies), as well as people who are knowledgeable about the Student. The Team must also include persons who are aware of the different placement options, that is, the regular and/or special education and related aids and services that may be provided. For example, FAPE may include modifications to the regular education program, including adjustments in test taking procedures and adjustments to rules regarding absences when a student's absences are due to a disability, as well as aides to assist with sensory impairments and services such as physical therapy.

When determining a student's placement, or conducting a periodic reevaluation of a placement, the Team must document and consider information from a variety of sources, including data about the disability, the results of aptitude and achievement tests, teacher recommendations, reports on the student's physical condition, social or cultural background, and adaptive behavior. As noted, Section 504 further requires periodic re-evaluation.

Once the Team has determined the appropriate program, school districts are obligated to implement that program. Failure to do so, or failure to adhere to the procedural requirements of Section 504, may result in a denial of FAPE where students with disabilities are affected in their ability to access their education as a result of the failure to provide necessary services and/or accommodations.

Preliminary Investigation

OCR requested from the District copies of the Student's Section 504 Plan(s) for the 2012-13 school year; documents reflecting the corrective measures taken to address any lapses in implementation; and, copies of the District's Section 504/Title II policies and procedures, to determine if any additional steps by the District might be appropriate.

From reviewing the District's documents, OCR learned that the Student's 504 Plans for the 2012-13 school year included the following accommodations: 1) use of word processor for in-school assignments, 2) extended time and a half for assignments, tests and quizzes, 3) water breaks at Student's request, and 4) access to the school nurse XXXXXXXXXXXX as needed. The Student's Section 504 Team had also discussed providing the Student with class notes and a second set of books, but these were not provided.

The District acknowledged that, as the Complainant alleged, the Student did not receive some of these accommodations in his XXXXXXXX class, specifically a word processor, extra time for assignments and exams, and the ability to see the nurse or get a drink of water as needed. To address these lapses in implementation, the District provided the Student the opportunity to re-take XXXXXXXX over the summer with accommodations and, if he passed, to remove the X from his transcript. Additionally, the District stated that, at the start of this school year, the Director of Pupil Services (Director) had met with the Student's teachers to discuss the Student's disability and its affects, along with addressing implementation of the Student's 504 Plan. The Complainant confirmed these corrective measures had been taken and expressed that things were going much better this year; documents provided by the District further confirmed these steps.

As noted above, the District requested to resolve the complaint before OCR had completed its investigation. Subsequent discussions with District officials and the Complainant resulted in the District signing the enclosed Resolution Agreement (Agreement). In the Agreement, the District agreed to complete the corrective steps for the Student that are noted above, specifically to confirm that the Student's XXXXXXXXXXXXXXXX has been removed from his educational record and to have the Director monitor the implementation of the Student's 504 Plan for the 2013-14 school year.

By implementing the Agreement, the District will also host OCR training on the requirements of Section 504/Title II for administrators and high school staff to address some areas that may be unclear for staff. For instance, after reviewing documents provided by the District regarding the Student's 504 Plans, OCR noted to the District that, per 34 C.F.R. Section 104.35(c), 504 Team meetings about evaluation and placement should include documented consideration of evaluation information about a student's disability, in addition to the student's academic progress. Additionally, OCR noted that the group of persons determining a student's eligibility and placement should include someone with the appropriate expertise to understand such data; for instance, a school psychologist for students presenting mental disabilities, and/or a school nurse or other medical personnel for students presenting physical disabilities.

OCR also noted that, when a student's team determines that certain accommodations and services are necessary for that student to obtain a FAPE, the District should then provide such accommodations and services via District resources. For instance, if a team determines that, because of a disability, a student requires copies of class materials, then the District is obligated to provide such materials, without requiring the student and/or his family to copy such materials. The training agreed to by the District will address these points.

Finally, the District agreed to clarify some of its 504/Title II policies and procedures as described in the Agreement. Per OCR policy, OCR will monitor the District's implementation of the Agreement.

Under the Freedom of Information Act, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Pursuant to OCR procedure, the District is reminded that no recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or participated in any manner in connection with a complaint.

OCR determinations are made on a case-by-case basis and are not formal statements of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and are made available to the public.

OCR wishes to thank you and your staff, especially Dr. Ann Carabillo, for the cooperation extended during the course of its investigation. If you or your staff have any questions regarding this matter, please do not hesitate to contact Civil Rights Investigator Carol Kennedy-Merrill at (617) 280-0048 or Civil Rights Attorney Meighan McCrea at (617) 289-0052. You may also contact me directly at (617) 289-0040.

Sincerely,

____/s/_____

Nicole M. Merhill
Acting Compliance Team Leader/
Civil Rights Attorney

Enclosure