



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

September 19, 2019

Superintendent Brian E. Lynch
Middleborough Public Schools
By email: blynch@middleboro.k12.ma.us

Re: Complaint No. 01-18-1188
Middleborough Public Schools

Dear Superintendent Lynch:

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 Middleborough Public Schools (District). The Complainant alleges that the District discriminated against the Complainant's son (Student) on the basis of disability. Specifically, the complaint alleges that after the Student was XXXXXXXXXXXXX in early 2018, the District failed to reevaluate the Student or consider his new diagnosis and the District informed the Complainant that it did not have someone who could interpret the diagnosis. 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. 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.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR opened the following allegation for investigation:

- Whether the District failed to reevaluate the Student in winter/spring 2018 based on new information and prior to a significant change in placement; and/or whether, in interpreting evaluation data and in making placement decisions regarding the Student, the District failed to draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; and ensure that the placement decision was made by a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options, in violation of 34 C.F.R. Section 104.35, and 28 C.F.R. Section 35.130.

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

Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant, the Complainant’s former educational advocate (Advocate), and the District. OCR interviewed the Complainant, the Advocate, the District’s Director of XXXXX XXXXXXXXXXXX XXXXXXXXXXXX, and the District’s Director of XXXXXXXXXXXX XXXXXXXXXXXX.

The information obtained by OCR to date indicates that the Student has an Individualized Education Program (IEP) that lists both a XXXXXXX disability and an XXXXXXXXXXXX disability. From December 2016 to December 2017, the Student attended the District’s XXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX Program (XXXXXXX Program). In December 2017, the Student was XXXXXXXXXXXX and then XXXXXXXXXXXX to a XXXXXXXXXXXX XXXXXXXXXXXX at a XXXXXXXXXXXX XXXXXXXXXXXX program. In January and February 2018, while the Student was still XXXXXXXXXXXX, the Student’s IEP team met to discuss his needs and placement options. The Complainant did not want the Student to return to the XXXXXXX Program, and the IEP team was not able to reach a consensus regarding a new placement. On March 1, 2018, the Advocate forwarded a letter to the District from the Student’s XXXXXXXXXXXX, in which the XXXXXXXXXXXX described the Student’s needs and recommended a XXXXXXXXXXXX school placement.

When the Student was scheduled to return to school in XXXXX 2018, the District held a reentry meeting to plan the Student’s transition back to school. The participants of the meeting included the Complainant, the Advocate, the Student, the Director of XXXXX XXXXXXXXXXXX XXXXXXXXXXXX, and the Director of XXXXXXXXXXXX XXXXXXXXXXXX. OCR’s preliminary investigation suggests that, although the Student’s IEP team had previously discussed the placement options, the IEP team had not reached a decision prior to the XXXXX XX, 2018 reentry meeting. By the conclusion of the reentry meeting, however, the District decided that the Student would attend the XXXXX Program—a program involving XXXXXXXXXXXX classes with additional XXXXXXXXXXXX support—and developed the Student’s schedule. The Student started in the XXXXX Program the following day.

The evidence obtained by OCR to date suggests that the District may have implemented a significant change to the Student’s placement by moving him to the XXXXX Program without an evaluation by the IEP team. Nevertheless, OCR’s preliminary investigation also indicates that the District convened two IEP team meetings prior to the reentry meeting and two IEP team meetings following the reentry meeting (in XXXXX 2018). The IEP team meetings included the people necessary for making placement determinations, who reviewed information about the Student’s XXXXXXXXXXXXXXXXXXXX, diagnosis, and placement.¹

In addition, the evidence obtained by OCR to date suggests that a more recent evaluation of the Student might have been helpful. The parties dispute whether the Complainant requested an

¹ OCR understands that the Complainant disagrees with several decisions made by the IEP team, including the Student’s placement; however, OCR generally does not review or second-guess the results of individual evaluation, placement, and other educational decisions as long as the District follows the “process” requirements of Section 504. Substantive disagreements over a student’s evaluation, services, placement, or educational program are more appropriately addressed through a due process proceeding.

evaluation following the Student's XXXXXXXXXXXXXXXXXXXX. Yet even if the Complainant did not request an evaluation, the District was likely on notice that the Student might need additional or different services as a result of his recent XXXXXXXXXXXXXXXXXXXX and his new educational program. OCR notes that the Complainant did obtain a XXXXXXXXXXXXXXXXXXXX evaluation of the Student in October 2018, which the IEP team reviewed in November 2018.

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 and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address the allegation opened for investigation. 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.

Sincerely,

Abra Francois
Compliance Team Leader

Enclosure

cc: Andrea Bell, Esq., Stoneman, Chandler & Miller LLP