



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

May 30, 2019

Dr. Betsy M. Webb
Superintendent
Bangor School Department
By Email: bangorsupt@bangorschools.net

Re: Complaint No. 01-18-1360
Bangor School Department

Dear Dr. Webb:

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 Bangor Public Schools (District). The Complainant alleges that the District discriminated against her grandson (Student) on the basis of disability. Specifically, the complaint alleges that the District imposed an out-of-school suspension on the Student in XXXXXXXXXXXXXXXX for conduct related to his disability and thereby denied him a free, appropriate public education (FAPE). 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 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) 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.

Summary of Preliminary Investigation

Background

On XXXXXXXXXXXXXXXX, the Complainant requested the Student, who was in XXXX grade at XXXXXXXXXXXXXXXX, be evaluated. In XXXXXXXXXXXXXXXX, the Student received a number of evaluations. Of relevance to this complaint, the Student received XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX (Evaluation).¹ XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX

¹ XX- Footnote redacted – XX.

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

OCR has also not completed its investigation concerning the tutoring the Student received and whether he was provided a free, appropriate public education during the time of his suspension. The District provided documentation that the Student was provided with 58 hours of tutoring, and a computer math program for extra assistance over the summer, and the team notes indicate some discussion of Student's needs when determining what tutoring to provide, but OCR has not determined whether the team assessed the Student's need retroactively in light of the possible delay in identification or possible lack of manifestation determination.

Finally, OCR has other preliminary concerns about the District's policies and procedures:

- (i) Neither the District's child find policy nor any other document obtained during OCR's investigation to date outlined the District's obligations to locate students with disabilities under Section 504 and the implementing regulation at 34 C.F.R. § 104.32(a). The child find policy is limited to the state law and IDEA obligations;
- (ii) The form used when suspending a student asks whether a student has an IEP, but does not appear to consider whether a student has a Section 504 plan; and
- (iii) The District's Section 504 policy discusses student discipline, and the need to convene a manifestation determination, but it is limited to students identified under Section 504 as students with a disability; the policy should be extended to students who are believed to potentially have a disability but who may not yet have a plan (i.e., children who need or are believed to need special education or related services but may have not yet been evaluated or who may have been evaluated but for whom a team has not yet met to consider their appropriate placement).

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 all of the allegations investigated. 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

preliminary concerns that the District staff member may have been attempting to supplant or presuppose the team's decision-making. The determination of eligibility must be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and not by an individual.

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 Catherine Deneke at (617) 289-0080 or by e-mail at Catherine.Deneke@ed.gov.

Sincerely,

Michelle Kalka
Compliance Team Leader

Enclosure

cc: Peter D. Lowe, PLowe@brannlaw.com