

Ms. Maryanne Perry
Superintendent
Marblehead Public Schools
9 Widger Road
Marblehead, Massachusetts 01945

Re: Complaint No. 01-14-1269
Marblehead Public Schools

Dear Superintendent Perry:

This letter is to inform you that the U.S. Department of Education's (Department) Office for Civil Rights (OCR) is closing its investigation of the above-referenced complaint that was filed against the Marblehead Public Schools (District). The Complainant alleged that the District discriminated against a student (Student) on the basis of disability when the District required students with disabilities, including the Student, to travel to the Marblehead High School's (School) senior prom on a different bus than their non-disabled peers. The Complainant further alleged that although a parent had raised concerns about the alleged discriminatory nature of this action, the District failed to respond to her disability-related grievance.

OCR began an investigation of this complaint under our enforcement authority pursuant to Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination on the basis of disability. The District is subject to Section 504 and Title II because it is a recipient of Federal financial assistance from the Department, and because it is a public entity operating an educational school system, respectively.

Specifically, OCR opened the following two issues for investigation:

- 1) Whether the District discriminated against the Student, and other students with disabilities, by isolating them from their non-disabled peers during non-academic activities, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.34(b), and the Title II implementing regulation at 28 C.F.R. § 35.130(a); and
- 2) Whether the District failed to provide a prompt and equitable response to a parent's disability-related grievance, contrary to the requirements set forth at 34 C.F.R. Section 104.7(b), and 28 C.F.R. Section 35.107(b).

After the District provided documents in response to OCR's requests, but before OCR interviewed staff and completed its investigation, the District offered to resolve the allegations by taking the steps in the enclosed Agreement.

Legal Standards

Under the Department's Section 504 regulations, a school district is required to provide a qualified student with a disability an opportunity to benefit from the school district's program and activities that is equal to that of students without disabilities. Specifically, at 34 C.F.R. Section 104.34(b), the Section 504 regulation states that when school districts are providing, or arranging for the provision of, nonacademic services for students with disabilities, they must ensure that such students participate with students without disabilities to the maximum extent appropriate to the needs of each student with a disability. Thus, the provision of *unnecessarily* separate or different services can be discriminatory.

The regulations implementing Section 504 at 34 C.F.R. Section 104.7(b) and Title II at 28 C.F.R. Section 35.107(b), further require that covered entities adopt and implement grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by their respective provisions.

Whenever a covered entity has notice of possible discrimination based on disability, it has a responsibility – whether or not the person who was discriminated against makes a complaint or otherwise asks the covered entity to act – to take immediate and appropriate action. This action should consist of steps to investigate or otherwise determine what occurred, adequately, reliably, and impartially, including providing an opportunity to present witnesses and other evidence. Additionally, the response should include prompt and effective measures reasonably calculated to end any discrimination, eliminate a discriminatory environment if one has been created, and prevent discrimination from occurring again.

Preliminary Investigation

The complaint asserted that the Student, who has significant disabilities but does not require any transportation accommodations, was segregated with all of the other students with disabilities, onto one bus (Bus H) for the prom.

The parent raised concerns that students with disabilities were being segregated from their non-disabled peers, to the Principal and Assistant Principal on Friday, May 30, 2014, as students were getting on the busses for the prom. They responded that it was not the appropriate time to address the issues she was raising, but she could contact the School's main office on the following Monday to do so.

On Monday, XXXXXX, 2014, the parent emailed the Superintendent, cc'ing the Principal, raising concerns that students with disabilities had been singled out and segregated onto one bus for the prom. The Principal, who is the High School's Building 504 Coordinator, responded immediately, via email, also cc'ing the Superintendent. He wrote that students with disabilities were enabled to participate in the prom as fully as they chose, including with the provision of IEP accommodations.

The Complainant sent a second email to the Superintendent on XXXXXXXX, noting that the Principal's response was not satisfactory because segregating students because of their disabilities was not appropriate and violates the "least restrictive requirement" obligation of Section 504.

Shortly thereafter, the Superintendent notified the District's Section 504 Coordinator (504 Coordinator) of the parent's concerns. By XXXXXXXX, the 504 Coordinator had investigated the concerns by speaking with the Special Education Teacher. She told him that all students, including those with disabilities, were assigned to busses based on when they had purchased their prom tickets. Students in her Life Skills Program (a substantially separate special education program), did end up on Bus H together- because they had purchased their tickets together, when she prompted them about buying tickets. Since they were among the last students to purchase tickets, they were assigned to the last bus, along with students who do not have disabilities, as well as the Student, who, the District confirmed, also purchased her ticket around that same time.

The 504 Coordinator then called the parent to report his findings and explained the bus assignment process. While she appreciated the information, she expressed that steps should be taken to change the bus assignment process so that students with disabilities were not singled out. The Superintendent followed up by email, stating that she and the 504 Coordinator would be raising the bus assignment process at an administrative meeting.

Resolution

While it appears that the bus assignments may have been made pursuant to a non-discriminatory policy of assigning students as they purchased tickets, OCR discussed with the District its obligation to ensure that such a policy did not result in students actually being segregated from their non-disabled peers in a manner contrary to the requirements of Section 504/Title II. The District noted that the Complainant's concerns had already led the District to consider revamping its process for assigning students to busses. The District expressed interest in doing so in a manner that would ensure that students with disabilities were integrated throughout the busses as much as possible, consistent with their individual needs.

OCR also shared with the District that, although the District appeared to have promptly responded to, and investigated, the parent's complaint of possible disability discrimination, it would have been appropriate to provide an opportunity for the parent to provide information before the conclusion of the investigation, consistent with the requirements of Section 504/Title II and the District's Discrimination and Harassment Grievance Procedures (Grievance Procedures), which OCR reviewed. OCR also discussed with the District the need to consider discriminatory impact, as well as intent, when considering whether a policy or practice discriminates against individuals with disabilities.

Finally, OCR discussed with the District the Principal's response to the parent (since the Principal is the Building 504 Coordinator). That is, the Principal responded that students with disabilities were able to fully participate in the prom, including by having IEP accommodations provided as needed. The parent appeared to be raising a different issue, however, that is, whether students with disabilities had been inappropriately segregated while they participated in the prom

(including its transportation). The District offered to provide training for its District and building 504 Coordinators, on disability discrimination investigations and on the District's obligations to provide non-academic programs and services in an integrated setting for students with disabilities.

If you have any question about our investigation or this letter, please contact Civil Rights Investigator, Diana Otto, at (617) 289-0073, or by email at: Diana.Otto@ed.gov; or Civil Rights Attorney Meighan McCrea, at (617) 289-0052, or by email at: Meighan.McCrea@ed.gov. You may also contact me by telephone at (617)-289-0120.

Sincerely,

Allen L. Kropp
Team Leader/Civil Rights Attorney

Enclosure

Cc: Attorney Matthew MacAvoy