



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I

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

DEC 24 2013

Ms. Kathleen Murphy  
Superintendent  
School Administrative Unit 90 - Hampton Public Schools  
Six Marston Way  
Hampton, New Hampshire 03842

Re: Complaint No. 01-13-1280

Dear Ms. Murphy:

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 Hampton Public School District, SAU 90 (District) on behalf of a Student attending XXXXXXXXXXXXXXXXXXXX (School). The Complainant alleged that the Student was discriminated against when he was required to pay an additional cost for his gluten-free school lunch, thereby denying the Student a free appropriate public education (FAPE) as required by law. OCR is closing this complaint because, prior to OCR completing its investigation, the District entered into a voluntary resolution agreement (Agreement) that resolves the complaint allegation. A copy of the Agreement is enclosed.

OCR enforces 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). Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance from the Department. Title II prohibits discrimination on the basis of disability by public entities operating school systems. The District is subject to the provisions of Section 504 because it is a recipient of Federal financial assistance from the Department, and it is subject to the requirements of Title II because it is a public entity operating an elementary and secondary school system.

Based on the allegation, OCR accepted for investigation the following legal issue:

- Whether the District discriminated against the Student on the basis of disability by charging him additional costs for his school lunch, in violation of 34 C.F.R. Section 104.4 and 104.33 (c).

After OCR's initial contact to the District and prior to OCR completing its investigation of the allegations presented in this complaint, the District offered to resolve this complaint voluntarily, as is permitted in Section 302 of OCR's Complaint Processing Manual. After negotiating with OCR, the District agreed to take a number of steps to resolve the allegations. These steps are set out in the Agreement, signed by you on December 20, 2013, and include commitments by the District to reimburse 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 for all expenses she paid to the District for gluten-free food for the Student that exceeded the normal cost of food for other students. The District also agreed not to charge any additional costs to the Complainant or any other family for gluten-free food that is required by a student's Section 504 Plan or Individualized Education Program (IEP).

OCR finds that the resolution offered by the District is aligned with the Complainant's allegation and with information obtained by OCR. In addition, the resolution offered is consistent with Section 504 and Title II. Accordingly, we are closing this investigation as of the date of this letter. Although OCR would normally monitor the District's implementation of the Agreement, in this instance, OCR has already received a copy of the accounting indicating that the Complainant's account has been credited for the additional amount that she was charged for gluten-free food (\$17.50). Because we have determined that the District has satisfied the terms of the Agreement, OCR is closing the monitoring of this matter, effective the date of this letter as well.

The matters addressed in this letter are not intended and should not be construed to cover any other issues regarding the District's compliance with the regulations implementing Section 504, Title II, or the other laws enforced by OCR, which may exist but are not discussed here. This letter is a resolution letter issued by OCR to address an individual OCR case. Resolution letters contain fact-specific investigative findings and dispositions of individual cases. Resolution letters are not formal statements of OCR policy and they 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.

Please note that the Complainant may have the right to file a private lawsuit regarding the matters raised in this case, whether or not OCR identified compliance concerns. Also, 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, OCR will seek to protect all personal information to the extent provided by law that, if released, could constitute an unwarranted invasion of privacy.

OCR would like to thank you for your assistance in resolving this issue. If you have any questions or concerns about the information contained in this letter, please feel free to contact Eric Olick, Senior Civil Rights Attorney at (617) 289-0021, or via email at [Eric.Olick@ed.gov](mailto:Eric.Olick@ed.gov). You may also contact me directly at (617) 289-0040.

Sincerely,

/s/ Nicole Merhill  
Acting Compliance Team Leader/Civil Rights  
Attorney

Enclosure