



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

January 12, 2018

Dr. Herbert W. Levine  
Interim Superintendent  
Peabody Public Schools  
By Email: [levineh@peabody.k12.ma.us](mailto:levineh@peabody.k12.ma.us)

Re: Complaint No. 01-16-1285  
Peabody Public Schools

Dear Superintendent Levine

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Peabody Public Schools (the District). The Complainant alleged that the District discriminated against the Complainant's son (the Student) on the basis of disability. Specifically, the Complainant alleged that, during a series of incidents in 2016, the District failed to properly implement the Student's Individualized Education Program (IEP) and behavioral plan. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

OCR investigated this complaint 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 (Title II), which prohibit discrimination on the basis of disability against persons who assert rights under these laws. The District is subject to the requirements of Section 504 and Title II because it is a recipient of Federal financial assistance from the Department, and because it is a public entity operating an educational institution, respectively.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to students with disabilities. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

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



- The Complainant stated that on XXXXXXXX, when XXXXXXXXXXXXXXXXXXXX  
XX  
XXXXX. XXX  
XXXXX. The District provided an incident report stating that the Student XXXXXXXX  
XX  
XXXXXXXXXX. OCR determined that the District XXXXXXXXXXXXXXXXXXXXXXX  
XXX. The Complainant informed OCR that when she arrived at school, the Student XX  
XX  
XX. The Complainant stated that XXX  
XX  
XX. OCR determined that the  
Student subsequently received XXXXXXXXXXXXXXXXXXXXXXX for the incident.

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving this complaint. The information gathered to date raises potential concerns that the District may not have appropriately implemented a behavior plan for the Student, as required by his IEP, in a timely manner. While the evidence indicates that the District developed a behavior plan in accordance with the Student’s IEP in or around XXXXXX, it was not implemented during the timeframe of the incidents alleged by the Complainant that occurred in XXXXXXXXXXXX 2016. The District asserted this lack of implementation was due to the Complainant’s disagreement with the plan. Because the District expressed an interest in resolving this complaint, OCR did not determine the specific circumstances and reasons for the delay in implementing the behavior plan, including any efforts the District was making to implement the plan from XXXXXXXXXXXX XXXXX and whether or not the plan was not implemented at the Complainant’s request. In addition, the evidence raises potential concerns with respect to the District’s response to the XXXXXXXXXXXX incident, particularly in regard to XXXXXXXXXXXXXXXXXXXX  
XX  
XX.

In order to complete the investigation and make a finding, OCR would need to interview District personnel who were responsible for developing and implementing the behavior plan, to further investigate why neither the undated plan nor any other plan was implemented until XXXXX, as required by the Student’s IEP, and those who were present at each of the incidents to determine whether the Student’s IEP and/or behavior plan was appropriately implemented.

**Conclusion**

Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in this complaint. The terms of the Agreement are aligned with the complaint allegation and are consistent with the applicable laws and regulations. OCR will monitor the District’s implementation of the Agreement and continue to do so until it has determined that the District has complied with the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

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 must 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions, you may contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or by e-mail at [Catherine.Deneke@ed.gov](mailto:Catherine.Deneke@ed.gov).

Sincerely,

Meena Morey Chandra *w/p AMM*  
Acting Regional Director

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXXXXXXX