



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

October 19, 2017

Dr. Kathleen M. Ouellette  
Superintendent of Schools  
By email: [kouellette@waterbury.k12.ct.us](mailto:kouellette@waterbury.k12.ct.us)

cc: Linda Wihbey, Esq.  
By email: [lwihbey@waterburyct.org](mailto:lwihbey@waterburyct.org)

Re: Complaint No. 01-15-1081  
Waterbury Board of Education

Dear Dr. Ouellette:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against the Waterbury Board of Education (the District), in which the Complainant alleged that his daughter (Student) was discriminated against based on disability. Specifically, the Complainant alleged that the Board failed to provide the Student a free appropriate public education (FAPE) when it failed to implement several provisions of her Section 504 Plan during the beginning of the 2014-2015 school year. During the course of OCR's investigation, the Complainant raised additional concerns regarding the District's alleged failure to ensure that the Student's placement decision was made by a group of persons knowledgeable about the Student, and delay in providing XXXXXX services to the Student.

As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual* by taking the steps set forth in the enclosed Resolution Agreement (Agreement). The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Agreement.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by certain public entities. The District is subject to Section 504 and Title II because it is a recipient of federal financial assistance from the U.S. Department of Education, and is a public institution, respectively.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with

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disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

During the course of OCR's investigation, OCR reviewed documents provided by the Complainant and the District, including, but not limited to, correspondence between the Complainant and the District; internal correspondence between and among District staff, the District's Section 504 policies and procedures; and the Student's Section 504 plans. OCR also spoke with the Complainant and the District's counsel.

OCR's preliminary investigation revealed that the Student, who is a resident of a neighboring town (XXXXXX), attended one of the District's magnet schools during the 2013-2014 and 2014-2015 school years. Under Connecticut state law, if a student attends a magnet school, the student's home district is responsible for ensuring compliance with Section 504, including the identification, evaluation, and placement of the student; however, the magnet school is responsible for implementing the Section 504 plan. The Student was first found eligible for a Section 504 plan at a meeting convened by the District in XXXXXX 2014. XXXXXX was not part of the initial meeting.

In XXXXXX 2014, the Complainant contacted the District and XXXXXX to discuss XXXXX instruction for the Student. Based on the records provided to OCR, it appears that during this time there was confusion by all parties as to who was responsible for specific paperwork and to whom the completed paperwork should be returned. On XXXXXXX, 2014, the completed XXXXX instruction paperwork was received and tutoring was scheduled to begin on XXXXXXX, 2014. OCR is concerned that the confusion between the District and XXXXXXX regarding which entity was responsible for completing the paperwork may have resulted in a delay in services.

The Complainant also alleged that the District failed to implement two provisions of the Student's Section 504 plan, and OCR's preliminary investigation uncovered conflicting information on this allegation.

Before OCR made a compliance determination with respect to the above issues, the District agreed to resolve the complaint consistent with Section 302 of OCR's *Case Processing Manual*. Waterbury Public Schools signed the enclosed Resolution Agreement on October 18, 2017 which, when fully implemented, will resolve the allegations raised in this complaint. As detailed in the Agreement, Waterbury Public Schools has agreed to provide Section 504 training to staff at the Waterbury Arts Magnet School on several topics, including evaluation, identification, and placement procedures, and its obligations when working with students attending its inter-district magnet schools from other districts. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information discussed above that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Thank you for the District's cooperation in this investigation. If you have any questions, you may contact Melissa Kirby, Civil Rights Attorney, at (617) 289-0067 or by email at [Melissa.Kirby@ed.gov](mailto:Melissa.Kirby@ed.gov).

Sincerely,

Ramzi Ajami  
Compliance Team Leader

Enclosure