



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 3, 2023

Sheila Hoffman
Superintendent
Agawam Public Schools
By email: shoffman@agawamed.org

Re: Complaint No. 01-18-1222
Agawam Public Schools

Dear Superintendent Hoffman:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the complaint we received on April 19, 2018, against the Agawam Public Schools (District). While we strive to resolve the complaints we receive in a timely manner, we acknowledge the length of time that OCR has taken to resolve this case, and we thank the District for its patience.

The Complainant alleges that the District discriminated against Student 1 and Student 2 on the basis of disability and retaliated against the Complainant. OCR investigated the following legal issues:

1. Whether, in XXXXXXXXX, the District failed to evaluate Student 1 who, because of disability, needed or was believed to need special education or related services, in violation of 34 C.F.R. Section 104.35(a) and 28 C.F.R. Section 35.130.
2. Whether, in XXXXXXXXX, the District failed to evaluate Student 2 who, because of disability, needed or was believed to need special education or related services, in violation of 34 C.F.R. Section 104.35(a) and 28 C.F.R. Section 35.130.
3. Whether, in XXXXXXXXXXXXX, the District retaliated against the Complainant, in violation of 34 C.F.R. Section 104.61 (incorporating 34 C.F.R. Section 100.7(e) by reference) and 28 C.F.R. Section 35.134.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the U.S. Department of Education. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, 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 U.S. Department of Education. The laws enforced by OCR

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prohibit retaliation against any individual who asserts rights or privileges under these laws or their implementing regulations, or who files a complaint, testifies, assists, or participates in a proceeding under these laws. 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.

During the investigation, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District staff. Before OCR completed its investigation, the District expressed a willingness to resolve Allegations 1 and 2. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 3.

OCR's findings and conclusions are further discussed below.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. 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.

Likewise, to provide FAPE to a student with an allergy-related disability and meet the standards referenced above, a school district must have a plan to meet the student's individualized needs. A health care plan may comply with the provisions of Section 504, provided that the school district complies with the procedural requirements of the Section 504 regulation with respect to evaluation, placement, and procedural safeguards.

The Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement. Accordingly, school districts must not deny or unreasonably delay conducting an evaluation of a student when a school district reasonably suspects that a student has a disability and needs special education or related services because of that disability.

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 individual engaged in a protected activity; (2) the individual experienced an adverse action caused by the recipient; 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. 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.

Background

Student 1 and Student 2 are

XX
XXXXXXXXXXXXXXXXXXXX school year. Both students started the
XX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Student 1 – XXXXXXXXXXXXXXXXXXXXXXX

At the time of enrollment, the Complainant told District staff about Student 1's

XX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX The Complainant completed Student 1's health history
form, noting that Student 1

XX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX According to the District, shortly after her enrollment,
Student 1 started to

XX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX In response, on XXXXXXXXXXXXX, the
Complainant authorized the District to exchange information with a XXXXXXXXXXXX that
Student 1 was seeing, and in XXXX the District also received authorization for the release of
information from Student 1's pediatrician.

In XXXXXXXXXXXX, Student 1 had an

XX
XXXXXX the District staff held an in-school meeting with the Complainant on XXXXXXXXXXXX to
discuss Student 1's needs, request a release to speak to Student 1's XXXXXXX, and develop a
safety plan. The Complainant signed the Safety Plan on XXXXXXXXXXXX; the plan included the
use of a XXXXXXXXXXXX and explained that if Student 1
XX
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XXXXXXXXXXXXXXXXXXXXXXXXXXXX

In the XXXXXXXXXXXX, Student 1 began XXXXXXXXXXXXXXX XXXXXXX, and
XXXXXXXXXXXX. The School Adjustment Counselor told OCR that her concerns grew in the

XXXX and she was in communication with the Complainant or Student 1's grandmother on almost a daily basis. The District explained that it tried to manage Student 1's
XX
XX while simultaneously taking steps to begin the evaluation process.

On XXXXXXXXXXXXXXXXXXXX, the Complainant signed a consent form for Student 1 to work with the School Adjustment Counselor and
XX in the school. On
XXXXXXXXXXXXXXXXXXXXXXXXXXXX, the District requested consent for a Functional Behavioral Assessment (FBA). According to the District, there were multiple conversations, and several copies of the consent form exchanged back and forth with the Complainant, and they ultimately received consent to conduct the FBA from the Complainant on XXXXXXXXXXXXXXXX (although, as noted below, a formal observation of Student 1 was not conducted for nearly a month).

On XXXXXXXXXXXXXXXXXXXX, the District informed the Complainant that Student 1 was
XX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX The District also indicated to OCR that Student 1 was
XX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX have Student 1 evaluated, but that the Complainant had refused. The District represented to OCR that they told the Complainant that they would file a XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX if Student 1's
XXXXXXXXXXXXXXXXXXXX and she was not evaluated by XXXXXXX. The Complainant told OCR that she never once refused to call XXXXXXX but that at times she questioned XXXXXXX efficacy because every time they called XXXXXXX it was the same referral service with the same recommendation that Student 1 XXXXXXXXXXXXXXX. The Complainant also responded affirmatively when asked whether she recalled the District saying that they would file a XXXX if she did not take Student 1 to XXXXXXX, and stated that a police officer
XX

On XXXXXXXXXXXXXXXXXXXX, the Complainant signed an authorization for a XXXXXXXXXXXX referral for Student 1. According to the District, that same day it received authorization from the Complainant to speak with Student 1's pediatrician "for the Section 504 evaluation that the [District] was pursuing." The District spoke to Student 1's pediatrician about its in-school concerns with Student 1, and received information on
XX
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

On or about
XX
XXXXXXXXXXXXXXXXXXXX The Complainant and Student 1's grandmother eventually arrived at the school. The Complainant explained to OCR that she was upset that the District had not called her earlier when Student 1
XX
XXXXXXXXXXXXXXXXXXXX The Complainant told OCR that she yelled at District staff and administrators that she was going to contact an advocate, and that the Principal called her afterwards to speak to her about how she treated District staff. The Complainant also told OCR

On XXXXXXXXXXXXXXXX, Student 1 was scheduled to meet with her
XXXXXXXXXXXXXXXXXXXX at the school. Upon arrival, Student 1
XX
XX
XX
XX
XX
XX
XX
The Complainant ultimately
took Student 1 home and told District staff that Student 1 would not be in school the next day
and XXX. The District
subsequently contacted DCF about this incident. On XXXXXXXXXXXXXXXX the District filed a
XXXXXXXXXXXX.

The District strongly denied that either the XXXXXXXXXXXXXXXXXXXX was filed because of any advocacy on the part of the Complainant, or because the Complainant indicated she was going to retain an advocate. OCR conducted an interview with the School Adjustment Counselor, who stated that whether or not a parent or guardian had an advocate was completely separate from the District's decision to XXXXXXXXXXXX, and that in this case its decision to file the XXXXXXXXXXXX did "not at all" take into account the fact that the Complainant had indicated she was going to get an advocate. Pursuant to District policy and state law, school staff are mandated reporters and are required to report XXXXXXXXXXXXXXXXXXXX.

[illegible]

With respect to the XXXXXXXXXXXXXXXXXXXX the District told OCR that it filed in part because of
XX
XX
XXThe District strongly denied that
the Complainant's advocacy for Student 1 had anything to do with the filing. In response to the
District's position regarding their filing XXXXXXXXXXXXXXXX, the Complainant stated to OCR
that she believed that the District notified XXXXXXXXX at that point because of
XXXXXXXXXXXXX. The Complainant also told OCR that she believed the

XXXXXXXXXXXXX was filed to shift the blame to her as the parent because the District believed they knew Student 1's XXXXXXXX needs better than the Complainant.

OCR also reviewed data regarding XXXXXXXXXX filed by the District during the XXXXXXXXXX school year and noted that the District filed XXXXXXXXXX during this period which were prompted by a wide range of reasons, and that according to OCR's review, none of the other XXXXXXXXXX filed by the Student's school appeared to involve disability advocacy.

[illegible]

On XXXXXXXXXXXXXXXXXX, the District invited the Complainant to a Section 504 eligibility meeting to be held on XXXXXXXXXXXXXXXXX. The District received the Complainant's signed consent to evaluate for special education on XXXXXXXXXXXXXXXXXX After receiving the signed consent form, the Team Facilitator scheduled both testing and an eligibility meeting for XXXXXXXXXXXXXXXX. However, after scheduling the testing and the eligibility meeting, the Team Facilitator received a letter from the Complainant
XX Student 1 (and Student 2, addressed below) from the District, and
XX The District's 504 Education Team Facilitator learned that Student 1
XX
XX

Student 2 – XXXXXXXXXXXXXXXXXXXX

As for Student 2, at the time of enrollment, the Complainant completed a Health History form, indicating that Student 2 has a
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. A medical form completed by a health care provider in
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. An undated school health record stated that Student 2

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, the Complainant signed a medical release form for the District, which authorized the school to share information about Student 2's XXXXXXXXXXXXXXXXXXXX to various school personnel; the form noted that this "would help them understand both the severity of the issue and the importance of contacting the school nurse or escorting [Student 2] to the Nurse's office **immediately** in case of an emergency" (emphasis in original).

The District instituted a Severe Allergic Reaction Plan for Student 2 on XXXXXXXXXXXX, which outlined a plan that school personnel would follow if Student 2 XXXXXXXXXXXXXXXXXXXX. The District stated that it provided copies of this Plan to the office as well as Student 2's teachers. Further, according to the District, the head of the school cafeteria was given Student 2's picture and allergy information, and the Nurse personally spoke to the cafeteria staff about Student 2's XXXXXXXXXXXX. The District further explained that they treated Student 2's XXXXXXXXXXXXXXXXXXXXXXXXXXXX. Student 2 also received a Severe Allergic Reaction Individual Health Care Plan (Health Care Plan) on XX. The plan identified a potential for severe allergic reactions and noted that past reactions included XXXXXXXXXXXXXXXXXXXX.

On XXXXXXXXXXXXXXXXXXXX, Student 2 received a new Health Care Plan, which was signed by the Complainant on XXXXXXXXXXXXXXXXXXXX. This version of the Health Care Plan was updated to list XXXXXXXXXXXX as one of the intervention steps. Student 2's health care provider submitted medical authorization to XX. The health care provider also completed a Food Allergy & Anaphylaxis Emergency Care Plan indicating that Student 2 is XXXXXXXXXXXXXXXXXXXX.

On XXXXXXXXXXXXXXXXXXXX, the District sent the Complainant a formal invitation to a Section 504 meeting for Student 2, to determine his initial eligibility and to develop a Section 504 plan. On XXXXXXXXXXXXXXXXXXXX, the District conducted a Section 504 eligibility meeting for Student 2, with the Complainant, the School Nurse, an adjustment counselor, and Student 2's teacher in attendance. The team concluded that Student 2 was eligible for a Section 504 plan. The team noted that Student 2 has a "documented XX XX. The Team created a Section 504 plan that provided XXXXXXXXXXXXXXXXXXXX option and to follow the health care plan, and the use of medication as directed.

District Policies

During the XXXXXXXX school year, the District had policies on the identification, evaluation, and placement of students with disabilities under Section 504 and Title II. The District had a District-wide Section 504 Coordinator, and each school building had an administrator who was responsible for assuring the respective school is in compliance with Section 504 regulations. Each individual school building administrator was responsible for the entire procedural process for medical-related Section 504 plans, including ensuring the referral form was complete, obtaining parental consent, scheduling meetings, etc. For non-medical related Section 504 plans,

the District-wide Section 504 Evaluation Team Facilitator would assist the school building administrator in the evaluation, scheduling, notice, team meeting membership, eligibility, and the writing of plans and documentation. The District-wide Section 504 Evaluation Team Facilitator was responsible for procedural aspects for non-medical Section 504 plans, including ensuring referral forms were complete, obtaining parental consent, sending meeting notices with procedural safeguards, etc., and then each school was responsible for compliance related to any and all Section 504 plans at that school.

The policies also outline the District's responsibilities should a parent bring a concern to the school or request an evaluation, noting that a referral should be initiated immediately. The policies also include detailed checklists and procedures for the Section 504 evaluation process. As to the relation between individual health plans and Section 504 plans, the policies note that an individual health care plan may not serve as a substitute for an initial evaluation under Section 504. The policies also state that Section 504 requires recipients to refer a student for an evaluation for possible special education or related aids and services if the student, because of disability, needs or is believed to need such services.

The District maintained policies to address life-threatening allergies, with the purpose of identifying students with life-threatening allergies and training faculty and staff. The policies outline specific responsibilities for the District, the school nurse, teachers, food service personnel, and others.

The District also maintained a policy on student welfare that mandated school officials or employees to report any suspected child abuse or neglect pursuant to Massachusetts state law.

Analysis

Disability Discrimination as to Student 1 (Allegation 1) and Student 2 (Allegation 2)

Based on OCR's preliminary investigation, OCR is concerned that the District may have failed to conduct a timely evaluation for Student 1. As to the District's general procedures, they require that an evaluation be conducted immediately upon a referral by a parent. Here, however, the parent did not initially note any XXXXXXXXXXXXXXXX and there was no other evidence to corroborate the allegation that a request was made in XXXXXXXXXXXXXXXX. The District nonetheless took several steps to attempt to address the student's behaviors, such as a XXXXXXXXXXXXXXXX and requesting consent for an FBA.

[illegible]

Accordingly, although the District had general policies to ensure a prompt evaluation and had taken steps to support Student 1, OCR has concerns with the delay in requesting the consent to evaluate and scheduling the evaluation given Student 1's XXXXXXXXXXXX. School districts may implement strategies and provide supports, however those supports must not deny or delay an evaluation of a student who is suspected to need special education or related services because of a disability.

Likewise, as to Student 2, OCR is concerned that the District did not evaluate Student 2 for a Section 504 plan, or develop a plan pursuant to the procedures required under Section 504, in a timely manner. Instead, the District waited XXXXXXXXXXXXXXXXXXXXXXXX to schedule a Section 504 eligibility meeting.

OCR's review of the District's Policies indicates that they generally comport with Section 504 in this regard. However, each school had its own administrator that was responsible for the procedural process for medical-related Section 504 plans, which includes plans for students with allergies. Thus, OCR is concerned that the manner in which Student 2's school implemented this process may have delayed evaluating or implementing Section 504 plans for students with allergies.

OCR has not made a finding with regards to the District's alleged failure to timely evaluate Students 1 and 2, and whether any delay was reasonable or led to a denial of FAPE. The District has agreed to voluntarily resolve this matter to address the concerns identified above before OCR reached a compliance determination.

Retaliation (Allegation 3)

OCR has determined that there is insufficient evidence to find that the District retaliated against the Complainant for disability-related advocacy. As an initial matter, OCR finds that the Complainant engaged in a protected activity when she requested services for Student 1 during the XXXXXXXXXXXX and indicated she would contact an advocate on or about XXXXXXXXXXXXXXXX. In addition, even assuming (without determining) that the District's XXXXXXXXXXXXXXXX constitute adverse actions, the proximity in time between the filings and the Complainant's advocacy on or XXXXXXXXXXXXXXXXXXXXXXXX may lead to an inference of a causal connection.

[illegible]

Moreover, OCR found insufficient evidence that the District's explanations for why they filed a XXXXXXXXXXXXXXXXXXXX were a pretext for retaliation. The evidence was instead

consistent with the School Adjustment Counselor's denial that the District's decisions were influenced by the Complainant's statement that she was going to hire an advocate. A review of data related to other filings for the XXXXXXXXXX school year did not indicate that the involvement of XXXX in this case was due to disability-related advocacy or having an advocate or attorney. Furthermore, the District acted consistent with its policy which stated that mandated school officials or employees must report XXXXXXXXXXXXXXXX. Accordingly, there is insufficient evidence suggesting that the District's reasons for filing XXXXXXXXXXXXXXXXXXXX was pretextual.

For these reasons, OCR found insufficient evidence that the District retaliated against the Complainant for disability-related advocacy.

Conclusion and Resolution Agreement

As noted above, 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 OCR's concerns, 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 these concerns. 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 a right to file a private suit in federal court whether or not OCR finds a violation.

The complainant has a right to appeal OCR's determination of Allegation 3 (Retaliation) within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the District may 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. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Sincerely,

/s/Megan Paresky w/p

Colleen Robinson w/p *MLP*
Compliance Team Leader

Enclosure

cc: Adam Dupere, Esq. (*by email: adam@duperelawoffices.info*)
Russell Dupere, Esq. (*by email: russell@duperelawoffices.info*)