



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

April 20, 2018

John Robert, M.Ed., CAGS  
Superintendent  
Hatfield Public Schools

Via E-mail: [jrobert@hatfieldps.net](mailto:jrobert@hatfieldps.net)

Re: Case No. 01-17-1062  
Hatfield Public Schools

Dear Superintendent Robert:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint we received on November 25, 2016 against Hatfield Public Schools (District), alleging disability discrimination. The Complainant alleged that after her son (Student) had been accepted to the District's Smith Academy through Massachusetts' school choice program for the 2016-2017 school year, the District rescinded the offer of acceptance due to the Student's disability-related needs.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 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 programs and activities receiving financial assistance from the Department. OCR is also responsible for enforcing 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. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public entity operating an elementary and secondary education system. Therefore, OCR had jurisdictional authority to investigate this complaint under Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant and District staff. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II. OCR's findings and conclusions are discussed below.

## **Background**

### **A. Massachusetts' School Choice Program**

Massachusetts' school choice program allows parents to enroll their children in public schools outside the school district in which they live. M.G.L. c. 76 § 12B. Every year districts decide whether they will accept non-resident students under the school choice program. Districts may

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

establish terms for accepting non-resident students; provided, however, that if more students apply than there are spaces available, the district will hold a lottery to randomly select which students will be admitted.

Massachusetts regulations provide that once a child is enrolled in a choice district (i.e., receiving district), that district becomes programmatically and financially responsible for that student until high school graduation. 603 C.M.R. § 28.10(6). School choice tuition amounts are assessed against sending districts and paid to the receiving districts, and, for a student requiring special education, the tuition amount is adjusted to reflect the cost of his or her specific services. *See* Mass. Gen. L. c. 76, § 12B(f). In addition, if the receiving district places a student in an out-of-district placement, that district may bill the sending district for the cost of the placement. *See* 603 C.M.R. § 28.10(6)(b).

### **B. The District’s School Choice Admissions and Enrollment Process**

The District is a small school district with one elementary school and one middle/high school (Smith Academy).<sup>1</sup> Every year the District’s school committee votes on whether to participate in school choice for the upcoming year. If the school committee votes to participate, the District then advertises the openings in the newspaper and on its website and provides a date by when applications must be received.

The District’s school choice application asks, among other information, whether the applicant has a current Individualized Education Program (IEP) or Section 504 plan and whether he/she has ever had an IEP. The application notes that “[this] information is for planning purposes and will not affect acceptance.”<sup>2</sup> The application also notes that the District does not have “substantially separate Special Education Programs or Public Day Placements.”

If there are more applicants than spaces available, the District holds a public lottery to select the students who will be admitted. The District maintains a waitlist for those students who are not chosen during the lottery. After the lottery, the District sends a letter to all applicants detailing the results of the lottery and asking applicants to return acceptance and release forms.

The District reported that even if a student is chosen by lottery for an open spot, final acceptance and enrollment is not automatic. As set forth on the application form, enrollment will take place only after all health and academic records are received from the sending school and are reviewed by the District’s principals and Student Services Office. If an applicant has a disability requiring special education services, the Student Services Coordinator reviews the records to ensure that the District has the appropriate personnel and services in place to meet the applicant’s needs.

---

<sup>1</sup> According to the District, 446 students were enrolled in the District for the 2016-2017 school year and 126 of those students enrolled through the school choice process.

<sup>2</sup> The Student Services Coordinator informed OCR that the District had added this question to the application so that the District knew to request the IEP or Section 504 plan from the sending district. She explained that the District wants to ensure that the necessary services are in place before the start of the school year and that prior to adding this question to the application, there was an instance in which a school choice student started the school year and the sending district never provided the District with that student’s IEP.

Once the records are reviewed and approved, the District then notifies the applicant's parents in writing of its decision and enrollment procedures.

The Superintendent told OCR that the review process for a school choice student is the same as for a student who moves into the District. When asked to identify factors that may cause the District to reject a school choice applicant, the Superintendent, noting the rarity of the situation, said that the District may reject a student who had very severe incidents in his/her discipline file or who had been placed due to his/her disability in a program that the District did not offer, such as a substantially separate special education program or a therapeutic day program.

### **C. The Student's Application to the District for the 2016-2017 School Year**

The District's school committee voted to participate in school choice for the 2016-2017 school year and advertised its openings in February of 2016. The Complainant submitted an application on behalf of the Student for a spot in the District's seventh grade class at Smith Academy. On the application, she marked that the Student had a current IEP.

On May 2, 2016, the District held the public lottery for school choice applicants. The Student's name was not chosen, so he was placed on the waitlist. In early June 2016, an administrative assistant for the District called the Complainant to let her know that space had become available in the seventh grade and asked whether she was still interested in having the Student attend Smith Academy. The Complainant said that she was.<sup>3</sup>

On or about June 14, 2016, the Complainant and the Student toured Smith Academy. District staff told OCR that during the tour, they became aware that the Student had certain physical disabilities and that he used augmentative and alternative communication and assistive technology. The Student Services Coordinator reported that after the tour, she called the sending district, Holyoke School District, to follow up on the District's request for the Student's records.

The District received some of the Student's records, including the last agreed-upon IEP, on June 14, 2016, and received multiple evaluations and observation reports for the Student on June 28, 2016. According to the District, the Superintendent, the Student Services Coordinator, and Smith Academy's principal (Principal) all reviewed the Student's records. After their review, the District contacted the Complainant to set up a meeting.

### **D. The District's Rescission of its Offer of Admission to the Student**

On June 30, 2016, the Superintendent, the Student Services Coordinator, and the Principal met with the Complainant. The District reported that the Complainant brought the Student's proposed IEP, which was developed by the Student's IEP team on June 9, 2016, to the meeting to share with District staff.

The District reported that during this meeting, they discussed the District's concerns about its ability to meet the Student's needs for the 2016-2017 school year, particularly because the

---

<sup>3</sup> The Complainant told OCR that during the call, the administrative assistant told her that the District had an opening and that the Student had been selected.

District is a very small school district. The District explained to OCR that, as the Student’s records indicate, the Student has significant disabilities which require intervention of and consultation with a number of therapists and specialists, in addition to assistive technology and augmentative communication, all to receive a free appropriate public education (FAPE). The District further explained that the Student requires a highly-trained one-to-one paraprofessional who can implement and work with the Student’s assistive technology and augmentative communication throughout the day. According the District, it does not have the specially-trained staff necessary to meet the Student’s needs, and would not have been able to hire and train staff before the start of the school year. The Superintendent told OCR that he explained to the Complainant that the District did not have the necessary services and that two months (particularly when staff was gone for the summer) would not be enough time to put them in place.

The Complainant told OCR that during the meeting, she tried to explain how the Student would be able to access the District’s program successfully and that, while the Student’s IEP looked complex, the District was actually well-equipped to address the Student’s needs, which were primarily technology-based. She stated that, despite her efforts, they insisted that the District would not be able to implement the Student’s required services and that, even if the Student moved to the District, the District would need to send the Student to an out-of-district program.<sup>4</sup>

After the meeting, the Superintendent sent the Complainant an e-mail stating that “the [District] has determined that it cannot provide a [FAPE] for [the Student] that would meet his needs and therefore there is not a school-choice slot available for [him].” The next day, the Superintendent sent a letter to the Complainant and her husband, notifying them that the District had determined that it would not be able to provide the Student with a FAPE and that it would not be in his best interest to transition to Smith Academy. The Superintendent wrote that “[t]his determination was based on a review of the student records that were received on both June 28 and June 30, 2016.” The Superintendent explained in the letter that the Student’s IEP includes devices, which would require extensive training that could not be provided to the staff in the timeframe available, and that his IEP also requires staff that the District does not currently have (i.e., a one-to-one paraprofessional, an assistive technology specialist, and an adaptive physical education teacher). He further wrote: “As I stated in our meeting, the [District] would have to consider an out-of-district placement in order to best provide [the Student] FAPE in a least restrictive environment.”

#### **E. The District’s Handling of Other School Choice Applications for Students with Disabilities**

OCR sought information from the District regarding other students with disabilities who had applied for admission to the District through the school choice program. The District stated that whenever a student is successful in the school choice lottery, the District always reviews the student’s records to ascertain the strengths and needs of each student before it makes a final

---

<sup>4</sup> The Complainant also told OCR that during this meeting, the Superintendent said, “we don’t take students like these,” referring to the Student. In interviews with OCR, the Superintendent, the Principal, and the Student Services Coordinator all denied that the Superintendent made this statement.

decision on enrollment. The District stated that this process ensures that it can meet the needs and implement the proposed or agreed-upon IEP for each student.

The District provided OCR with school choice admissions and enrollment data for the 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, and 2016-2017 school years.<sup>5</sup> The data showed that from 2011-2012 through 2015-2016, the District did not refuse admission to any student identified as having an IEP or Section 504 plan. For the 2016-2017 school year, however, the data showed that the District refused admission to two students with disabilities—the Student in this case and a first grade student with a Section 504 plan (Student A). The District stated that a review of Student A’s discipline record showed several dozen major and minor referrals for discipline during the previous school year for behavior that included threatening students and staff, assaulting students, and threatening to “blow up the school.” The District explained that Student A’s Section 504 plan indicated that he was being recommended for placement in a behavioral classroom for the 2016-2017 school year and that because the District does not have such a classroom, the District denied him enrollment.

During interviews with District staff, OCR learned that for the 2017-2018 school year, the District received an application for a student who had been enrolled in a private day program. District staff told OCR that upon receiving the student’s application, they notified the student’s parents that the District did not have a therapeutic day program.

### **Legal Standard**

The Section 504 regulation at 34 C.F.R. § 104.4 provides that no qualified person with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient’s programs or activities on the basis of disability. The regulation further provides that the recipient may not use criteria or methods of administration which have the effect of subjecting qualified persons with disabilities to discrimination on the basis of disability. Where, as here, Title II confers no greater rights than Section 504, OCR applies the Section 504 regulatory standards.

In addition, the Section 504 regulation at 34 C.F.R. § 104.33 requires that the recipient provide a FAPE to students with disabilities in its jurisdiction.<sup>6</sup> 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

---

<sup>5</sup> OCR only requested data for the 2014-2015, 2015-2016, and 2016-2017 school years, but the District voluntarily provided an additional three years of data.

<sup>6</sup> Where a qualified individual with a disability resides in the jurisdiction of one recipient but attends the school of another recipient through school choice, OCR policy permits a state to define each covered entity’s obligations in ensuring that the qualified student receives a FAPE. As detailed above, Massachusetts regulations provide that once a child is enrolled in a choice district, that district, rather than the district of residence, becomes responsible for providing that student with a FAPE and complying with the evaluation and placement requirements of the Section 504 regulation. *See* 603 C.M.R. § 28.10(6).

requirements.<sup>7</sup> Where appropriate, Section 504 permits the recipient to place a particular student with a disability in an educational program other than the recipient's regular education classes if that placement is needed to provide the student with a FAPE. *See* 34.C.F.R. §§ 104.33(b)(3), 104.34(a), 104.35(c). In interpreting evaluation data and making placement decisions, Section 504 requires, among other things, that the recipient draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 104.35(c).

### **Analysis**

When investigating an allegation of disability discrimination under a different treatment theory, OCR first determines whether there is sufficient evidence to establish an initial, or *prima facie*, case of discrimination. Specifically, OCR determines whether the District treated the Student less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

OCR found that the District denied the Student admission to Smith Academy on the basis of his disabilities and treated him differently than similarly situated applicants without disabilities when it denied him admission. As detailed above, the District reported to OCR that a spot at Smith Academy became available for the Student but that the District did not offer him final admission because of his disability-related needs. In addition, correspondence from the District to the Complainant specifically cites the Student's disability-related needs as the reason it could not offer the Student admission.

Because the District treated the Student differently based on his disabilities, OCR next considered whether the District provided a legitimate, nondiscriminatory reason for the different treatment that was not a pretext for discrimination. The District asserted that it did not discriminate against the Student when it denied him admission. The District explained that it denied the Student admission because the District could not implement the Student's IEP nor be ready to do so by the start of the 2016-2017 school year and, as a result, would not have been able to provide the Student with a FAPE, in violation of its obligations under federal and state law. District staff told OCR that based on its review of the Student's records, the District determined that it lacked the appropriate staff to implement the Student's IEP services and that it would have been impossible to contract or hire for the necessary services at the late date of June 30, 2016 and have them ready by the end of August. The District also stated that had the Student moved to the District on or about June 30, 2016, the District would have proposed an out-of-district placement with specially-trained staff and equipment to meet the Student's needs for the upcoming school year.

---

<sup>7</sup> OCR interprets the Title II regulations 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 regulations.

The District further stated that it has participated in the school choice program for a number of years and, during that time, has accepted a significant number of students with disabilities. The District noted that until the 2016-2017 school year, it had never refused admission to any applicant with a disability. The District reiterated that it always reviews an applicant's records to ensure that the District can meet his/her needs and implement his/her IEP or Section 504 plan, and that in this case, the District determined that it could not meet the Student's needs.

Section 504 prohibits a school district from excluding any student because the student needs special education or related aids and services to ensure a FAPE. The District's stated reasons for denying the Student admission are directly related to his disabilities and the District's ability to accommodate his disability-related needs. Therefore, the District's reasons for denying the Student admission are not legitimate or nondiscriminatory under Section 504 and Title II. Moreover, the District's practice of considering whether the District can meet a student's disability-related needs during its admissions process is prohibited as unnecessary different treatment on the basis of disability.

The District contends that it has to consider an applicant's disability-related needs during the admissions process so that it can ensure that upon enrollment, the District has the appropriate staff and services to provide that student a FAPE. The District is correct that, pursuant to Section 504, a school district has an obligation to provide a FAPE to students with disabilities in its jurisdiction and that where appropriate, a district may place a student with a disability in an educational program other than the district's if that placement is needed to provide the student with a FAPE. However, the District's practice of reviewing a student's special education files prior to enrollment conflates its admissions process with a placement decision, and in doing so, violates Section 504. Specifically, a placement decision is not to be made during the admissions process nor made by staff responsible for admissions and enrollment. Section 504 prohibits staff responsible for admissions and enrollment from substituting their judgment for a decision of the group of people responsible for placement under Section 504.

In this case, the District denied the Student admission because District staff responsible for admissions and enrollment determined that the District was not an appropriate placement for the Student (i.e., that the District did not have the services to be able to implement the Student's IEP). District staff told OCR that they made this decision based on a review of the Student's records and without convening a team meeting or otherwise consulting with persons knowledgeable about the Student from the sending district. OCR notes that while it is possible that the District would not have been able to provide the Student with a FAPE during the 2016-2017 school year, this was a decision for the Student's IEP team—not District admissions staff (who had no prior knowledge of the Student or the services he required)—and not to be made prior to enrollment. Accordingly, the District's decision to rescind the Student's admission to Smith Academy was not an individualized placement decision that satisfied Section 504 FAPE requirements; instead, the District's actions subjected the Student to different treatment and excluded him from the District's program on the basis of disability.<sup>8</sup>

---

<sup>8</sup> During the course of its investigation, OCR learned that there were two other instances where the District notified parents of prospective students with disabilities that the District did not have the programs or services to meet their children's needs. Although OCR does not have more specific information about these cases, they raise concerns that

Lastly, OCR notes that the District's application form includes questions regarding whether an applicant has an IEP or Section 504 plan. The application states that the information is used for planning purposes only, and District staff told OCR that the questions were added as a check if the sending district does not provide a student's IEP or Section 504 plan. However, as detailed above, there is no legitimate reason to consider a student's disability during the admissions process, and for this reason, any pre-enrollment inquiry about disability is prohibited as unnecessary different treatment on the basis of disability. Moreover, asking about a Section 504 plan or IEP on the application could have the effect of subjecting students with disabilities to discrimination because it could discourage parents of students with disabilities from applying to the District. OCR acknowledges the District's efforts to prepare services and aids in advance of the school year and notes that once a student is admitted, it is permissible to ask a student whether he or she has a disability in order to ensure that the district provides the student a FAPE, assuming that any placement decision is made in conformity with legal requirements.

Based on the foregoing, OCR concludes that the District's actions in rescinding the Student's admission offer denied the Student an equal opportunity to participate in the District's program and subjected him to different treatment on the basis of his disabilities..

### **Conclusion**

On April 12, 2018, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take certain steps in order to resolve 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.

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.

---

the District may have a practice of treating applicants with disabilities differently than it treats those applicants who do not have disabilities and has denied them enrollment because of their disabilities.

If you have any questions, you may contact Civil Rights Attorney Gillian Thompson at 617.289.0012 or [Gillian.Thompson@Ed.gov](mailto:Gillian.Thompson@Ed.gov).

Sincerely,

/s/ Adrienne Mundy-Shepard  
Meena Morey Chandra *w/p AMM*  
Acting Regional Director

Enclosure

cc: Regina Tate ([gtate@mhtl.com](mailto:gtate@mhtl.com))