



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 18, 2019

Steven Rioux  
Superintendent  
By email: [srioux@killinglyschools.org](mailto:srioux@killinglyschools.org)

Re: Complaint No. 01-19-1153  
Killingly Public Schools

Dear Superintendent Rioux:

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 Killingly Public Schools (District). The Complainant alleges that the District discriminated against her son (Student) on the basis of disability by taking over six months to provide the Student with a personal FM/DM System for his hearing impairment. 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 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. 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.

OCR opened the following legal issues for investigation:

- whether the District failed to implement provisions of the Student's plan, when it took over six months to provide the Student with an FM/DM System, and whether doing so denied the Student a free appropriate public education (FAPE), in violation of 34 C.F.R. Sections 104.33(a) and (b), and 28 C.F.R. Section 35.130; and
- whether the District failed to provide the Student with appropriate auxiliary aids and services for effective communication, in violation of 28 C.F.R. § 35.160.

#### Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant. Before OCR completed its investigation, the District expressed a willingness to voluntarily resolve the complaint on August 31, 2019.

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

*Background*

During the 2018-2019 school year, the Student attended kindergarten at the District. At a Section 504 meeting on June 11, 2018, the District found the Student eligible, for related aids and services based on hearing loss, which at that time did not include a personal FM/DM system. The Student subsequently had an audiology evaluation at the XXX XXXXXXXX XXXXXXXX XXX XXXXXXXX XXXXXXXXXXXXXXXXXXXX (XXXXXXX)<sup>1</sup> on July 30 and August 9, 2018, which recommended, in part, a trial period with a personal FM system.

At a Section 504 meeting on October 11, 2018, the team discussed the request by the Student’s parents for a personal FM system. The comments from the Section 504 meeting state that based on XXXXXXXXXX evaluation, “the team would like to trial the use of a FM unit for one month,” then “reconvene to discuss the impact that the personal FM unit had on [the Student’s] success within the classroom.”<sup>2</sup> According to comments from a subsequent Section 504 meeting on October 17, 2018, XXXXXXXX sent a letter to the District dated October 15, 2018, recommending that the Student be fit with personal hearing aids. The meeting comments also state that XXXXXXXX, the Student’s parents, and District personnel “have all agreed that Killingly District will place the trial of a personal FM system on hold” and “[a]t a later date, the team will decide if and when the FM system is needed.” The Complainant disputed that she agreed to place the personal FM system on hold, however, and asserted that the comments contradict what she and the XXXXXXXXXXXXX recalled from the meeting.<sup>3</sup>

XXXXXXX fitted the Student’s hearing aids in late October 2018. According to the District, XXXXXXXX confirmed that the trial with the hearing aids was “deemed successful,” via an email dated November 7, 2018. Although the District requested on November 15, 2018 that XXXXXXXX provide an updated audiological report and audiogram, they were never provided.

Although it is undisputed that the District provided an FM/DM system, the parties disagree when, and how long, a functional system was in use. According to the District, on November 29, 2018, its XXXXXXXX XXX XXX XXXX spoke with the Student’s classroom teacher regarding the FM/DM system trial. The District further stated it fitted the Student’s FM/DM system on December 10, 2018, with guidance from the Capitol Regional Education Council (CREC)<sup>4</sup> XXXXXXXXXXXXX, after which the Student’s classroom teacher received training on the system. The District stated that the Student’s FM/DM system was “functioning well” through December 20, 2018, with the exception of a torn tube that XXXXXXXX replaced at the District’s expense.

XXXXXXX tested the Student’s FM/DM system on January 24, 2019, and found that “it was not in optimal working condition” because “[t]here was corrosion observed on the pins of both

---

<sup>1</sup> XXXXXXXX is a rehabilitation facility offering home, clinic and school-based services to individuals with hearing loss.

<sup>2</sup> The Section 504 plan also provided for continued access to a classroom assistive listening system such as Juneau.

<sup>3</sup> The Complainant also asserted that the District’s XXXXXXXXXXXXX told her on March 6, 2019, that the District did not need to order the personal FM/DM system because they already had one at school.

<sup>4</sup> CREC is one of six Regional Educational Service Centers (RESC) established under Connecticut General Statute 10-66 a-n, which permits local boards of education to establish an RESC as a “public educational authority” for the purpose of “cooperative action to furnish programs and services.” CREC is supported by local, state, federal and private funds. See <http://www.crec.org/about/index.php> (last accessed October 16, 2019).

receivers” and “[t]his information was shared with [the Student’s] educational team.” The District stated that the CREC XXXXXXXXXXXX replaced the FM/DM system with loaner equipment on February 5, 2019, and ordered new equipment because the original equipment could not be updated due to changes in technology. The District further stated that on February 20, 2019, the Student’s new FM/DM system was implemented and set to XXXXXXXX specifications, after CREC tested it with in-house hearing aids to verify functionality.

The Complainant disputed this. She informed OCR that on February 20, 2019, she received an email from the Student’s classroom teacher stating that the District had the new FM/DM system and that she should schedule a time for XXXXXXXX to test it. XXXXXXXX informed her that the District had to request the testing, however, because it was responsible for the cost. The Complainant asserted that as of March 5, 2019, the District had not yet requested the testing, and that CREC had sent an email to the District “encouraging” them to do the testing. The Student’s XXXXXXXX evaluation dated March 14, 2019, stated that: (1) the Student had been “recently fit” with a personal FM/DM system at school; (2) the District had requested testing with the new equipment; and (3) the evaluation showed that the Student’s hearing aids and FM/DM system were in “good working condition.”

### *Legal Standard*

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. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. 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 investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student’s plan or as otherwise agreed to by the student’s team. If OCR finds that a district has not implemented a student’s plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the district to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

In addition to the requirement to provide FAPE, the Title II regulation, at 28 C.F.R. § 35.160, further requires school districts to ensure that communication with students with hearing, vision, or speech disabilities is as effective as communication with students without disabilities. To do this, school districts must provide appropriate auxiliary aids and services where necessary to provide effective communication so that students with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the district. Title II requires public schools to give primary consideration to the auxiliary aid or service requested by the student with the disability when determining what is appropriate for that

student. A school district is not required to provide a particular auxiliary aid or service if the district can demonstrate that doing so would fundamentally alter the nature of a service, program, or activity, or that it would be an undue financial and administrative burden. However, the district still has an obligation to provide an effective auxiliary aid or service to the maximum extent possible.

School districts must apply both a FAPE analysis and the Title II effective communication analysis in determining how to meet the communication needs of a student with a hearing, vision, or speech disability. In some cases, in order to comply with Title II's effective communication requirement, a district may have to provide the student with aids or services that are not required for the student to receive FAPE.

### *Analysis*

Based on the evidence obtained to date, OCR was unable to conclude whether the District met its obligation to provide the Student with a personal FM/DM system pursuant to his Section 504 plan and whether it provided appropriate auxiliary aids and services for effective communication. Specifically, OCR has not reached a determination regarding the Complainant's assertion that she did not agree to place the FM/DM system "on hold" in October 2018, nor does the evidence obtained to date establish the reason(s) why the District subsequently proceeded to provide the Student with the FM/DM system in early December 2018. In addition, while the District asserts that the FM/DM system was functioning well after it was fitted to the Student, the evidence obtained to date does not indicate how the District was assessing the effectiveness of the system prior to the testing by XXXXXXXX on January 24, 2019, at which point NECHEAR determined the system was not functioning optimally.

In addition, while the District informed OCR that it obtained and implemented a loaner FM/DM system in early February 2019 followed by a replacement system in late February 2019, the Complainant asserted that the FM/DM system was not appropriately implemented and tested until April 2019. While the evidence obtained to date demonstrates that XXXXXXXX had tested the FM/DM system and found it to be operating effectively as of mid-March 2019, the evidence is not conclusive as to whether the Student was provided with an effective FM/DM system prior to that time. Based on the above, OCR has not yet reached a determination regarding whether the District provided the Student with a fully functional/tested FM/DM system in a timely manner in accordance with his Section 504 plan.

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 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 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.

Sincerely,

Meighan A.F. McCrea  
Compliance Team Leader

Enclosure

cc: Rebecca Rudnick Santiago, Esq. (XXXXXXXXXXXXXXXXXXXXXXXXXX)