



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

April 6, 2018

Pia Durkin, Ph.D.
Superintendent of Schools
New Bedford Public Schools
455 County Street
New Bedford, MA 02740

Re: Complaint No. 01-17-1189
New Bedford Public Schools

Dear Dr. Durkin:

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 New Bedford Public Schools (the District). Specifically, the Complainant alleged that the District denied his child, who has a disability, a free appropriate public education (FAPE) by failing to take appropriate steps to address peer harassment of which it had notice. 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).

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. The District is subject to the provisions of Section 504 and Title II because it is a recipient of federal financial assistance from the Department, and it is a public entity operating an elementary and secondary school system, respectively. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and Title II.

Legal Standards

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. 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 Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any student who needs or is believed to need special education or related services due to a disability. A district must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement. Factors that could indicate that a student may have a disability and be in need of services include documentation of a mental or physical impairment or other information from care providers; increased absenteeism; increased disciplinary incidents; and/or changes in grades or social interactions.

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 address all of the allegations raised in the complaint. OCR will monitor the District's implementation of the Agreement.

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 Tokufumi Noda, Civil Rights Attorney, at (617) 289-0017 or by e-mail at Tokufumi.Noda@ed.gov.

Sincerely,

Ramzi Ajami
Compliance Team Leader

Enclosure

cc: Catherine Lyons, Esq.; Melissa Curran, Esq.