



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

June 27, 2019

Kevin J. Smith, Ph.D.  
Superintendent  
Wilton Public Schools  
Via e-mail: [kevin.smith@wilton.k12.ct.us](mailto:kevin.smith@wilton.k12.ct.us)

Re: OCR Complaint Nos. 01-14-1227, 01-16-1152, 01-16-1243, & 01-16-1245  
Wilton Public Schools

Dear Superintendent Smith:

This letter is to advise you of the outcome of four complaints<sup>1</sup> that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Wilton Public Schools (the District) alleging that the District engaged in disability discrimination and retaliation. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaints by taking the steps set out in the enclosed Resolution Agreement (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 any program or activity receiving federal financial assistance from the Department. 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 against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or their implementing regulations, or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the District receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Because OCR determined that it has jurisdiction and that the complaints were timely filed, OCR opened the following legal issues for investigation:

- With respect to Students 1 and 2:
  - Whether the District failed to timely and appropriately evaluate Students 1 and 2 during the 2013-2014 school year in violation of 34 C.F.R. Section 104.35 and 28 C.F.R. Section 35.130 (Allegation 1(a)).

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<sup>1</sup> Complaint Nos. 01-14-1227, 01-16-1152, and 01-16-1243 were filed by Complainant 1. These complaints include individual allegations with respect to Student 1, Student 2, and Complainant 1, as well as systemic allegations. Complaint No. 01-16-1245 was filed by Complainant 2 and includes individual allegations with respect to Student 3 and Student 4.

- Whether, in interpreting evaluation data and in making placement decisions during an XXXX 504 team meeting for Students 1 and 2, the District failed to draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and ensure that the placement decisions are made by a group of persons, including persons knowledgeable about Students 1 and 2, the meaning of the evaluation data, and the placement options, in violation of 34 C.F.R. Section 104.35(c) and 28 C.F.R. Section 35.130 (Allegation 1(b)).
- With respect to Students 3 and 4:
  - Whether, in interpreting evaluation data and in making placement decision during a XXXX 504 Team meeting for Students 3 and 4,<sup>2</sup> the District failed to draw upon information from a variety of sources and establish procedures to ensure that information obtained from all such sources is documented and carefully considered, in violation of 34 C.F.R. Section 104.35(c) and 28 C.F.R. Section 35.130 (Allegation 2).
- With respect to Complainant 1:
  - Whether the District retaliated against Complainant 1 for protesting XXXXXXXXthat she believed exacerbated Student 1 and 2’s disabling conditions, by removing Complainant 1 from XXXXXXXXXXXXXXXXXXXX mailing lists, and threatening to XXXXX her for XXXXX, in violation of 34 C.F.R. Section 104.61 and 28 C.F.R. Section 35.134 (Allegation 3(a)).
  - Whether the District retaliated against Complainant 1 for her advocacy on behalf of Students 1 and 2 by widely publicizing XXXXXXXXXXXXXXXXXXXXXXXX, in clear reference to Complainant 1, which invited criticism from community members, in violation of 34 C.F.R. Section 104.61 and 28 C.F.R. Section 35.134 (Allegation 3(b)).
- Whether the District failed to adopt Section 504 grievance procedures, in violation of 34 C.F.R. Section 104.7(b) (Allegation 4).<sup>3</sup>

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<sup>2</sup> Although Complainant 2 alleged that this was a systemic concern, information provided by Complainant 2 in interviews and correspondence with OCR was not sufficient for OCR to infer that a systemic violation could have occurred. Specifically, Complainant 2 did not provide information from which OCR could infer that other students who might have been affected by environmental issues at the school were evaluated under Section 504. Absent information supporting that any such students were evaluated, OCR cannot infer that any evaluations did not comply with Section 504. Accordingly, OCR is dismissing the systemic aspect of this allegation pursuant to CPM Section 108(b).

<sup>3</sup> Complainant 1 also alleged that the District failed to designate a Title II coordinator. During its investigation, OCR obtained credible information indicating that this allegation has been resolved and is therefore no longer appropriate for investigation because the District has a Title II Coordinator who is appropriately identified in District notices. Accordingly, OCR is dismissing Complainant 1’s allegation regarding the District’s Title II Coordinator pursuant to CPM Section 108(j).

## **Allegation 1: The Evaluation and Placement of Students 1 & 2**

### Background

During the XXXX school year, Students 1 and 2 attended elementary school in the District. In XXXX, Complainant 1 removed Students 1 and 2 from school due to their XXXXXXXXXXXXX and XXXXXXXXXXXXX and she requested homebound services. In response, the District sought to schedule team meetings to determine whether Students 1 and 2 were eligible students under IDEA or Section 504.

### Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (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 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.

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities. Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation unless the state has established a different timeline, in which case evaluations must be completed within the timeline established by the state. Regulations of Connecticut State Agencies (RSCA) § 10-76d-13 requires that once a district receives a referral for special education, it has 45 school days to obtain written parental consent, conduct a comprehensive evaluation, determine eligibility, and implement the individualized education program (IEP).<sup>4</sup>

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about

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<sup>4</sup> [https://portal.ct.gov/-/media/SDE/Special-Education/Timelines\\_for\\_Initial\\_Evaluations\\_Memorandum\\_Dec\\_2018.pdf](https://portal.ct.gov/-/media/SDE/Special-Education/Timelines_for_Initial_Evaluations_Memorandum_Dec_2018.pdf)

the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

Analysis: Timeliness of Evaluation and Placement

Complainant 1 alleged that the District discriminated against Students 1 and 2 by failing to timely evaluate their eligibility for special education and/or related aids and services.

The District held its first team meetings for Students 1 and 2 on XXXX, several months after Complainant 1 removed the Students from school. During the XXXX team meetings, the teams did not make any eligibility determinations, but rather referred Students 1 and 2 for special education evaluations and independent medical assessments. The special education evaluations took place during the week of XXXX.

The District held its next team meetings – Planning and Placement Team (PPT) meetings under IDEA – on XXXX, over a year after the special education evaluations occurred. During the XXXX team meetings, the teams found Students 1 and 2 ineligible for services under IDEA. Complainant 1 requested that the teams consider whether Students 1 and 2 would be eligible under Section 504, but the teams determined that they would not consider Section 504 eligibility until they spoke with XXXXXXXXXXXX that Students 1 and 2 had been XXXX during the XXXX school year. The follow-up 504 team meetings were held on XXXXX and the teams found Students 1 and 2 eligible for services under Section 504.

OCR is concerned about the length of time that elapsed between when Complainant 1 removed Students 1 and 2 from school (XXXX), and the District’s determination that the students were ineligible under IDEA (XXXX) and eligible under Section 504 (XXXX). While OCR understands that schedules for District staff, parents, and evaluators may conflict and thus delay the scheduling of team meetings and evaluations, OCR remains concerned that it took close to XXXX years for the District to determine that Students 1 and 2 were eligible under Section 504.

OCR is also concerned that the District’s delay was because the District did not set up the team meetings to consider IDEA eligibility as an initial matter and Section 504 eligibility in the alternative. The District was not obligated to conduct its IDEA team meetings first and its 504 team meetings at a later date, as it did for Students 1 and 2. Given that it took over XXXX to schedule team meetings to determine eligibility under IDEA, the District should have considered whether it made sense to schedule both the IDEA and 504 determinations to occur back-to-back during the XXXX team meetings. Instead, the District held IDEA eligibility meetings in XXXX, and when the teams determined that the Students were not eligible under IDEA, the District sought additional information from the Students’ XXXXXXXXXXXX and did not reconvene the teams to discuss Section 504 eligibility until XXXX.

Analysis: Procedural Issues During the XXXX Team Meetings

During the XXXX team meetings, the teams found Students 1 and 2 eligible under Section 504. However, Complainant 1 alleged that the teams failed to ensure that the placement decisions

were made by knowledgeable people and the teams did not base their placement decisions on the evaluative materials.

With respect to attendance at the XXXX team meetings, Complainant 1 alleged that the District’s medical advisor and school nurse did not attend the team meetings, and that the school psychologist was not familiar with Students 1 and 2. The Section 504 regulation, at 34 C.F.R. Section 104.35(c)(3) provides that the 504 team must be composed of persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The team members do not all have to be knowledgeable about all three areas (the student, the data, the placement options). The XXXX team meetings appear to have included persons knowledgeable about Students 1 and 2, specifically Complainant 1, her husband, their lawyer, and the Students’ regular education teachers in the District. OCR would need to ensure that the school psychologist or other team members who attended the XXXX team meetings were sufficiently knowledgeable about the medical data, such that it was not necessary for the District’s medical advisor or the school nurse to attend the team meetings.

With respect to the evaluative materials, Complainant 1 alleged that the teams failed to consider how the Students’ disabilities affected their major life activities. However, the 504 plans the District provided to OCR reflect that the teams considered how each Students’ disabilities affected major life activities, such as XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. OCR would need to ensure that these 504 plans were the final 504 plans that reflect the information discussed at the XXXX team meetings, rather than drafts prepared in advance of the team meetings.

Conclusion

Allegation 1 will be resolved with an Agreement that includes a provision that if Complainant 1 seeks to re-enroll Students 1 and 2 in the District, the District will hold a team meeting for each student in accordance with Section 504. The Agreement also requires the District to revise its Section 504 policies, especially with respect to evaluation and placement.

**Allegation 2: The Placement of Students 3 & 4**

Background

During the XXXX school year, Students 3 and 4 attended elementary school in the District. In XXXX, Complainant 2 removed Students 3 and 4 from school due to their XXXXXXXXXXXXXXXX and XXXXXXXXXXX and she requested homebound services. In XXXX, the District held 504 team meetings for Students 3 and 4.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (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 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.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and establish procedures to ensure that information obtained from all such sources is documented and carefully considered.

Analysis: Procedural Issues During the December 2015 Team Meetings

During the XXXX team meetings, the teams found Students 3 and 4 eligible under Section 504. However, Complainant 2 alleged that the teams did not discuss Student 3 and 4’s diagnoses or the doctors’ recommendations and that the teams failed to establish procedures to ensure that information obtained from all such sources was documented and carefully considered.

Complainant 2 alleged that the team did not consider the reports that she provided to the District from doctors who evaluated the Students and the doctors’ recommendations that Students 3 and 4 XXXXXXXX due to their disabilities. However, the 504 plans the District provided to OCR reflect that the teams considered parent reports and doctors’ notes regarding the Students’ disabilities. OCR would need to conduct interviews of the team members to ascertain how this information was documented and considered by the teams during the XXXX team meetings.

Conclusion

Allegation 2 will be resolved with an Agreement that includes a provision that if Complainant 2 seeks to re-enroll Students 3 and 4 in the District, the District will hold a team meeting for each student in accordance with Section 504. The Agreement also requires the District to revise its Section 504 policies, especially with respect to evaluation and placement.

**Allegation 3: Retaliation Against Complainant 1**

Background

Complainant 1 protested the XXXXXX at the XXXXXX school that Students 1 and 2 attended. Complainant 1 believed that the XXXXXX issues in the XXXXXX school exacerbated Student 1 and Student 2’s disabling conditions. Complainant 1 alleged that in retaliation for her advocacy, the District removed her from XXXXXXXXXXXXXXXXXXXX mailing lists, threatened to XXXXX her for XXXXX at the XXXXXX school, and made widely publicized XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

In analyzing an individual’s claim of retaliation against a recipient, OCR analyzes whether: (1) the recipient knew the individual engaged in a protected activity;<sup>5</sup> (2) the individual experienced an adverse action caused by the recipient;<sup>6</sup> and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons) for taking the adverse action. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

#### Analysis: Alleged Retaliation

The District disputes that it retaliated against Complainant 1. OCR determined that Complainant 1 engaged in protected activities by her advocacy for Students 1 and 2, and that Complainant 1 experienced actions that could be considered adverse. OCR would need to conduct interviews with relevant District staff to determine whether the alleged adverse actions were caused by the District. If so, OCR would then need to determine whether there is evidence of a causal connection between the protected activity and the adverse actions, and if so whether the District identified a legitimate, non-retaliatory reason for taking the adverse action that Complainant 1 alleged, and if this reason was a pretext for retaliation.

#### Conclusion

Allegation 3 will be resolved with an Agreement that requires the District to revise its Section 504 policies to include a statement prohibiting retaliation.

#### **Allegation 4: Grievance Procedures**

##### Background

Complainant 1 alleged that the District did not have grievance procedures, as required by Section 504 and Title II.

##### Legal Standards

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<sup>5</sup> A “protected activity” is the exercise of a right that is protected under OCR’s non-discrimination laws.

<sup>6</sup> An adverse action is something that could deter a reasonable person from engaging in further protected activity.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires that districts that employ 15 or more people adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public school districts that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

#### Analysis: Grievance Procedures

The District provided OCR with a copy of its 504 Procedural Safeguards, which explains that “a local grievance [can be filed] with the designated Section 504 Coordinator to resolve complaints of discrimination other than those involving the identification, evaluation or placement of your child” and provides the name, title, and contact information for the District’s former Section 504 Coordinator. The 504 Procedural Safeguards do not include the District’s 504 grievance procedures.

The District also provided OCR with a copy of its “Non-Discrimination (Students)” policy and administrative regulation, which prohibit discrimination based on disability and other protected classes. The accompanying administrative regulation explain that that “[i]f the complaint involves an allegation of discrimination based on disability . . . the complainant should be referred to the board’s student policies and procedures related to Section 504 of the Rehabilitation Act/Americans with Disabilities Act (ADA) (for claims of discrimination and/or harassment based on disability). The cross-references listed in the administrative regulation are to the District’s civility, hazing, and bullying prevention and intervention policies. The District did not provide OCR with copies of those policies.

Finally, the District also provided OCR with a copy its “Statement of Non-Discrimination” regulation (R-2050). The regulation prohibits discrimination based on disability and other protected classes. This regulation provides procedures for reporting complaints to the District’s “Compliance Coordinator.” It is unclear whether this regulation provides the grievance procedures that would be followed for claims of discrimination and/or harassment based on disability.

OCR would need to conduct interviews of District staff to determine whether any of the above materials, or any materials not provided, would comply with the grievance procedure requirements of Section 504/Title II.

#### Conclusion

Allegation 4 will be resolved with an Agreement that requires the District to revise and/or develop Section 504 grievance procedures (or include a cross-reference thereto).

#### Conclusion

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving these complaints and OCR

determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in these complaints. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of these complaints. 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 these individual OCR cases. 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 Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Complainant 2 has a right to appeal OCR's determination regarding the systemic aspect of Allegation 2 within 60 calendar days of the date indicated on this letter. In the appeal, Complainant 2 must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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.

If you have any questions, you may contact Civil Rights Attorney Amy Fabiano at (617) 289-0007 or by e-mail at Amy.Fabiano@ed.gov.

Sincerely,

Emma Kim  
Acting Compliance Team Leader

Enclosure

cc: Leander Dolphin, LDolphin@goodwin.com