



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

May 25, 2017

Dr. Kate Carter, Superintendent  
South Windsor Public Schools  
1737 Main Street  
South Windsor, CT 06074

Re: OCR Case No. 01-16-1188  
South Windsor Public Schools

Dear Superintendent Carter:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against South Windsor Public Schools (District). The Complainant alleged that during the 2015-2016 school year, the District discriminated against her daughter (Student) based on disability by failing to appropriately implement her Individualized Education Program (IEP) and/or Individualized Health Care Plan (IHCP) with respect to XXXXX, drinking fluids, and resting/breaks (Allegation 1). The Complainant also alleged that the District retaliated against her for her advocacy on behalf of the Student by requiring the Student to participate in XXXXXXXXX on or about XXXXXX, despite a knee injury (Allegation 2). As explained below, the District agreed to resolve Allegation 1 before OCR reached a compliance determination, pursuant to the enclosed voluntary resolution agreement (Agreement). Additionally, OCR determined that there was insufficient evidence of a violation regarding the Complainant's Allegation 2.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, 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 is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the U.S. Department of Education and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and Title II.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any

right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The regulation implementing Title II contains a similar provision at 28 C.F.R. § 35.134.

### **Allegation 1: Failure to Implement IEP/IHCP**

#### *Summary of Investigation To Date*

OCR reviewed documents provided by the District and the Complainant, including the District's Handbook on Special Education Services, the District's Specialized Healthcare Procedure Manual for School Nurses, the Student's IEP and IHCP, the Student's progress reports, all nursing logs for the 2015-2016 school year and correspondence between the District staff and Complainant regarding the Student. OCR also interviewed the Complainant and XXXXX. On March 17, 2017, prior to OCR obtaining additional information to complete its investigation, the District requested to engage in a voluntary resolution pursuant to Section 302 of OCR's *Case Processing Manual*.

#### *Legal Standards*

The regulation implementing Section 504, at 34 C.F.R § 104.33(a), provides that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation, at 34 C.F.R. § 104.33(b)(1)(i) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The regulation, at 34 C.F.R. § 104.33(b)(2), states that the implementation of an IEP is one means of meeting the standard set forth in 34 C.F.R. § 104.33(b)(1)(i). The implementing regulation for Title II explicitly states that it does not set a lesser standard than Section 504. Accordingly, OCR interprets Title II to impose the same FAPE obligations as those imposed by Section 504.

#### *Analysis*

OCR determined that the Student's IEP in effect during school year 2015-2016 did not address resting breaks and drinking fluids, but that the Student's IHCP contained provisions concerning these services.<sup>1</sup> The Student's IEP included specific goals regarding XXXX. The IHCP included several provisions with respect to "XXX" including "XXXXX XXXXXXXXXXXX" and "XXXXXXXXXXXXXX" and "XXXXXXXXXXXXXXXXXXXX." The IHCP also included several provisions with respect to "XXXXX" including "XXXXXXXXXXXXX" and "XXXXXXXXXXXXXXXXXXXXXXXXXXXX," among other provisions.

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<sup>1</sup> The Student's IEP dated January 8, 2016, notes as a recommendation to "[a]ttach XXXXXX plan to IEP."

[illegible]

OCR determined that the documentation provided by the Complainant, consisting of email correspondence with the District, suggests that she and the District had reached an understanding of how the provisions were to be implemented (e.g., use of a timer for drinking), but that there were deficiencies in the District's implementation of the IHCP provisions. Specifically, the email correspondence includes responses from the District that indicate the provisions were not being consistently implemented. OCR did not complete its assessment of this issue before the District requested to engage in a voluntary resolution pursuant to Section 302 of OCR's *Case Processing Manual*.

The District provided the Connecticut State Department of Education’s (CSDE’s) “Specialized Health Care Procedure Manual for School Nurses” (1997) (the Manual) in response to OCR’s request for the District’s policies/procedures governing IHCPs. OCR determined that the Manual provided by the District is outdated, since the CSDE has disseminated an updated version of the Manual.<sup>3</sup> The District did not provide any other written policies and procedures concerning the development and implementation of IHCPs. Through its investigation, OCR determined that relevant School staff had not received any formal training from the District on IHCPs, or policies/procedures used by the District regarding IHCPs.

## Resolution

Prior to OCR completing its investigation and making any findings regarding this allegation, the District agreed to address Allegation 1 by convening the Student's IEP Team to determine compensatory or remedial services for the Student to remedy the IEP and/or IHCP implementation issues that occurred in the 2015-2016 school year. The District also agreed to develop and implement a policy and procedure concerning the development and implementation of IHCPs, which will be reviewed and approved by OCR. Finally, the District agreed to conduct training for all of its administrators, certified special education staff, nurses, and any other District staff responsible for the development and implementation of IHCPs.

<sup>2</sup> The District did not provide a specific date of implementation for this Plan.

<sup>3</sup> OCR found that this document has been updated in the “Clinical Procedure Guidelines for Connecticut School Nurses” (2012), which is available at <http://www.sde.ct.gov/sde/cwp/view.asp?a=2663&q=334188>.

## **Allegation 2: Retaliation**

OCR investigated whether the District retaliated against the Complainant because of her advocacy on behalf of the Student, by requiring the Student to participate in XXXXXXXX class on or about XXXX X, XXXX, despite a knee injury.

### *Legal Standards*

The Section 504 regulation at 34 C.F.R. Part 104.61 incorporates by reference 34 C.F.R. Section 100.7(e) of the regulation implementing Title VI, which prohibits a district from intimidating, threatening, coercing or discriminating against any individual because she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under the laws enforced by OCR. The Title II regulation at 28 C.F.R. Section 35.134 similarly prohibits retaliation and discrimination by a district against individuals who opposed any act or practice made unlawful by Title II or because the individual participated in any manner in an investigation, proceeding or hearing under Title II.

The following three elements must be satisfied in order to establish a prima facie case of retaliation: (1) an individual experienced an adverse action caused by the District; (2) the District (a) knew that the individual engaged in a protected activity or (b) believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If OCR determines that any element is missing, OCR will conclude that there is insufficient evidence to support a finding of retaliation.

### *Analysis*

In its investigation, OCR interviewed the Complainant, reviewed documentation submitted by the Complainant and the District, and interviewed XXXXX. OCR made the following determinations.

The Complainant alleged that on XXXXX X XXXX, the Student fell on her knees at recess, drawing blood and causing her right knee to swell. The Complainant stated that XXXXX XXXXXXXXXXXXX offered an ice pack. The Complainant further stated that the Student requested not to go to XXXXX class, but to stay in the classroom and rest, and XXXXX told the Student that she had to participate in XXXXX. The Complainant stated that when she picked the Student up at the end of the day, immediately after XXXX class, the Student was complaining her knees hurt. The Complainant stated that she took the Student to the emergency room, where it was confirmed that the Student had bruised her knee, requiring “rest, compression, ice and elevation for 24 to 48 hours,” and the Student was instructed to stay home the following day and “XX.” The Complainant further stated XXX.

XXXXXX informed OCR that on XXX XX XXXX, the Student tripped over another student on the playground at recess, and fell on both knees. XXXX further stated that she was called to the playground where the Student was sitting on the ground XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XX  
XX  
XX  
XX  
XX  
XXXXX stated that the Student did not indicate that she did not want to attend XXXX, and she had no concerns about the Student participating in XXXX.<sup>4</sup>

OCR found that the evidence did not indicate that the District subjected the Student to an adverse action. An act is an adverse action if it is likely to dissuade a reasonable person in the Complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR. Based on the above, OCR determined that XXXXXXXX assessed the Student's needs and XXXXXXXXXXXX. OCR did not find any evidence to indicate that XXXXXX acted adversely in her response to the Student's injury. Specifically, OCR found credible the statements of XXXXXXXX that based on her evaluation of the Student's injury, XXXXXXXXXXXX, and that the Student did not ask to skip XXXX. OCR did not find any other evidence to corroborate the Complainant's assertion that XXXXXXXX denied the Student's request to rest instead of attending XXXXXXXX class. In addition, documentation from the XXX teacher shows that the Student participated in XXX and did not require rest time in class. Accordingly, OCR found there was no evidence of any action that was likely to dissuade a reasonable person in the Complainant's position from making or supporting a charge of discrimination or from otherwise exercising a right under the statutes or regulations enforced by OCR. Therefore, OCR concluded that the evidence is not sufficient to indicate that XXXXXXXXXXXX subjected the Student to an adverse action.

As indicated in the legal standards section above, if any one of the elements of retaliation cannot be established, OCR will find insufficient evidence of retaliation. Without finding an adverse action, OCR will not proceed to analyze the retaliation claim further. OCR concluded that there is insufficient evidence that the District retaliated against the Complainant by requiring the Student to XXXXXXXX XXX XXXXXX.

<sup>4</sup> OCR determined that District staff (including the Principal, Supervisor of Special Education, and XXXXX) met with the Complainant and her advocate on XXXXX, at the Complainant's request, regarding the incident. The Complainant's advocate summarized the outcome of the meeting in an email to District staff on XXXXX, stating that "the Student will be allowed to rest and/or not participate in XXXXXXXX if she complains that she is either tired or hurt," and to call the Complainant "[i]f there is a question as to whether or not to push [the Student]."

### ***Conclusion***

Before OCR reached a compliance determination with regard to Allegation 1, the District agreed to resolve it through the enclosed Agreement. OCR will monitor the District's implementation of the Agreement.

OCR did not find sufficient evidence to find a violation with respect to Allegation 2. Accordingly, OCR will take no further action with respect to Allegation 2 and has closed the complaint as of the date of this letter.

OCR's findings only address the specific allegations and legal issues identified in this complaint and do not pertain to the District's compliance with other aspects of Section 504, Title II, or any other laws enforced by OCR. This letter is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases, 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 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 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. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it 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.

If you have questions, please contact Colleen Robinson, Civil Rights Attorney, at (617) 289-0063 or [Colleen.Robinson@ed.gov](mailto:Colleen.Robinson@ed.gov).

Sincerely,

/s/ Diane M. Henson

Diane M. Henson  
Regional Director

Cc: Alyce Alfano, Esq.