



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

December 3, 2019

Matthew D'Andrea
Superintendent
By email: mdandrea@mvyps.org

Re: Complaint No. 01-18-1286
Martha's Vineyard Public Schools

Dear Superintendent D'Andrea:

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 Martha's Vineyard Public Schools (District). The Complainant alleged that the District discriminated against her child (Student) on the basis of disability. Specifically, the complaint alleges that the District (i) failed to ensure that it convened a group of knowledgeable persons, with information from a variety of sources, to conduct a manifestation determination for the Student after he was excluded from class for more than 10 days during the XXXXXX school year (Allegation 1), and (ii) denied the Student a free appropriate public education (FAPE) by failing to implement his Section 504 plan, specifically the provisions concerning XXXXXXXX and XXXXXXXX (Allegation 2). 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), 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 Department. 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 Department.

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

- Whether the District failed to reevaluate the Student who had been provided special education or related services prior to a significant change in placement, in violation of 34 C.F.R. Section 104.35(a) and 28 C.F.R. Section 35.130, when it failed to convene an adequate team meeting to determine whether the student's disability caused the misconduct.

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

Intervention Plan (FBA/BIP) during the meeting and this may have been a reference to that; she also stated that she was not sure whether they were going to tell her when it had been reviewed, whether she needed to take any action, or what exactly they were doing with that request. She also alleged that she requested an FBA/BIP on other occasions but the Student was never assessed or given such a plan. When interviewed by OCR, the Director thought the provision may have related to XXXXXXXXXX for in-school suspensions, but was not certain. Because the District expressed an interest in a voluntary resolution, OCR has not completed its investigation into this meeting and exactly which services the team agreed the Student needed.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education 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. 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.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student's plan or as otherwise agreed to by the student's team. If OCR finds that a district has not implemented a student's plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the district to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), also requires a school district to reevaluate a student with a disability before any significant change in placement. OCR considers an expulsion, long-term suspension, or other disciplinary exclusion of more than 10 school days to be a significant change in placement. A series of short-term exclusions that add up to more than 10 days and create a pattern of exclusions may also be a significant change in placement. When a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the misconduct (also referred to as a manifestation determination). That determination should be made by a group of persons, including persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. The group must draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior. If the group finds that the student's disability did not cause the misconduct, the district may discipline the student in the same manner as it disciplines students without disabilities. If a school district finds that the student's disability caused the misconduct, the district may not exclude the student for more than 10 days and must continue the reevaluation to determine the appropriateness of the student's current educational placement.

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.

Sincerely,

/s/

Michelle Kalka
Compliance Team Leader

Enclosure

cc: XXXXXXXXXXXX