

Dr. Sheldon H. Berman
Superintendent
Andover Public Schools
36R Bartlet Street
Andover, Massachusetts 01810

Re: Complaint No. 01-14-1138
Andover Public Schools

Dear Superintendent Berman:

The U.S. Department of Education, Office for Civil Rights (OCR) is closing its investigation of the above-referenced complaint filed against Andover Public Schools (District). The Complainant alleged that the District discriminated against XXX XXX (the Student), on the basis of disability, while enrolled at XXXXXXXX XXXX School (the School). Specifically, the Complainant alleged that the District denied the Student a free appropriate public education (FAPE), by failing to implement XXX Section 504 Plan during school year 2013-2014. As explained below, OCR is closing the investigation of this complaint because the District requested to resolve this complaint prior to the completion of OCR's investigation by entering into the enclosed Resolution Agreement.

OCR accepted this complaint for investigation under the jurisdiction of Section 504 of the Rehabilitation Act of 1973, and its implementing regulation found at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, and its implementing regulation at 28 C.F.R. Part 35 (Title II). Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is subject to the requirements of Section 504 and Title II because it is a recipient of financial assistance from the Department and is a public elementary and secondary educational system.

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance from the Department. The implementing

regulation at 34 C.F.R. § 104.33(a) provides that a recipient that operates a public elementary education program or activity shall provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The implementing regulation at 34 C.F.R. § 104.33(b) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35 and 104.36. Title II regulations are interpreted consistently with the above.

OCR determined that during the time period relevant to the complaint, the Student's Section 504 plan, dated XXXXXXXX XX, 2013, required: preferential seating near the focal point of instruction; prompts and/or cues to help [the Student] stay focused; extra time for tests, quizzes and standardized testing; communication with parents on a regular basis; after-school time with all teachers on a regular basis to check and receive support with organization and completion; and use of a planner. OCR further determined that the Student's Section 504 Plan dated XXXXXX XX, 2014, required: "communication with parents on a regular basis, especially if the [Student's] grade drops to 82.5 (B) or if he is not completing assignments, is doing poorly on tests or is not performing well"; preferential seating near the focal point of instruction; prompts and/or cues to help [the Student] stay focused; extra time up to 50% for test, quizzes, and standardized testing; after-school time with all teachers on a regular basis to check and receive support with organization and completion of his work; that teachers must ask the student to write his homework, testing, and projects in the planner daily; and that [the Student] should be encouraged to use active reading strategies, such as close reading notes, highlighting main ideas or any important information.

On October 26, 2015, the District expressed a desire to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.¹ Therefore, OCR did not proceed to conduct a full investigation and negotiated the attached Resolution Agreement with the District in accordance with its case processing procedures. OCR has determined that the Resolution Agreement is aligned with the allegation concerning a denial of FAPE, and is consistent with the laws and regulations OCR enforces. Accordingly, OCR is closing its investigation and will monitor the District's implementation of the Resolution Agreement.

The matters addressed in this letter are not intended to, and should not be construed to, cover any other issues regarding compliance with the regulations implementing Section 504 and Title II that may exist but are not discussed here. We also wish to advise you that 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 may not harass, coerce, intimidate or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

¹ Section 302 of the CPM states: Allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in this matter. If you have any questions, please contact Civil Rights Investigator Fred Dow at (617) 289-0025 or Fred.Dow@ed.gov, Civil Rights Attorney Caroline Kazakis at (617) 289-0012 or Caroline.Kazakis@ed.gov. You may also contact me at (617) 289-0111.

Sincerely,

Allen Kropp
Acting Regional Director