

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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



July 28, 2015

Dr. James Cummings
Superintendent
Grafton Public Schools
30 Providence Road
Grafton, Massachusetts 01519

Re: Complaint No. 01-15-1090
Grafton Public Schools

Dear Superintendent Cummings:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is closing the investigative phase of the above-referenced complaint against the Grafton Public Schools (District). OCR is taking this action because, prior to OCR completing its investigation, the District expressed an interest in resolving this case. The District entered into a voluntary resolution agreement (Agreement) that resolves the complaint allegations. A copy of the Agreement is enclosed.

In her complaint, the Complainant alleged that the District retaliated against her for advocating on behalf of a student (Student). Specifically, the Complainant explained that during an individualized education program (IEP) Team meeting for the Student on XXXXXXXX, 2015, she raised questions about and expressed disagreement with the results of a recent evaluation conducted for the Student. In response to her raising these concerns, she alleged that the evaluator threatened to contact the Department of Children and Families (DCF) if she requested any additional testing or evaluations for the Student, and that the District's lack of response to this threat has dissuaded her from taking further actions to advocate for the Student's rights as a student with a disability.

OCR opened this investigation pursuant to its authority under 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, which prohibit discrimination on the basis of disability. Section 504 applies to recipients of Federal financial assistance (FFA) from the Department, while Title II applies to public entities operating school systems. The District is subject to the provisions of Section 504 and Title II because it is a recipient of FFA from the Department, and it is a public entity operating an elementary and secondary school system. Section 504 and Title II also prohibit retaliation, intimidation, or interference with the exercise of any right protected by these laws.

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

- Whether the District failed to adequately respond when its evaluator threatened to contact DCF in response to the Complainant's advocacy on behalf of the Student, in violation of Section 504 at 34 C.F.R. Sections 104.7 (b), and Section 104.61, which incorporates by reference the provisions of 34 C.F.R. Section 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964; and the Title II regulation at 28 C.F.R. Section 35.134.

After OCR reviewed the District's initial data response, and prior to OCR completing its investigation of the allegations presented in this complaint, the District asked to resolve this complaint, as is permitted under Section 302 of OCR's Complaint Processing Manual. After negotiating with OCR, the District agreed to take a number of steps to resolve the complaint allegations. These steps are set out in the Agreement and include commitments by the District to: invite the Complainant to meet with relevant District staff to discuss the evaluator's comment; train District staff on mandatory reporting; and notify all District staff and contractors of its non-discrimination and non-retaliation statements and policies.

OCR finds that the resolution offered by the District is aligned with the Complainant's allegations 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. Consistent with our usual practice, OCR will monitor the District's implementation of the Agreement. OCR will close the monitoring of this matter, and will notify the parties in writing of the monitoring closure, once it determines that the District has satisfied the terms of the Agreement. The District has agreed to provide OCR with an initial monitoring report by September 1, 2015, and a final monitoring report by September 15, 2015.

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 Title VI, or the other laws enforced by OCR, that may exist but are not discussed here. Please note that the Complainant may have the right to file a private law suit 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 thanks the District, especially Special Education Administrator Arnold Lundwall, for the cooperation afforded us during this resolution process. If you have any questions or concerns about the information contained in this letter, please feel free to contact Diana Otto, Civil Rights Investigator, at (617) 289-0073, or via email at Diana.Otto@ed.gov. You may also contact me at (617) 289-0111.

Sincerely,

/s/ Joel J. Berner
Joel J. Berner
Regional Director

Enclosure

cc: Arnold Lundwall, Special Education Administrator