



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

December 14, 2020

Matthew Crowley
Superintendent
c/o Michael J. Joyce
By email: mjj@snclegal.com

Re: Complaint No. 01-16-1088
Woburn Public Schools

Dear Dr. Crowley:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint we received on January 15, 2016, against Woburn Public Schools (District). OCR’s investigation included the following allegations:

1. Whether the District failed to provide the Student with a free appropriate public education by failing to implement certain provisions of his Individualized Education Program (IEP), in violation of 34 C.F.R. § 104.33 and 28 C.F.R. § 35.130.
2. Whether the District retaliated against Complainants 1 and 2 for advocating on behalf of the Student by
XX
XX and, thus, prohibiting
Complainant 1 from
XX, in
violation of 34 C.F.R. § 104.61, which incorporates by reference 34 C.F.R. § 100.7(e), and 28 C.F.R. § 35.134.
3. Whether the District failed to respond promptly and equitably to the Complainants’ internal grievances alleging retaliation, in violation of 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b).¹

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public

¹ This allegation was not part of the Complainants’ complaint or included in the notification letter OCR issued to the District on April 13, 2016. Rather, OCR exercised its discretion to add this allegation during the course of the investigation.

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Today, I was met with a child who was a puddle of emotions – completely overwhelmed after school. This is not the first time, but it needs to be the last.

We have a problem, [Teacher]. What might be considered typical tactics for management of XXXXX grade students in your class are simply not ALL going to be applicable to our XXXXXXXX child. We need to find a solution.

Based on our experience and the shared experiences of others, the classroom appears to be run on an authoritative philosophy. Daily, we hear of negative consequences handed out or a negative comment for every infraction. There appears to be little or no room for positive, trust-building and respect-building interactions between teachers and students.

We feel, strongly, that the lack of respect you feel flowing from students may be a direct result of the lack of respect and trust they sense from you. Students need a safe environment to make mistakes. They will not achieve an innate responsibility through fear and intimidation. They will become more responsible when they feel safe to try new things: when they feel safe to make mistakes.

We do not doubt that your classroom management style works for some children. But is it not the responsibility of the teacher to look at her students and teach them in a way that is effective and appropriate for those students? The law requires schools to provide a free and appropriate public education. At the moment, we do not see this style of teaching as appropriate. It is undermining our child's ability to feel safe at school and to appropriately access the social curriculum.

Never before have we ever considered asking a teacher to alter their teaching style or alter their classroom management. However, here we are. It is that serious to us. We are in a situation that we feared and are now seeing is intolerable for our child.

We are also aware of three other students in this class, who have IEPs, who are struggling more and showing increased symptoms related to their disabilities – most of them anxiety related. With such a stacked classroom – far too many students with IEPs – frankly, we're not surprised. To us, this is a clear sign that things are not working well overall. For our son, it is unacceptable.

The email went on for another two pages to provide specific examples of how the Teacher treated the Student and a detailed summary of a conversation with the Teacher from that day. The tone of the email remained polite and did not contain language that was abusive or threatening. The Complainants requested that the Teacher refrain from disciplining the Student until further discussion at a team meeting. When interviewed by OCR, the Teacher expressed that she was "horrified at the accusations" and told OCR that she had never received such an email in her XXXXXX years of teaching.

The Teacher shared the email with the Principal and filed a grievance on XXXXXXXXXXXXXXXXXXXX. Her grievance stated in full:

Complainants emailed a third time on XXXXXXXXXXXXXXXX, stating their desire to resolve their complaint “quickly and with a collaborative approach.” The former superintendent did not respond. The Complainants emailed a fourth time on XXXXXXXXXXXXXXXX, again, reiterating their preference to address the issue internally. There was no additional response from the former superintendent. The Complainants filed with OCR on XXXXXXXXXXXXXXXX.

In early XXXXXXXXXX, Complainant 1 met with the Principal and asked him to consider XXXXXXXXXXXXXXXX. The Complainants sent the Principal a follow-up email on XXXXXXXXXXXXXXXX, summarizing this meeting in detail. In an interview with OCR, the Principal acknowledged that the Complainants’ written summary was accurate. According to this email, in response to the Complainants’ request, the Principal suggested modifying the terms of the XXX to allow Complainant 1 to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. When Complainant 1 responded that she was unwilling to negotiate the terms of what she viewed as a retaliatory act, the Principal responded that he would not XXXXXXXXXXXXXXXX. After further conversation, the Principal agreed to check in with the Teacher and meet with the Complainants again.

The Principal responded to the Complainants’ XXXXXXXX email, writing, “Based on your statements at our brief meeting on Tuesday it is apparent that you are not willing to negotiate/compromise because you feel the grievance is still an illegal action. These feelings, combined with my discussion with the teacher, have led me to the decision to leave the finding of the grievance in place.” In an interview with OCR, the Principal stated that, contrary to his email, he never checked in with the Teacher; rather, he said that once Complainant 1 expressed her unwillingness to compromise on the terms of the XXX, he had no intention of XXXXXXXXXXXXXXXX. He said that he intended the XXX to stay in effect as long as the Student or the Complainants’ younger child, then in XXXXX grade, attended the school.

In XXXXXXXXXX, as the Complainants’ younger child was finishing XXXXXXXX grade at the school, the Complainants initiated a meeting with the Principal and current superintendent (Superintendent), who was the assistant superintendent and District Section 504 coordinator at the time the Principal first XXXXXXXXXXXXXXXXXXXXXXXX in XXXXXXXXXXXXXXXX. At the meeting, the Complainants requested both that their younger child not be assigned to the Teacher and that the District respond to their allegation that the XXX – which, at the time of the meeting, had been in effect for three and a half years – was retaliatory. The District initially assigned their younger child to the Teacher. The Complainants then requested that their younger child be permitted to attend a different school, and the District declined this request. The Complainants then made the decision to

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Subsequently, the Complainants learned that the District had reassigned their younger child to a different teacher, but the Complainants had already XXXXXXXXXXXXXXXX.

On XXXXXXXXXXXXXXXX, the Complainants emailed the Superintendent again, asking for a response to their retaliation allegation. The Superintendent responded on XXXXXXXXXXXXXXXX, that he had spoken to the Principal, who indicated that the Complainants “are always welcome at the [school] and have the same access to the school [as]

bothered him and that nothing in the email suggested that Complainant 1 had been eavesdropping.

In reaching this determination, OCR also considered other circumstances surrounding the alleged past eavesdropping to determine whether this asserted reason was pretextual, including the District's alleged response during the prior school year when the eavesdropping allegations were made, the scope of the XXX, and the interviewed parties' recollection of the allegations and how they were handled. Based on these circumstances, OCR found that the District's explanation regarding confidentiality concerns was pretextual.

Based on the foregoing, OCR determined that there was a preponderance of evidence to substantiate Allegation 2.

Allegation 3: Prompt/Equitable Response to Internal Grievances

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires school districts that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public school districts that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

In addition, a district must respond promptly and equitably to notice of possible disability discrimination by investigating or otherwise determining what occurred. The failure to respond to notice of an alleged violation of Section 504 or Title II is itself a violation of Section 504 and Title II. Although the reasonableness of the district's response will vary depending on the circumstances, in all cases the inquiry should be prompt, thorough, and impartial. If an investigation reveals that disability discrimination occurred, a district must take prompt and effective steps reasonably calculated to end the discrimination, remedy its effects, and prevent it from recurring.

Analysis

During the course of its investigation, OCR found that the District did not respond to the Complainants' retaliation concerns consistent with Section 504 and Title II. The Complainants brought their Section 504 retaliation allegation to the District repeatedly without a prompt or equitable response, including in emails to the Principal in XXXXXXXXXXXXXXXX, the former superintendent in XXXXXXXXXXXXXXXX, and the Superintendent in XXXXXXXXXXXXXXXX, and the District never responded to their complaint as a grievance. OCR was also unable to locate grievance procedures to resolve allegations of disability-based discrimination or retaliation in the District's online policy repository as recently as September 2020.¹³ Based on the foregoing, OCR

¹³ OCR notes that the Principal stated in his OCR interview that grievance procedures are for resolving Section 504 plan disputes and did not appear to be familiar with the requirement to respond to complaints of disability-based

found the District in violation of Section 504 and Title II for failing to provide a prompt and equitable response to the Complainants' retaliation grievances.

Conclusion

On September 3, 2020, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant when the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance. OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information if necessary to determine whether the District has fulfilled the terms of the Agreement. Once the District has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

As of November 4, 2020, the District implemented provisions 1, 2, and 4 in full pursuant to the due dates in the Agreement. **Pursuant to Section 503 of OCR's *Case Processing Manual*, OCR has modified the deadline for submitting a report. The due date for provision 3 is modified and must be completed by February 15, 2021.**

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. 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. 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, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

discrimination and retaliation in accordance with them, or that individuals other than students may assert they were targets of discrimination or retaliation.

released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Sincerely,

Ramzi Ajami
Program Manager/Acting Regional Director

Enclosure

cc: Michael J. Joyce