

UNITED STATES DEPARTMENT OF
EDUCATION
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8TH FLOOR



Mr. Lawrence Elliot
Director of Student Support Services
Kearsarge Regional School District
114 Cougar Court
New London, New Hampshire 03257

Re: Complaint No. 01-14-1089
Kearsarge Regional School District

Dear Mr. Elliot:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is closing the investigative phase of the above-referenced complaint that was filed against the Kearsarge Regional School District (District), alleging discrimination on the basis of disability. As you know, the complaint alleged that the District discriminated against a student (Student) on the basis of disability by not following appropriate placement procedures prior to implementing the Student's Section 504 plan, and by failing to provide the Student's parent with notice of her Section 504 procedural safeguards. As explained below, prior to OCR completing its investigation and drawing any conclusions regarding these matters, the District expressed an interest in resolving the complaint and submitted to OCR a letter of commitment and *Voluntary Resolution Plan* to resolve the allegations.

OCR opened this complaint for investigation because the complaint allegations fall under Section 504 of the Rehabilitation Act of 1973, and its implementing regulation found at 34 C.F.R. Part 104 (Section 504); and Title II of the Americans with Disabilities Act of 1990, and its implementing regulation found at 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination based on disability. The District is subject to the requirements of Section 504 because it receives Federal financial assistance from the Department, and it is also subject to the requirements of Title II because it is a public entity operating an education system.

Based on the allegations, OCR opened for investigation the following legal issue:

- Whether the District denied the Student a free appropriate public education (FAPE) by failing to comply with evaluation and placement procedures, including notice of procedural safeguards to the Complainant, in violation of 34 C.F.R. Section 104.33, 10435(a), (b), and (c) and 104.36, and 28 C.F.R. Section 35.130.

During the course of this investigation, OCR requested, received and reviewed information from the District including: the District's notice of procedural safeguards; copies of all medical information provided by the Complainant to the District regarding the Student's disability-related needs; and copies of all Section 504 Plans and related documents for the Student during the 2013-2014 school year. OCR also spoke at length with District staff and administrators regarding their responsibilities under Section 504 and Title II, as well as the manner in which the Section 504 process was handled with regard to the Student.

As previously mentioned, prior to OCR reaching a compliance determination with regard to the District's actions, the District expressed an interest in voluntarily resolving the complaint. As part of this process, OCR spoke with the Complainant and notified the Complainant of the District's interest in resolving the concerns; the Complainant expressed a similar interest in resolution. After conversations between OCR, the Complainant and you, the District agreed to take certain steps, memorialized in the enclosed *Voluntary Resolution Plan*, including the prompt reconvening of the Student's Section 504 team to determine what, if any, additional evaluations and/or changes/updates are needed to the Student's Section 504 Plan, and comprehensive Section 504 training for District staff and guidance counselors. Additionally, the District agreed to send a letter to staff regarding their obligations to notify parents/guardians of their procedural safeguards/parental rights.

OCR learned from the Complainant and you that on May 1, 2014, consistent with the above-referenced *Voluntary Resolution Plan*, the Student's Section 504 team reconvened and agreed that additional evaluations were necessary. However, as both you and the Complainant explained to OCR, the timing of such additional evaluations would be based on the guidance provided by the Student's medical advisors to ensure that the evaluations do not further exacerbate the Student's concussion-related symptoms.

As OCR discussed in our most recent telephone conversation with you, OCR will continue to monitor the District's compliance with the *Voluntary Resolution Plan*, consistent with the below schedule:

- By June 30, 2014, the District will identify the name(s) and qualifications of the trainer(s) who will provide Section 504 and Title II training and will provide an outline and/or copies of all training materials for OCR's review and approval.
- By June 30, 2014, the District will provide OCR with a copy of the notice sent to staff regarding their obligations to provide parents with notice of their procedural safeguards/parental rights.
- By June 30, 2014, and September 15, 2014, the District will provide OCR with a status update regarding any and all additional actions taken with regard to the Student's Section 504 Plan, including, but not limited to documentation of all team meetings, copies of any and all additional evaluative data, and copies of any and all updates to the Student's Section 504 Plan.
- By September 15, 2014, the District will provide OCR with confirmation that Section 504 training has been provided to all staff and guidance counselors, including the date(s) of training sign-in sheets noting the names and titles of all training participants.

As OCR shared with you, OCR has determined that the terms of the *Voluntary Resolution Plan* address the underlying allegations in this case and are also consistent with Section 504 and Title II. Accordingly, OCR is closing this investigation as of the date of this letter.

OCR explained to you in its most recent telephone conversation with you that OCR will not close the monitoring of the *Voluntary Resolution Plan* until OCR determines that the District has fulfilled the terms of the *Voluntary Resolution Plan* and is in compliance with the regulation implementing Section 504 at 34 C.F.R. Part 104, which was at issue in this complaint.

Furthermore, as OCR discussed with you, the District understands and agrees that it is obligated to provide OCR with data and other information related to the *Voluntary Resolution Plan* in a timely manner in accordance with the dates set forth in this letter. As part of this process, and as explained to you, OCR may visit the District, interview staff and students, and request such additional reports or data as necessary for OCR to determine whether the District has fulfilled the terms of the *Voluntary Resolution Plan* and is in compliance with the regulation implementing Section 504 at 34 C.F.R. Part 104, which was at issue in this complaint.

As OCR explained, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms of the *Voluntary Resolution Plan*. Before initiating administrative enforcement (34 C.F.R. Sections 100.9, 100.10), or judicial proceedings to enforce this *Voluntary Resolution Plan*, OCR shall give the District written notice of the alleged breach and a minimum of (60) calendar days to cure the alleged breach.

OCR will close the monitoring of this matter, and will so notify the parties in writing, once it determines that the District has fully implemented the terms of the *Voluntary Resolution Plan* and is in compliance with Section 504 and Title II.

The information in this letter is not intended and should not be construed to cover any other issues regarding compliance with Section 504 or Title II that may exist but are not discussed herein. Please also be advised that the Complainant may have the right to file a private suit in Federal court on these issues, whether or not OCR found a violation.

We would like to thank you and Assistant Principal XXXXX XXXX for all of your assistance during the investigation and resolution of this matter. If you have any questions regarding this letter, you may contact Senior Civil Rights Attorney Nicole Merhill, by telephone at (617) 289-0040, or via e-mail at: Nicole.Merhill@ed.gov; or Civil Rights Investigator Diana Otto at (617) 289-0073 or by e-mail at Diana.Otto@ed.gov. You may also contact me directly at (617) 289-0111.

Sincerely,

_____/s/_____

Allen L. Kropp

Team Leader/Civil Rights Attorney

Enclosure

Cc: Jerome E. Frew, Superintendent