

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921



Mr. Timothy Piwowar
Superintendent
Billerica Public Schools
365 Boston Road
Billerica, Massachusetts 01821

Re: Complaint No. 01-13-1212
Billerica Public Schools

Dear Superintendent Piwowar:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), is closing the above referenced complaint that was filed against the Billerica Public Schools (District) on June 12, 2013, alleging disability discrimination. Specifically, the Complainant alleged that, although many of her daughter's (Student) absences during the 2012-13 school year were disability-related, and despite the fact that the Complainant provided medical notes to that effect, the District did not consider the Student's eligibility for necessary accommodations according to Section 504. Instead, the Complainant alleged, the District did not let the Student take her final exams and notified the Student that she would have to repeat the 10th grade because of the absences.

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

During the course of the investigation, and before OCR reached a compliance determination with regard to the Complainant's allegations, the District expressed an interest in voluntarily resolving the complaint. Based on OCR's discussions with you and with the Complainant, the District agreed to take certain steps, memorialized in the enclosed Voluntary Resolution Agreement (Agreement), to resolve the complaint, including:

- Providing Section 504/Title II training to all relevant staff specifically focused on eligibility criteria, circumstances that trigger the District's obligation to conduct an evaluation under Section 504/Title II, the role of evaluations and medical documentation in the Section 504 process, and other requirements related to providing a free appropriate public education to students with disabilities;

- Developing and disseminating a notice to all parents/guardians informing them of the District's obligations under Section 504/Title II, including eligibility criteria and contact information for the District's Section 504/Title II Coordinator; and
- Reviewing and, if necessary, revising its Attendance Policy to ensure that, prior to disciplining a student for excessive absenteeism, the District considers whether a student's absences were properly documented medical absences, whether these absences suggest that the student(s) may have a disability, and to ensure that students are not penalized for disability-related absences.

In addition to the above steps, the District has agreed to provide documentation from the September 30, 2013 Section 504 Team meeting indicating the Team's decision with regard to whether the Student will be provided any compensatory services for her documented medical/disability-related absences during the 2012-2013 school year.

OCR has determined that the terms of the Agreement address the underlying allegations in this case, and are also consistent with the requirements of Section 504 and Title II. Accordingly, OCR is closing this investigation as of the date of this letter.

As memorialized in the Agreement, OCR will monitor the District's compliance with the agreed-upon terms. OCR will close the monitoring of this matter, and will so notify the parties in writing, once it determines that the District has satisfied the terms of the Agreement. The District has agreed to provide OCR with monitoring reports demonstrating that it has implemented the provisions of the Agreement.

The information in this letter is not intended, and should not be construed, to cover any other issues regarding compliance with Section 504/Title II that may exist but are not discussed herein. Please also be advised that complainants may have the right to file a private suit in Federal court on these issues, whether or not OCR found a violation.

We wish to thank you for your assistance throughout our investigation. If you have any questions regarding this letter, you may contact Civil Rights Attorney Meighan McCrea, by telephone at (617) 289-0052, or via e-mail at: Meighan.McCrea@ed.gov, or Civil Rights Investigator Diana Otto by telephone at (617) 289-0073, or via e-mail at: Diana.Otto@ed.gov. You may also contact me directly at (617) 289-0040.

Sincerely,

_____/s/_____

Nicole M. Merhill
Interim Acting Compliance Team Leader/
Civil Rights Attorney

Enclosure