



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

July 1, 2021

Neil C. Cavallaro, Superintendent
By email: neil.cavallaro@whschools.org

Re: Complaint No. 01-21-1072
West Haven Board of Education

Dear Superintendent Cavallaro:

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 West Haven Board of Education. The Complainant alleges that the District discriminated against her children on the basis of disability. Specifically, the complaint alleges that the District has not conducted a XXXX XXXX evaluation which the Students' 504 Teams recommended on or about XXXX. 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.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, 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, 42 U.S.C. Section 12131 *et seq.*, 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 U.S. Department of Education. Because the District receives federal financial assistance and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the District. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint on May 7, 2021.

Background

The Complainant's XXXX (Student 1 and Student 2) have been diagnosed by their physicians as having "XXXX XXXX XXXX XXXX XXXX." During the 2020-2021 school year, Student 1 was a XXXX XXXX XXXX and Student 2 was a XXXX. The District held a Section 504 meeting on XXXX, for the Students. According to the meeting notes, the Complainant related that her concern was the impact of XXXX, including XXXX, that she believed exacerbated the Students' XXXX XXXX XXXX XXXX XXXX XXXX. In addition, the notes indicate that the District had on several past occasions asked the Complainant for permission to speak with the

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Students’ physician to better understand their diagnoses, but that the Complainant had refused to provide consent. The meeting notes further indicate that the District’s counsel explained that while the Students’ XXXX were physical impairments, the District needed to determine whether those impairments were a substantial limitation on the major life activity of XXXX or another major life activity, prior to considering what services, if any, were needed. In the absence of consent from the Complainant to consult with the Students’ physician, the meeting concluded with the team recommending an evaluation by a XXXX XXXX XXXX XXXX.

Due to the COVID-19 pandemic, the District offered students the option of XXXX XXXX XXXX XXXX. The Complainant exercised that option for both Students on XXXX. On XXXX, the Complainant signed the District’s “Notice of Evaluation under Section 504,” giving consent for evaluations by a “XXXX XXXX XXXX XXXX XXXX” for both Students. The forms appear to have been e-mailed to the District by the Complainant on XXXX.

The District acknowledges that it has not yet conducted the evaluations. As reason for the delay, the District cites the demands and stressors of the pandemic. More specifically, the District explained that the Nursing Supervisor has had to contend with myriad and unique public health responsibilities during the public health emergency, including addressing positive cases of COVID-19, quarantining protocols, contact tracing, and securing vaccinations for school personnel, and thus had to prioritize and use a triage approach. Given the Students had XXXX XXXX XXXX XXXX and were thus not XXXX XXXX XXXX that the Complainant claimed was XXXX XXXX XXXX XXXX, and that “there was no ongoing request for accommodations,” the District told OCR that “this matter was set to a lower priority status than it might otherwise have been, had the Students been XXXX XXXX XXXX with an ongoing request for accommodations.” According to the District, after providing consent for the evaluations in XXXX the Complainant did not raise the issue of the evaluations again until XXXX XXXX, when she expressed interest in pursuing a waiver for the Students to participate in their school’s XXXX XXXX.¹

Documents provided by the District support that the District has been taking steps to schedule the outside evaluations of the Students since XXXX XXXX.² Student 2 returned to XXXX XXXX for approximately three weeks during XXXX XXXX, after which the Complainant XXXX XXXX XXXX. Student 2 XXXX from the District on or around XXXX XXXX. Documents provided by the District indicate that Student 1 is now scheduled to be evaluated on or around XXXX XXXX.

Allegation 1:

Whether the District failed to evaluate the Students who, because of disability, needed or were believed to need special education or related services, before taking any action with respect to the initial placement of the Students in regular or special education, in violation of 34 C.F.R. Section 104.35(a) and 28 C.F.R. Section 35.130.

¹ During the XXXX-XXXX school year, District policy allowed only students who XXXX XXXX XXXX XXXX XXXX XXXX.

² The District also appears to have taken initial steps in XXXX XXXX.

Legal Standard

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 a student in regular or special education and before any subsequent significant change in placement.

Analysis

It is undisputed that the District recommended the Students be evaluated by a XXXX XXXX XXXX XXXX XXXX in XXXX XXXX; that the Complainant provided consent for the evaluations in XXXX XXXX; and that the evaluations have not yet occurred. While OCR does not seek to understate the demands the global pandemic placed on District staff, and OCR recognizes that the Students were XXXX XXXX XXXX XXX that is alleged to be the cause of their XXXX in the interim,³ OCR nevertheless has concerns at the length of time it has taken for the evaluations to occur.

That said, Student 2 has XXXX. As discussed, because he engaged XXXX XXXX for nearly the entirety of the academic year, Student 2 was XXXX XXXX XXXX XXXX during the period of delay, and the District does not have an obligation to provide him a free appropriate public education going forward. Accordingly, OCR is dismissing the complaint as it relates to Student 2 pursuant to Section 108(s) of the *Case Processing Manual* because it is moot.

Conclusion/Resolution

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. OCR would like to make you aware that individuals who file complaints with OCR 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.

³ OCR recognizes the brief period Student 2 XXXX XXXX XXXX XXXX.

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,

/s/ Michelle Kalka

Michelle Kalka
Compliance Team Leader

Enclosure

cc: mlaubin@berchemmoses.com