



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

June 4, 2018

Erica M. Forti
eforti@east-haven.k12.ct.us

Re: Complaint No. 01-16-1208
East Haven Public Schools

Dear Superintendent Forti:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against East Haven Public Schools (District). The Complainant alleged that the District discriminated against her XXX (Student) based on XXX disability when, during the XXXX-XXXX school year, the District denied the Student a free appropriate public education (FAPE) by failing to reevaluate him when the Student's behavior indicated that he was experiencing difficulty accessing or benefiting from XXX educational program (Allegation 1); and from XXXXXXXX XXXX to the end of the XXXX-XXXX school year, the District did not provide the Student adequate homebound services during XXX XXX-day suspension (Allegation 2). As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint 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 programs and activities that receive 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. Because the District receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Relevant Facts

At the beginning of the XXXX-XXXX school year, the District evaluated the Student by reviewing XXX school records, grades, report cards, and the Complainant's feedback. To address XXX XXXXXXXX and XXXXXXXXXX XXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXX, the District provided the Student a Section 504 plan which included the following accommodations: repeat and simplify instructions about in-class and homework assignments; supplement important verbal instructions with visual aids; check for understanding; encourage use of an "XXXXXXXXXXXX XXX;" preferential seating at teacher's discretion; and contact the

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Complainant regarding tests and long-term assignments. The District’s data indicates that this Section 504 plan was utilized until it was amended in March 2016.

Alleged Failure to Reevaluate the Student

Correspondence provided by the District shows that the Student began the eighth grade at the XXXXXX XXXXXX School (School) at the beginning of the XXXX-XXXX school year. From the beginning of the school year to February 2016, the District disciplined the Student on eight occasions for misconduct, including for bringing a “XXXX XXX XXXXXXXX” to the School and engaging in disruptive behaviors during XXX classes.

On XXXXXXXX XX, XXXX and XXXXXXXX XX, XXXX, the Complainant asked the District to amend the Student’s Section 504 plan. On XXXXXXXX X, XXXX, the District asked the Student’s pediatrician for recent documentation about XXX medical conditions and whether he believed the Student required a Section 504 plan. The District’s data notes that the Student’s pediatrician said he was not currently treating or prescribing medication to the Student for an XXXXXXXX XXXXXXXXXX. On XXXXXXXX XX, XXXX, the District also asked the Student’s teachers to provide updates on the Student’s behavior and whether they thought he needed a Section 504 plan. Two teachers responded to the inquiry, saying that the Student was often late to class, behaved poorly, and disrupted their classes due to XXX lack of focus. One of the Student’s teachers felt that the Student did not need a Section 504 plan, and both believed the Student had the ability to focus when he desired. The District’s data does not indicate that it convened a Section 504 team meeting to determine whether it should reevaluate the Student or amend XXX Section 504 plan.

Correspondence provided by the District indicates that on XXXXX X, XXXX, the District amended the Student’s Section 504 plan without a meeting after obtaining the Complainant’s consent. The District revised the Section 504 plan to include the following statements: the Student’s XXXXXXXX diagnosis was made “by XXXX School of Medicine on XXX X, XXXX;” XXX “[c]ore academic teachers report that they do not see signs of XXXXXXXX;” and one of the Student’s teachers felt that he appeared unsettled. On XXXXX X, XXXX, the Complainant revoked her consent for the District to amend the Student’s Section 504 plan. The District’s data does not show whether it continued to implement the amended Section 504 plan.

Alleged Failure to Provide Homebound Instruction Designed to Meet the Student’s Individual Educational Needs

On XXXXXXXX XX, XXXX, the District disciplined the Student for engaging in conduct classified under the following discipline codes: pornography; sexual harassment; improper cell phone use; and disruption of the education process. The Student admitted that, along with two other students, he XXXXXXXXXXXX a XXXXXXXX XXXXXXXXXX XXXXXXXXXX using the XXXXXXXX and disseminated the recording. The District suspended the Student for ten days and recommended XXX expulsion. The District conducted a manifestation determination proceeding on XXXXXXXX XX, XXXX, and determined that the Student’s misconduct had no direct or substantial relationship to XXX disability. The District then imposed an expulsion to last until XXXXXXXX XX, XXXX.

Correspondence provided by the District reveals that beginning on XXXXX XX, XXXX, the District provided the Student XXX hours per week of homebound instruction during XXX expulsion. The District's data does not indicate whether it determined whether the homebound instruction provided to the Student would meet XXX individual educational needs as adequately as the needs of students without disabilities are met.

Legal Standard

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 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.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. 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 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

Based on the above, the evidence obtained to date raises concerns over whether the District (i) reevaluated the Student when he may have needed or was believed to need special education or related services due to XXX disability; (ii) convened a team meeting to determine whether the Student's placement remained appropriate despite XXX behavior during the XXXX-XXXX school year; and (iii) provided homebound instruction to the Student without having determined whether it was designed to meet XXX individual educational needs as adequately as the needs of students without disabilities are met and in a manner so as to comply with Section 504's procedural requirements. Because the District requested a voluntary resolution agreement, OCR has not completed its investigation or made a compliance determination. To complete the investigation, OCR would need, at minimum, to interview the Director of Pupil Services, School Counselor, and Homebound Coordinator, and conduct a supplemental interview of the Complainant. These interviews would allow OCR to determine whether the District should have convened a Section 504 team meeting to determine whether to reevaluate the Student or

otherwise determine whether the Student’s placement remained appropriate, and whether the District provided the Student homebound instruction designed to meet XXX individual educational needs as adequately as the needs of students without disabilities are met.

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 this complaint. 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 the complaint. OCR will monitor the District’s implementation of the Agreement.

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.

If you have any questions, you may contact Civil Rights Attorney Abra Francois at (617) 289-0142 or by e-mail at Abra.Francois@ed.gov.

Sincerely,

Adrienne M. Mundy-Shephard
Acting Regional Director

Enclosure

cc: Robert E. Swan, Director of Pupil Services
rswan@east-haven.k12.ct.us