



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

5 POST OFFICE SQUARE, 8th FLOOR

BOSTON, MASSACHUSETTS 02109-3921

February 7, 2017

Dr. Bonny L. Gifford
Superintendent of Schools
Dartmouth Public Schools
8 Bush Street
Dartmouth, MA 02748

Re: Complaint No. 01-16-1032
Dartmouth Public School

Dear Superintendent Dr. Gifford:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is closing the investigative phase of the above-referenced complaint against the Dartmouth Public School (District). The Complainant alleged that the District discriminated against students with disabilities in transportation services by providing them with fewer safety precautions on buses/vehicles than students with disabilities (e.g., video cameras). 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 allegations. A copy of the Agreement is enclosed.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104; and Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination 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 opened the following legal issue for investigation:

- Whether the District is discriminating against students with disabilities in transportation services by providing different safety precautions on buses/vehicles than students without disabilities (e.g., video cameras) in violation of 34 C.F.R. § 104.4(b)(1)(iii) and (iv) and 28 C.F.R. § 35.130.

Legal Authority

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(iii) and (iv), requires recipients to provide aid, benefits, or services to disabled students that are as effective as those provided to others. Title II contains similar requirements at 28 C.F.R. § 35.130.

To determine whether a recipient has intentionally and unlawfully subjected a student to different treatment on the basis of disability, OCR conducts an investigation seeking direct evidence, and indirect/circumstantial evidence, that a recipient has either directly or through its agent or assignee (e.g., staff, faculty, contractors) engaged in intentional discrimination. Direct evidence is information that directly illustrates a recipient's intent to discriminate, such as actions, statements, and writings that admit or otherwise directly demonstrate a motive based on disability. Indirect/circumstantial evidence is information from which OCR may reasonably infer intent to discriminate. A common and instructive form of indirect/circumstantial evidence is comparative evidence about how similarly-situated individuals are treated. For this assessment, OCR seeks evidence of persons who are similarly situated to the complainant but are of a different protected class (i.e., students without disabilities), in order to assess whether these students – or “comparators” – were treated more favorably than the student or student groups at issue under comparable circumstances.

Although the use of comparative information is the most common way to prove a violation of different treatment cases, OCR may also consider other forms of indirect/circumstantial evidence, including statistical information, statements by third party witnesses, a covered entity's inconsistency with its own practices and policies, or other evidence that might suggest disability bias or discrimination.

If OCR determines that the district did treat comparable persons or groups more favorably than it treated the student/student group who was allegedly discriminated against, then the district is afforded an opportunity to present non-discriminatory reasons to justify the different treatment. OCR scrutinizes these reasons to determine whether they are legitimately non-discriminatory, and not merely a pretext for discrimination.

In addition to different treatment of students based on disability, districts may violate federal law when they implement facially neutral policies/practices that, although not adopted with the intent to discriminate, nonetheless have a disproportionate and unjustified effect of discriminating against students on the basis of disability. The resulting discriminatory effect is commonly referred to as “disparate impact.” In determining whether a facially neutral district policy/practice has an unlawful disparate impact on the basis of disability OCR will examine: 1) if the policy/practice produces an adverse impact on students with disabilities in comparison to students without disabilities; 2) if the district can demonstrate that the policy/ practice is necessary to meet an important educational goal and OCR will consider both the importance of the educational goal and the tightness of the fit between the goal and the policy/practice employed to achieve it. If the policy/practice is not necessary to serve an important educational goal, OCR would find that the District has engaged in discrimination. If the policy/practice is necessary to serve an important educational goal, then OCR would ask 3) if there are comparably effective alternative policies/practices that would meet the district's stated educational goal with less of a discriminatory effect on students with disabilities; or, is the identified justification a pretext for discrimination. If the answer to either question is yes, then OCR would find that the

district has engaged in discrimination. If no, then OCR would likely not find sufficient evidence to determine that the district had engaged in discrimination.

Preliminary Investigation and Resolution

During the course of OCR's investigation, OCR reviewed and analyzed documentation provided by the Complainant and the District, including but not limited to the District's transportation contracts, vehicle rosters, vehicle identification numbers, listing of video cameras installed, transportation routes (i.e., special education, late, regular), and investigative reports for all investigations into misconduct on vehicles. In addition, OCR interviewed the Vice President of the District's contractor for school transportation and the District's Business Administrator.

Cameras Installed on Vehicles

OCR's preliminary investigation found that that the District transported students on vehicles it owns, and in vehicles that it contracts with a vendor. As for vehicles the District owns, OCR found that the District owned nine eight-passenger vans and two buses – none of which had cameras installed. As for the vehicles that the District contracted through a vendor, OCR identified two contracts: one contract for 40 daily/late route 16- and 51-passenger buses, and a second contract for 27 special education route eight-passenger vans. OCR found that the District requested video cameras for vehicles on the daily/late routes contract, but not for their special education routes, meaning that that the District's contracts only specified that the 16- and 51-passenger buses should be equipped with cameras (daily/late route); not the eight-passenger vans (special education route).

In summary, OCR found that some but not all of the 16- and 51-passenger buses operated by or on behalf of the District were equipped with cameras; and that none of the eight-passenger vans were equipped with cameras.

Students Transported on Vehicles

OCR's preliminary investigation found that the District transported both students with and without disabilities on its vendors' buses (daily/late routes), all of which had cameras installed. The District also transported both students with and without disabilities on the two buses it owns, neither of which had cameras installed.

OCR's preliminary investigation also found that the District transports some students with disabilities on eight-passenger vans (special education route), none of which is equipped with a camera. The District represented that it identifies which students should take the special education route based on students' individual needs and ability to be on a bus, taking into account the student's Section 504 plan or Individualized Education Plan (IEP) as well as the student's residence and standard daily bus routes available.

Relatedly, OCR found that the District transports students who are homeless on buses and eight-passenger vans, regardless of disability status. Finally, OCR found that for certain extracurricular events, the District bids on vehicles without cameras on a weekly basis, and transports all students, with and without disabilities, on these vehicles.

Investigation of Alleged Misconduct on Vehicles

OCR's preliminary investigation indicates that the District responds to allegations of misconduct on vehicles by, in relevant part, interviewing witnesses (student(s), driver, monitor(s)) and reviewing video camera footage if available. The driver and monitor in any given vehicle are employed by the same employer: drivers and monitors in contracted vehicles are employees of the vendor, and those on District-owned vehicles are City employees.

District's Position

The District denies any intent to discriminate or to treat students with disabilities differently in transportation, and has explained that its selection of vehicles for camera installation was determined by the size of the vehicles and the resulting impact this equipment would make (i.e., cameras installed on buses would have a greater impact and affect more people than cameras installed on smaller vans). In addition, the District has argued that all vehicles transport students both with and without disabilities, including larger buses (some with cameras, some without) and smaller vans (none equipped with cameras). The District has also argued that almost all special education route vans that transport students with disabilities are staffed by monitors, who are assigned pursuant to a student's Section 504 plan or IEP. This arrangement, the District argued, may actually provide even more oversight and protection to those students with disabilities riding the camera-less vans.

Based on its preliminary investigation and the District's response, OCR was concerned whether the most vulnerable students with disabilities (including students with severe impairments preventing meaningful communication) were exclusively or disproportionately transported on vehicles without cameras (eight-person vans), and whether this arrangement may interfere with the District's ability to investigate and resolve allegations of misconduct by other students, the driver, or the monitor. However, based on the evidence obtained to date, OCR had not yet made a compliance determination with respect to the District's actual practice in investigating complaints of misconduct of vehicles; whether the decision to install or request camera installation was based on disability status; and whether there was any actual disparate and harmful impact on students with disabilities regarding vehicle transportation. The District requested to voluntarily resolve this matter before OCR could investigate these issues further.

Voluntary Resolution

After negotiations between OCR and the District, the District agreed to take a number of steps to resolve the complaint allegations and the preliminary concerns OCR identified in its investigation to date. These steps are set out in the Agreement (enclosed), signed by the District on January 11, 2017.

The District has specifically agreed to ensure that working video cameras are installed on all vehicles for student transportation, including but not limited to all eight-passenger vehicles, 16-passenger vehicles, and 51-passenger vehicles. The District agreed that these working video cameras shall all have recording capabilities and/or features sufficient for the duration of at least one day of travel (i.e., completion of a route to and from school), and storage capacity sufficient for the duration of one week.¹ The video cameras shall be located and installed in the vehicles to record interactions among or with student passengers.

¹ The storage capacity can be enabled through additional devices (i.e., memory cards, computers, etc.).

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.

Conclusion

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. 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 thanks you and your staff for your cooperation in this matter. If you have any questions or concerns about the information contained in this letter, please feel free to contact Carla P. Moniz, Civil Rights Attorney at (617) 289-0047, or via email at Carla.Moniz@ed.gov.

Sincerely,

/s/

Ramzi Ajami
Compliance Team Leader

cc: Catherine Lyons, Esq.
Enclosure