

Dr. George H. Entwistle III
Superintendent
Scarborough Public Schools
259 U.S. Route 1 / PO Box 370
Scarborough, Maine 04074-0370

Re: OCR Complaint No. 01-14-1293

Dear Dr. Entwistle:

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 Scarborough Public Schools (District) on behalf of a student (Student). The Complainant alleged that the District discriminated against the Student on the basis of disability, when the District refused to provide a registered nurse to assist him in managing XXX XXXXXXXX during the XXXXXXXX school XXXXXXXX XXXXXXXX trip to XXXXXXXXXXXX. As you know, prior to OCR completing its investigation, the District agreed to resolve the complaint allegations by taking the steps set out in the enclosed Agreement.

OCR opened this complaint pursuant to our jurisdiction under Section 504 of the Rehabilitation Act of 1973 (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. As a recipient of Federal financial assistance from the U.S. Department of Education, the District is subject to the requirements of Section 504. As a public entity, the District is subject to the requirements of Title II.

OCR accepted the following issue for investigation:

- Whether the District is discriminating against the Student on the basis of disability by failing to provide XXXXXXXX an equal opportunity to participate in, and/or denying XXXXXXXX the benefits of, the District's extracurricular XXXXXXXX program, in violation of 34 C.F.R. Sections 104.4(a) and (b) and 104.37, and 28 C.F.R. 35.130.

Before OCR suspended its investigation, OCR had interviewed the Complainant, spoken with the Superintendent and Assistant Superintendent, and requested data from the District (which it provided). Both parties indicated a willingness to resolve the matter quickly, in the hopes of finding a resolution to allow the Student to participate in the trip.

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 its programs and activities, including extracurricular activities, that is equal to the opportunities that it offers to students without disabilities. Specifically, 34 C.F.R. Sections 104.37(a) and (c) require that when a district offers extracurricular activities, including athletics, it must afford students with disabilities an opportunity to participate in such activities that is equal to the opportunity it provides for students without disabilities. OCR interprets the Title II implementing regulation, at 28 C.F.R. 35.130, to be consistent with this Section 504 obligation.

Accordingly, districts must make reasonable modifications to their policies and procedures, and must provide such aids and services, as are necessary to ensure that students with disabilities are afforded an equal opportunity to participate in extracurricular activities, unless districts can show that doing so would be a fundamental alteration to their program, or would create an undue financial or administrative burden.

It is up to districts to determine whom students, parents or guardians should contact with requests for modifications, aids and services, as neither Section 504, nor Title II, designates a particular person responsible for, or a specific process to follow, with regard to obtaining modifications, aids or services for extracurricular activities under Section 504/Title II. Districts should, however, make sure that the identity and contact information of the designated district official is made publicly available. A best practice is for a district to proactively notify parents and students about the right of students with disabilities to have an equal opportunity to participate in extracurricular activities, and to identify the designated school official who accepts requests for modifications, aids and service pursuant to that right.

The determination of which modifications, and aids and/or services are necessary for a student should be made by districts on a case-by case basis, making an individualized determination about the student's needs. When making this determination, districts should consider whether the modification, aid or service is necessary for the student to have an equal opportunity to participate. This requires consideration of the nexus between the functional limitations of the student with a disability, and how the modification, aid or service addresses that limitation in a way that allows the student to access to the extracurricular activity.

Districts ought to provide an opportunity for students (or an appropriate family member, such as a parent or guardian), to request the modifications, aids and/or services that they think are needed for equal access, and should engage in an interactive process with parents/students who choose to do so. Districts should give significant consideration to the request by a student with a disability (or an appropriate family member such as a parent or guardian), because the student/parent/guardian is most familiar with the disability and can provide relevant information about what modifications, aids or services are most effective.

When the XXXXXXXX sent an email to the XXXXXXXX XXXX announcing the trip, the Complainant immediately responded, by email, that the Student would want to participate. She also wrote that he would need either one of his parents, or a registered nurse, to accompany him because of his XXXXXXXX. Staff noted to the Complainant that the trip was voluntary, and occurred outside of school hours. The District also informed the Complainant and her husband that they could submit their names as potential chaperones, in the same manner as all other parents who wanted to volunteer; chaperones would then be chosen by selecting names from a hat.

After initiating its investigation, OCR informed the District of the obligation to provide students with disabilities an opportunity to participate in extracurricular activities, including athletics and related trips, that is equal to the opportunity it provides to students who do not have disabilities. OCR further noted that Section 504/Title II do not allow districts to rely upon parents or guardians to provide the support required for students with disabilities to participate in such activities, though parents/guardians may opt to provide such support.

Thereafter, the District expressed an interest in resolving the complaint via Section 302 of OCR's case processing manual. As reflected in the proposed Agreement, the District offered to host training for staff on the requirements of Section 504 and Title II regarding the participation of students with disabilities in extracurricular activities, and to develop policies and procedures to ensure such students are provided an opportunity to participate that is equal to the opportunity provided to their peers without disabilities. Regarding the Student, the District agreed to take steps, and provide OCR with documentation evidencing such steps, to ensure the Student is afforded an opportunity to participate in the XXXXXXXX Team's trip that is equal to the opportunity offered to students without disabilities.

OCR has determined that the terms of the Agreement are aligned with the Complainant's allegations and are consistent with applicable requirements under Section 504 and Title II. Thus, OCR is closing its investigation of the complaint, as of the date of this letter, and will monitor the District's implementation of the Agreement until all terms have been met.

This letter sets forth OCR's determination in an individual OCR case. 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. 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. Please be advised that the complainant may file a private suit in federal court whether or not OCR finds a violation. Please also 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.

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.

We wish to thank you and for your cooperation with OCR in this matter. If you have any questions concerning this letter, please contact Civil Rights Investigator Carol Kennedy-Merrill (617) 289-0048 or carol.kennedy-merrill@ed.gov, or Civil Rights Attorney Meighan McCrea at (617) 289-0052, or meighan.mccrea@ed.gov. You may also contact me at (617) 289-0120, or by email at allen.kropp@ed.gov.

Sincerely

Joel J. Berner
Regional Director

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Enclosure