



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

February 2, 2018

Dr. Catherine Latham
Superintendent of Schools
Lynn Public Schools
lathamc@lynnschools.org

Re: Complaint No. 01-16-1301
Lynn Public Schools

Dear Superintendent Latham:

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 the Lynn Public Schools (the District). The Complainant alleged that the District discriminated against her son (Student) on the basis of disability. Specifically, the complaint alleged the following:

1. The District denied the Student a free appropriate public education (FAPE) between January 2016 and June 2016 by (a) failing to consistently implement a plan for the Student to make up missing work XXXXXXXXXXXXXXXX, and (b) allowing the Student to stay after school when the Complainant or a nurse was not in the building (Allegation 1).
2. The District retaliated against the Student and Complainant between April 2016 and June 2016 by repeatedly threatening to remove the Student from his XXXX class because the Complainant complained to the District about its alleged failure to comply with the Student's Section 504 plan (Allegation 2).

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 (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 Agreement

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces 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 against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. 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.

Allegation 1: Failure to Implement the Student’s 504 Plan

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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. 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.

Factual Background

The Student’s Section 504 Plan, dated January 26, 2016 provided the following accommodations, among others: (1) the Student
XX; and (2)
XX [FOOTNOTE
OMITTED]

The Complainant alleged that the Student’s teachers did not initiate a plan with the Student to make up his missed assignments XXXXXXXX following the inclusion of this accommodation in the Student’s Section 504 Plan in January 2016. Email correspondence OCR reviewed from the District shows that in late March 2016, the District developed a chart to track when the Student needed to attend a teacher’s XXXXXX to make up his missed assignments. The District also explained that although the school nurses stayed after school on multiple occasions to accommodate the Student as he attended a teacher’s XXXXXX, there were a couple of occasions on which school nurses were not available to stay after school.

Preliminary Concerns

Based on this information, the evidence obtained to date indicates that the Complainant and District staff did not share the same understanding of how the accommodations at issue in the Student’s Section 504 Plan would operate in practice. Specifically, whether individual teachers would remind the Student that he needed to stay for XXXXXX and the Student would inform the nurse that he needed to stay after school, or whether the Student’s guidance counselor or the Section 504 Coordinator would work with the Student’s teachers, the Student, and the nurse to ensure that the Student stayed after school for XXXXXX and there was appropriate nursing coverage available.

OCR would need to conduct interviews with the Student’s teachers, guidance counselor, and the Section 504 Coordinator to determine whether there was a miscommunication about how the

these accommodations would operate in practice, or whether the District simply did not implement these accommodations consistently.

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 or believed the individual might engage in a protected activity in the future¹; (2) the individual experienced an adverse action caused by the recipient²; 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, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons) for taking the adverse action. 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.

Factual Background

The Complainant alleged that the District retaliated against the Student by threatening to remove him from his XXXX class. The District explained its data response that the Student's XXXX teacher from late February 2016 through the end of the school year (Teacher) expressed his concerns to the Principal about the Complainant's communication with him and questioned whether it was appropriate for the Student to remain in his XXXX class. The District explained, however, that it never removed the Student from this XXXX class.

Preliminary Concerns

Based on this information, the evidence obtained to date indicates that the Teacher spoke with the Principal about whether the Student should remain in his XXXX class, but that the District never removed the Student from this XXXX class. OCR would need to review the correspondence between the Complainant and the Teacher, as well as interview the Deputy Superintendent, the Principal, and the Teacher (XXXXXXXXXXXX) to determine whether this

¹ A "protected activity" is the exercise of a right that is protected under OCR's non-discrimination laws.

² An adverse action is something that could deter a reasonable person from engaging in further protected activity

discussion about removing the Student from the Teacher's XXXX class, or any other communications with the Complainant about the XXXX class, could be considered retaliatory and why the District decided that the Student should remain in the Teacher's XXXX class.

Conclusion

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. 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 allegations 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 Amy Fabiano at (617) 289-0007 or by e-mail at Amy.Fabiano@ed.gov.

Sincerely,

/s/

Meighan McCrea
Acting Compliance Team Leader

Enclosure

cc: Colby Brunt, CBrunt@SCMLLP.COM