



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

February 5, 2019

Dr. Stephen Zrike
Receiver/Superintendent
Holyoke Public Schools
57 Suffolk Street
Holyoke, MA 01040

Via email: szrike@hps.holyoke.ma.us

Re: Complaint No. 01-18-1388
Holyoke Public Schools

Dear Dr. Zrike:

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 Holyoke Public Schools (the District). The Complainants alleged that the District discriminated against their son (Student) on the basis of disability. Specifically, the complaint alleged that the District failed to provide writing, reading, math, and counseling services required by the Student's Individualized Education Program (IEP). 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

During the spring of 2018, the Student was in the XXX grade at the XXXXXX in Holyoke receiving special education services pursuant to an IEP. The Student's IEP included push-in special education services in Writing Skill Development (1 x 30), Mathematics Skill Development (4 x 30), and pull-out special education services in Reading Skill Development (5 x 30) and Social/Interaction Skills Development (2 x 30). The Complainants alleged that the Student did not receive reading, writing, and math services in April and May of 2018 because his special education teacher was tasked with proctoring for the Massachusetts Comprehensive

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

Assessment System (MCAS) for students in other grades during the times she was scheduled to meet with him. The Complainants further alleged that the Student did not receive counseling, math, or reading services in the fall of 2018 when the Student transferred to XXXXXXXX.

During the investigation, OCR reviewed documents provided by the Complainants and the District and interviewed the Complainants.

IEP Implementation in Spring 2018

The District has acknowledged that the Student missed some of his push-in and pull-out special education services in the areas of reading, writing, and math when the Student's special education teacher was proctoring MCAS. The District reported to OCR that the Student did not receive his services on eight occasions in April and May of 2018. The District provided emails showing that it worked with the Complainants and their advocate to determine appropriate compensatory services to remedy the missed services. The Complainants were given the option of having the compensatory services delivered over the summer of 2018 or during the 2018-2019 school year. The District stated that the Complainants have not yet scheduled the compensatory sessions.

Based on the above, the evidence raises preliminary concerns regarding the District's implementation of the Student's IEP. Specifically, the evidence indicates that the District did not provide the Student with some services in accordance with his IEP. However, OCR has not reached a determination regarding whether the missed services constituted a denial of a free appropriate public education (FAPE), or the effectiveness of the District's attempts to provide compensatory services. OCR has further identified a preliminary concern about the District's decision to have a special education teacher who provides pull-out and push-in services proctor the MCAS on numerous dates, and whether this special education teacher may have also missed services for other students she was supposed to service on these days. If OCR continued to investigate, OCR would seek to determine whether the special education teacher also missed services with her other students while she was proctoring the MCAS and whether any compensatory services were offered and/or provided.

IEP Implementation in Fall 2018

The Student began XXX grade in the fall of 2018. The evidence obtained to date indicates that the Student's IEP annual review meeting was held on XXXXXXX, 2018, during which the IEP team discussed counseling services. The team determined that although the Student should have been receiving weekly counseling services, he had only received one session since the beginning of the school year, and the team offered compensatory services to the Student. The District's position is that the Student continued to make effective progress, and that the missed services do not amount to a denial of FAPE. OCR has not yet reached a determination regarding whether the missed counseling services would amount to a denial of FAPE, nor has OCR fully assessed the District's efforts to provide compensatory services.

In addition, the District reported to OCR that the Student also missed sessions of a weekly social skills group that should have been provided in September 2018 pursuant to the Student's IEP in

effect from XXXXXXXX 2018 to XXXXXXXX 2018. OCR has identified preliminary concerns regarding the provision of the social skills group to the Student, and whether there may be other similarly affected students, given that it appears a group of students did not meet.

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 raised in the complaint, and the preliminary concerns identified during the course of OCR's 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 Complainants 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,

Emma Kim
Acting Compliance Team Leader

Enclosure

cc: Marianne Currier, Chief of Pupil Services
Leigh W. Mello, Esq.