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Dr. Robert Gerardi, Jr.
Superintendent
Maynard Public Schools
3-R Tiger Drive
Maynard, Massachusetts 01754

Re: Complaint No. 01-15-1157
Maynard Public Schools

Dear Dr. Gerardi:

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 that was filed against the Maynard Public Schools (District). The Complainants alleged that the District discriminated against their son (Student) on the basis of disability, by denying him a free appropriate public education (FAPE) when it failed to implement certain accommodations specified in his Section 504 Plan (Plan). The Complainants also alleged that the District failed to adequately respond to their internal Section 504 grievance.

As explained below, prior to OCR completing its investigation, the District agreed to resolve the FAPE allegations concerning the implementation of accommodations in the Student's Plan, and the failure to adequately respond to the internal Section 504 grievance, by entering into a voluntary resolution agreement (Agreement) that OCR has determined resolves those complaint allegations. Based on information gathered during the investigation prior to that request, however, OCR identified a compliance concern regarding the District's grievance procedures (Grievance Procedures), which the District also agreed to resolve via steps outlined in the Agreement.

OCR investigated this complaint under the jurisdiction of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 (Section 504), as well as 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 OCR is charged with enforcing. Section 504 and Title II prohibit entities from discriminating on the basis of disability. The District is subject to the requirements of Section 504 because it receives Federal financial assistance from the U.S. Department of Education and it is subject to the requirements of Title II because it is a public entity operating an elementary and secondary school system.

OCR accepted the following issues for investigation:

- 1) Whether the District failed to provide the Student a FAPE by failing to implement certain provisions of his Section 504 plan XXXXXXXXXXXX XX XXXXXXXX XXX

XXXXXXXXXXXXXXXXXXXXXXXX, in violation of 34 C.F.R. Section 104.33; and 28 C.F.R. Section 35.130; and

- 2) Whether the District failed to adequately respond to the Complainant's internal Section 504 grievance, in violation of 34 C.F.R. Section 104.7(b), and 28 C.F.R. Section 35.107(b).

During the course of OCR's investigation to date, OCR interviewed the Complainants and reviewed data that OCR requested from the District, which included the District's Grievance Procedures. After OCR reviewed the District's initial data response, and prior to OCR completing its investigation, the District requested to resolve this complaint, in accordance with Section 302 of OCR's *Complaint Processing Manual* (CPM).

Legal Standards

According to the Section 504 regulation, at 34 C.F.R. Section 104.33(a), covered entities must provide a FAPE to each qualified student with a disability in its jurisdiction. Section 504 defines a student with a disability as a student who has a physical or mental impairment that substantially limits a major life activity; and it defines an "appropriate" education as one that provides regular or special education and related aids and services that are designed to meet the individual education needs of a person with a disability as adequately as the needs of non-disabled persons are met.

To satisfy the FAPE requirements described in the Section 504 regulation at 34 C.F.R. Sections 104.33 *et seq.*, recipient school districts must comply with several evaluation and placement requirements, afford procedural safeguards, and inform students' parents or guardians of those safeguards.

OCR does not base its determination that a student has been denied a FAPE in violation of Section 504 solely on the failure to provide all the special education and related aids and services identified in a student's 504 Plan. Instead, OCR examines various factors to determine whether a student was denied a FAPE as a result of the failure to implement the 504 Plan, such as: the nature and amount of services lost; the reason for the missed services; the school district's response, including efforts to offset or compensate for any missed services; and the effect of the missed services or modifications on the student in light of other services and modifications provided by the school district. As the implementing regulation for Title II explicitly states that it does not set a lesser standard than Section 504, OCR accordingly interprets Title II to impose the same legal obligations as those imposed by Section 504.

In addition, the regulation implementing Section 504, at 34 C.F.R. Section 104.7(b), requires that a recipient adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation. The regulation implementing Title II, at 28 C.F.R. Section 35.107, has a similar requirement. In evaluating whether a district's response has been prompt and equitable, OCR examines whether it included a prompt, adequate, and impartial investigation of the complaint; notice to the parties of the outcome; and, if discrimination had

occurred, an assurance that the District would end the discrimination, prevent its recurrence, and remedy its effects.

Investigation and Resolution

OCR determined that on XXXXXXXX XXX XXXX, the District's Section 504 Team found the Student eligible for support and/or services and developed a Plan that included XX accommodations. The Complainants alleged that two of these accommodations, XXXXXXXXXXXX XX XXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXX XXXXXXXX, were not implemented. They also alleged that, when they raised concerns about the alleged lack of implementation to the Superintendent, the District's response was inadequate.

The District agreed to take a number of actions in accordance with the Agreement to resolve these allegations. These actions include commitments by the District to convene the Student's 504 Team to consider whether the Student had received a FAPE, based on a number of specific factors, and if not, what compensatory services might be needed; in addition, the District will consider modifications to the Section 504 plan to clarify the manner in which any services or supports will be implemented. The District further agreed to have relevant staff receive training regarding the District's FAPE obligations, and its obligation to investigate and resolve complaints of discrimination, under Section 504/Title II.

As part of its investigation, prior to the District's request to resolve the allegations, OCR reviewed the District's "Non-Discrimination Grievance Procedures" (the Grievance Procedures) and found that they do not comply with the requirements of Section 504/Title II. Specifically, the Grievance Procedures do not provide an opportunity for complainants to provide evidence/witnesses, nor do the Grievance Procedures contain an assurance that the District will address any discrimination that it finds has occurred. Accordingly, OCR finds that the District does not have grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504/Title II, as required by 34 C.F.R Section 104.7(b) and 28 C.F.R Section 35.107. The enclosed Agreement includes the actions the District will take to address this compliance concern, i.e., that it will revise their Section 504/Title II Grievance Procedures and, upon OCR approval, widely disseminate the revised Grievance Procedures. Additionally, District staff will receive training specific to the revised Grievance Procedures as part of the training noted above.

OCR determined that the Agreement is aligned with the allegations and with information obtained by OCR. 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 February 1, 2016, and a final monitoring report on April 15, 2016.

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, that may exist but are not discussed here.

Please note that the Complainants 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against the Complainants because they filed this complaint or participated in this complaint resolution process. If this happens, the Complainants may file another complaint alleging such treatment.

OCR thanks the District, most notably XXX XXXX XXXXXX, for its assistance in resolving this matter. If you have any questions or concerns about the information contained in this letter, please feel free to contact Ms. Carol Kennedy-Merrill, Civil Rights Investigator, at (617) 289-0048, or via email at Carol.Merrill@ed.gov, or Ms. Nicole Newman, Civil Rights Attorney, at (617) 289-0199, or via email at Nicole.Newman@ed.gov. You may also contact me at (617) 289-0120.

Sincerely,

/s/

Allen Kropp
Acting Regional Director

Enclosure