

# 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.
- 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).<sup>1</sup>

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

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<sup>&</sup>lt;sup>1</sup> 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.

education systems and institutions, regardless of whether they receive federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or their implementing regulations, or who files a complaint, testifies, assists, or participates in a proceeding under these laws. Because the District receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainants and the District; interviewed the Complainants; and conducted a site visit on October 28, 2019, to interview the principal, teacher, and librarian, and to view the layout of the XXXXXXXXXXXXXXX of the school.

After carefully considering the information obtained during the investigation, OCR found violations of Section 504 and Title II regarding Allegations 2 and 3, which the District agreed to resolve through the enclosed resolution agreement. OCR's findings and conclusions are discussed below.

#### **Findings of Fact**

On XXXXXXXXXXXXXXXX, the Teacher received a lengthy email from the Complainants. The email began as follows:

I'm left with the feeling that we didn't advance any understanding of our son's disability with our talk yesterday.

<sup>&</sup>lt;sup>2</sup> The school serves students from Kindergarten through XXXXX grade.

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.

I am in possession of an e-mail communication addressed to me and this e-mail is concerning. I am bringing the matter to your attention in an effort to raise awareness of potentially hostile intent directed toward me as I perform my duties in my classroom environment. This e-mail has affected the conditions of my work place in a negative way. I feel it would be prudent to investigate the writer's intent based upon the spirit and tone conveyed in the language and phrasing of the text. Therefore, I feel compelled to file a grievance and ask for a higher level of administrative review into this matter.

According to the Complainants, following an IEP meeting on XXXXXXXXXXXXXXXXX, the Principal informed the Complainants that the Teacher had filed a grievance alleging that she "does not feel safe in her workplace" because of Complainants' email. They told OCR that the Principal asked them to stay away from the school until he could look into it.

#### X---paragraph redacted---X

The Complainants emailed the then-superintendent (former superintendent) on XXXXXXXXXXXXXXXX, requesting a meeting to address their retaliation allegation and informing him of their intent to file with OCR. In response, the former superintendent wrote, "I cannot meet with you as you requested" because of their intent to file with OCR. The Complainants responded that they were committed to seeking a resolution internally before filing with OCR, to which the former superintendent reiterated that he would not meet with them because of their decision to file with OCR unless the district's attorney counseled otherwise. The

<sup>&</sup>lt;sup>3</sup> When OCR interviewed the Teacher in October 2019, she had no recollection of the "cold interaction" or any specific interactions with Complainant 1. Complainant 1 told OCR that it was a pleasant interaction where Complainant 1 assisted the Teacher in the library and they shared a laugh.

The Principal responded to the Complainants' XXXXXXX 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 XXXXXXXXXXX. He said that he intended the XXX to stay in effect as long as the Student or the Complainants' younger child, then in XXXXXX grade, attended the school.

OCR opened this complaint for investigation on April 13, 2016. In its response to OCR's request for relevant information, the District asserted that the decision to XXX the Complainants was "narrowly tailored to the concern regarding the Teacher's comfort level, in light of the criticism from the Parents, and the concerns regarding confidentiality" and that the District would have made the same decision regardless of any mention of disability in the Complainants' XXXXXXXXXXXXXXXXX email.<sup>5</sup>

As to the stated concern about confidentiality, the District shared with OCR that during the XXXXXXXX school year, staff reported Complainant 1 "was witnessed to be eavesdropping at classroom doors," raising privacy concerns. The District wrote that the Principal "responded to these concerns and addressed it with [Complainant 1] directly regarding respecting the privacy of the students and teachers." In an interview with OCR, the Teacher stated that she saw Complainant 1 at least twice outside the XXXXXX grade door when the Student was in XXXXXX grade, and that "someone" saw her standing in the stairwell near the XXXXX grade door when he was in XXXXX grade. When OCR interviewed the Principal about the eavesdropping, he was unable to recall any details, although he estimated that one or two incidents were reported to him. He also could not recall how his conversation with Complainant 1 to address these concerns went beyond describing that "she was not defensive." He told OCR that when he spoke with Complainant 1, he informed her that "it was perceived" she was listening in on the teachers. When OCR asked Complainant 1 about this eavesdropping allegation and how the Principal had addressed it, she responded that OCR's question was the first she had heard of this concern. OCR did not identify any mention of eavesdropping concerns in any documents, including the Teacher's grievance or in the email correspondence provided by the Complainants or the District.

When interviewed by OCR, the Principal initially told OCR that he understood why the Teacher was upset about the email and that the email "tied in" with the prior eavesdropping concerns. OCR asked the Principal to review the email carefully in order to identify exactly what in the email raised eavesdropping concerns. After stepping away to review the email, the Principal returned to the interview visibly upset. He acknowledged that nothing in the email suggested that Complainant 1 had been eavesdropping and instead explained that the tone was "troublesome" because it conveyed a lack of respect and the content was not true. He said he would have made the same decision regardless of whether the email had mentioned disability, mostly citing the excerpt from the email, reproduced above, where the Complainants made general comments

<sup>&</sup>lt;sup>4</sup> OCR did not interview the Superintendent.

<sup>&</sup>lt;sup>5</sup> The District's response did not mention any "cold interaction" between Complainant 1 and the Teacher as a reason for the XXX.

<sup>&</sup>lt;sup>6</sup> X---paragraph deleted---X

<sup>&</sup>lt;sup>7</sup> Complainant 1 readily recalled other specific conversations with the Principal in detail and emailed contemporaneous and detailed summaries of her conversations with District staff to District staff, but she told OCR that she had never been informed that District staff had alleged she had eavesdropped.

about the Teacher and her teaching style. Both the Teacher and Principal also mentioned the Teacher's degree in special education and her former experience as a special education teacher.

OCR did not identify a written policy for XXXXXXX people from school. When asked about any policy or practice, the Principal confirmed that there is no written policy and explained that he is the sole decision maker.

During the course of the investigation, OCR was unable to locate Section 504 grievance procedures that provide for the prompt and equitable resolution of complaints alleging disability discrimination or retaliation within the District's online policy repository. When OCR asked the Principal about the purpose of Section 504 grievance procedures, he responded that they apply when a parent is not happy with a Section 504 plan. When OCR asked how he responds to discrimination complaints, the Principal told OCR that in his XXXXXXXX years as principal at the school, he had never received a discrimination complaint.<sup>8</sup>

The Complainants claim that the XXX-in place from December 2015 and continuing indefinitely – damaged their reputation. They were

### **Allegation 2: Retaliation**

#### Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

In analyzing an individual's claim of retaliation against a recipient, OCR analyzes whether (1) the recipient knew the individual engaged in a protected activity; further, the manner of advocacy must be reasonable under the circumstances. In addition, OCR analyzes whether

<sup>&</sup>lt;sup>8</sup> The Principal did recall one incident when a child got hurt and the family said it was on the basis of XXXXX. He said he resolved the incident through a conversation with the family.

<sup>&</sup>lt;sup>9</sup> A protected activity is the exercise of a right that is protected under OCR's non-discrimination laws.

(2) the individual experienced an adverse action caused by the recipient, <sup>10</sup> and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation.

OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

#### Analysis

OCR found that the Complainants engaged in a protected activity when they sent the XXXXXXXXXXXXXXXXX email because the purpose of the email was to advocate on behalf of the Student as a student with a disability. Even the District acknowledged that the email included disability-based advocacy. The Complainants opened their email with a one-sentence paragraph: "I'm left with the feeling that we didn't advance any understanding of our son's disability with our talk yesterday." They continued to explain what they believed was the negative impact the Teacher's classroom style was having on the Student. They described in detail specific interactions the Teacher had with the Student and why the interactions upset him, as well as their conversation with the Teacher the previous day about how the Student's behaviors related to his disability. The Complainants also conveyed their impression that the Teacher did not understand the Student's disability, informed the Teacher that they requested an IEP meeting because they believed the classroom was damaging his self-esteem, and requested that the Teacher refrain from disciplining the Student until further discussion at the team meeting.

<sup>&</sup>lt;sup>10</sup> An adverse action is something that could deter a reasonable person from engaging in further protected activity.

<sup>&</sup>lt;sup>11</sup> OCR did not determine whether the XXX applied to both the Complainants or just to Complainant 1.

OCR next determined that there was evidence of a causal connection between the protected activity and the adverse action. The Principal acknowledged that he XXXXXXXXXXXXXXXXXXX in response to the Teacher's grievance, which the Teacher filed because of the Complainants' email. Therefore, OCR found a causal connection between the XXXXXXXXXXXXXXXX email and the XXX.

Having found a prima facie case of retaliation, OCR then considered whether the District articulated a legitimate, non-retaliatory reason for the adverse action and whether that reason was a pretext for retaliation. Here, the District offered that the Principal would have taken the same action regardless of any mention of disability in the email because of 1) the "harshly critical nature" of the email, and 2) the past eavesdropping concerns.

With regard to the District's explanation that it responded to the "harshly critical nature" of the email regardless of any mention of disability, as explained above, OCR found the email to be a reasonable manner of advocacy. Furthermore, OCR found that the email at issue was wholly focused on advocating for the Student's rights as a student with a disability. Therefore, OCR found that the critical nature of the XXXXXXXXXXXXX email was integral to and inseparable from the Complainants' advocacy for the child as a student with a disability such that taking action against the Complainants due to the critical nature of the email was taking action against them for engaging in disability-based advocacy.<sup>12</sup>

As to the District's explanation that it XXXXXXXXXXXXXXXXXX because the email raised concerns related to Complainant 1's prior alleged eavesdropping and her "respect for the confidentiality of other students and teachers," OCR found that the evidence was not consistent with this explanation. First, OCR did not identify any written information consistent with this explanation; nothing in the XXXXXXXXXXXXXXXXX email, the Teacher's grievance precipitating the ban, or subsequent detailed and contemporaneous email correspondence about the ban and the Complainants' retaliation grievance mentioned eavesdropping or confidentiality. Second, in his interview with OCR, the Principal admitted that it was the critical nature of the email that

<sup>&</sup>lt;sup>12</sup> Moreover, Title II guarantees the right to "oppose[] any act or practice made unlawful" by that law without suffering retaliation, when that opposition, as here, is made in a reasonable manner, i.e., a district cannot limit the scope of the protected activity in which a complainant may engage by prohibiting protected activity focused on criticism.

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 XXXXXXXXXXXXXXX, the former superintendent in XXXXXXXXXXXXXXXX, and the Superintendent in XXXXXXXXXXXXX, 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. Based on the foregoing, OCR

<sup>&</sup>lt;sup>13</sup> 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.

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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