



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

January 2, 2018

Susan Viccaro
Superintendent
Newburyport Public Schools
70 Low Street
Newburyport, MA 01950

Via Email to: sviccaro@newburyport.k12.ma.us

Re: Case No. 01-17-1305
Newburyport Public Schools

Dear Superintendent Viccaro:

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 Newburyport Public Schools (the District). The Complainant alleged that the District discriminated against her client's daughter (the Student), who has a disability, by placing her on the school bus approximately eight to ten minutes before her non-disabled peers, from XXXXXX 2016 until XXXX XX, 2017. 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 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 Section 504 because it receives Federal financial assistance from the U.S. Department of Education and it is subject to Title II because it is a public entity operating an education system.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District's programs or activities on the basis of disability.

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

When investigating an allegation of different treatment, 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.

Summary of Preliminary Investigation

The Student is XXXXX XXXX XXX XXXXXXXX who receives services in school pursuant to an IEP. The Student has limited verbal communication skills and her IEP requires 1:1 support by an aide at all times. On XXXXX XX, 2017 the Student's bus driver reported to the parent that the Student had been chewing on the back of a bus seat every day at the end of the school day. The parent alleged that the bus driver told her that the Student was put on the bus approximately 8 to 10 minutes before other students each day. The parent provided photographs to OCR of the chewed bus seat, and asserted that the reason her daughter chewed through the bus seat was because of her anxiety regarding being left alone on the bus. The parent immediately stopped sending the Student on the bus and began driving her to school. The parent stated that when she brought this matter to the District's attention, the District immediately offered the Student specialized transportation on a van going forward. The parent declined these services for the remainder of the 2016-2017 school year based on safety concerns.

During its investigation, OCR reviewed documents provided by the Complainant and the District, including, but not limited to: classroom schedules, the Student's schedule, bus schedules and routes, the school schedule, documentation between the parent and the District during the 2016-2017 school year about transporting the Student to and from the school, and the Student's Individualized Education Program (IEP).

The District asserted that it immediately investigated the parent's concerns. The District indicated that all students, with or without disabilities, are dismissed at the same time in the afternoon, unless a different schedule is established in order to ensure safety or to address the specific needs of a child. The District stated that the Student was brought to the bus a few minutes before her peers each day in order to ease her anxiety with transitions and large, crowded noisy hallways.

OCR has determined that the evidence gathered to date indicates that the Student was brought to the bus early without her peers, on a daily basis. OCR has not yet determined whether the District has provided legitimate, nondiscriminatory reasons for bringing the Student to the bus, or whether the reasons given by the District are pretextual. To complete its investigation, OCR would need to interview District staff about the underlying reasons the Student was brought to the bus, and obtain any other relevant documentation.

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 issue 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 Colleen Robinson at (617) 289-0063 or by e-mail at Colleen.Robinson@ed.gov.

Sincerely,

/s/

Emma Kim
Acting Compliance Team Leader

Enclosure

cc: Alina Kantor Nir, Esq.