



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

September 19, 2014

Dr. Craig A. Cooke
Superintendent of Schools
Windsor Board of Education
L.P. Wilson Community Center
601 Matianuck Avenue
Windsor, Connecticut 06095

Re: Complaint No. 01-13-1245

Dear Superintendent Cooke:

The Office for Civil Rights (OCR) in the U.S. Department of Education (Department) has completed its investigation of the above-referenced complaint filed against the Windsor Board of Education (District). The Complainant alleged that the District discriminated against his daughter (Student) by not providing a 1:1 paraprofessional on November 28, 2012; by not implementing her behavior intervention plan (BIP) on December 20, 2012; and by not providing tutoring services while the Student was hospitalized from February 28, to March 22, 2013. The District has entered into the enclosed resolution agreement to resolve the allegation regarding implementation of the Student's BIP. For the reasons provided below, we concluded that there was insufficient evidence of discrimination with respect to the other two allegations.

OCR has jurisdiction over the allegations under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). The District is required to comply with both laws, as well as their implementing regulations, because it receives Federal financial assistance from the Department and is a public entity.

The Section 504 regulation at 34 C.F.R. § 104.33 requires that school districts provide a free appropriate public education (FAPE) to students with disabilities. To determine whether a school district has provided a FAPE, OCR focuses on whether the district has provided the services described in its educational plan for the student. When a student has a BIP because of problems related to the student's disability, OCR also examines whether this plan was implemented. When students with disabilities are unable to attend school because they have been hospitalized, OCR examines whether the district offered appropriate educational services to the student. OCR used the standards in the Section 504 regulation to determine the District's compliance with Title II of the Americans with Disabilities Act as well, since Title II has been interpreted to adopt the standards of Section 504 in areas where Title II has not adopted a different standard, and Title II does not specifically address discrimination in public elementary and secondary education programs.

We investigated whether the District's failure to provide the Student a 1:1 paraprofessional on November 28, 2012 denied her a FAPE. The Complainant indicated that the paraprofessional may have been able to prevent an incident that resulted in a five-day suspension for the Student. We reviewed her Individualized Education Program (IEP) of November 14, 2012, which was in effect at the time of the November 28th incident, and found that it did not require a 1:1 paraprofessional for the Student. It said that her services would be provided by general and special education teachers, paraprofessionals, tutors, and SPARK support staff. It also said that she will receive "dedicated adult supervision for the times and locations specified in this IEP." Because the IEP did not require a 1:1 paraprofessional, we could not conclude that the failure to provide such a paraprofessional on November 28th denied the Student a FAPE. We also note that in its December 5, 2013 letter to the Complainant, the Connecticut

Bureau of Special Education found that the supervision required by the IEP was provided by another adult.

We were also unable to conclude that the District denied the Student a FAPE by failing to provide tutoring during her hospitalization from Thursday, February 28 to March 22, 2013. On Monday, March 4, 2013, the Complainant contacted the District and asked when tutoring was going to begin. The District began making arrangements for a tutor the following day and on March 7, 2013, the tutor attempted to provide services at the hospital. This attempt was unsuccessful because of the Student's medical condition, as was at least one other attempt. The hospital then asked the District to discontinue services, which the District did. In these circumstances, we cannot conclude that failing to provide the Student with additional tutoring during her hospitalization denied her a FAPE.

We did have concerns about the District's failure to implement the Student's BIP on December 20, 2012, as the manner in which a tutor corrected the Student was not consistent with the BIP. The District has agreed to address the issue of BIP implementation by ensuring that all staff are notified of the BIP and are trained on the need to comply with it. The District has also agreed to expunge the suspension from the Student's permanent record. Since the suspension was for a short period (two days) and the Student is now in an out-of-district placement, we did not determine that the District was required to provide compensatory services for her.

This concludes OCR's investigation of this complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement 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 made available to the public. Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. Should this happen, the Complainant may file another complaint alleging such treatment. We have also notified the Complainant of his right to file a private suit in federal court, whether or not OCR finds a violation in this case.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In cases in which there is a resolution agreement, like this case, it is also our standard practice to make the resolution letter and agreement available on our web site. In releasing or posting the letter and agreement, 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 personal privacy.

We want to thank you and your staff – especially Attorney Leander Dolphin – for your cooperation during OCR's investigation. If you have any questions about this letter, you may contact Civil Rights Investigator Olga Benjamin by phone at 617-289-0041 or by email at Olga.Benjamin@ed.gov, or Civil Rights Attorney Liz Bagdon at 617-289-0020 or at Elizabeth.Bagdon@ed.gov. You may also contact me directly at 617-289-0083 or at Jane.Lopez@ed.gov.

Sincerely,

Jane López
Team Leader/Civil Rights Attorney

Enclosure

Cc: Leander A. Dolphin, Esq.