



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

March 30, 2020

Patrick Daly, Ed.D.
North Reading Public Schools
Sent via email: pdaly@nrpsk12.org

Re: Complaint No. 01-19-1148
North Reading Public Schools

Dear Superintendent Daly:

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 North Reading Public Schools (District). The Complainant alleged that the District discriminated against the Parent's son (Student) on the basis of disability when the Student's XXXXXXXX teacher (Teacher) failed to implement several provisions of the Student's Individualized Education Program (IEP) between XXXX and XXXX 2018.¹ As explained 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.

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

- Whether the District failed to implement provisions of the Student's IEP between XXXX and XXXX 2018; specifically, "XXXXXXXX," "XXXXXXXX," and "XXXXXXXXXX"/"XXXXXXXX," and whether doing so denied the Student a free

¹ The Complainant also alleged that the District failed to promptly and equitably respond to notice that the Teacher made two discriminatory disability-based remarks about the Student in front of his XXXXX around XXXXX/XXXX 2018. OCR opened this allegation for investigation on April 4, 2019. On September 11, 2019, OCR notified you that OCR was dismissing this allegation pursuant to Section 108(j) of OCR's *Case Processing Manual*, because we obtained credible information indicating that the allegation was resolved and was therefore no longer appropriate for investigation.

appropriate public education (FAPE), in violation of 34 C.F.R. Sections 104.33(a) and (b), and 28 C.F.R. Section 35.130.

Summary of Preliminary Investigation

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

Background

On or around XXXXX XX, 2018, the Student met with the School XXXX to discuss his concerns with his XXXXX class. According to the Principal's notes summarizing the meeting, the Student reported feeling uncomfortable in the class due to a recent XXX change. As a result, the School XXXX provided the Student with several options, including remaining in the class, switching to a different XXXXX teacher, taking a different XXXX, or dropping XXX XXX altogether. The Parent ultimately provided consent for the Student to drop XXXXXX and XXXX XX the XXXXX during this period. According to the Parent, the Student had no choice but to leave his XXXXXXXX class because the Teacher "was not honoring [the Student's] IEP or providing him with an appropriate education." This change in schedule began on XXXXX X.

The Student's IEP lists diagnoses of XXXXXXXXXX, XXXXXXXXXX, and XXXXXX. The "Parent and/or Student Concerns" section of the IEP states that the Student is XXXX XXX XXX XXX, so teachers should XXXX XXX XXXX XXXXXXXX XXXXXXX and be mindful that "XXX XXXX XXX XXXX XXXX." Additionally the IEP provides for a number of accommodations, including "XXXXXXX," "XXXXXXX," and "XXXXXXXXXXXX"/"XXXXXXXXX."

The Parent alleges that the Teacher XXXX XXXXX XXXX XXXXX XXX to the Student, thereby failing to provide him with "XXXX" and account for his "XXXXX," or the "XXXXXXXXXX." For example, the Parent alleges that whenever the Student XXXXXX, which he sometimes needed to do to XXXXXXX, the Teacher would XXXX XXX XXX XXX XXX XXX XXXXXXXX. The Parent further alleges that the Teacher did not do this for any other student. The Teacher also allegedly changed the entire class's XXXX XXXX because of the Student.

On XXXX X, the Parent reported to the Principal that the Teacher made an inappropriate comment to a XXXX XXXXX about the Student XXX XXX XXXXX XXX XX. On XXXX XX, the Parent emailed the Principal that the Teacher also made a XXXXXXXXXX XXXX following the Student's XXXXX that the XXX XXXX XXX XXXX to the Student.

After several back-and-forth scheduling emails, the Principal, School XXXXX, and Parent spoke on XXXXX XX and discussed the District's investigation of the Parent's complaint, including its determination that the Teacher spoke to an individual XXXXXXXXXX and the XXXX XXX about the Student's XXXXXXX. The Principal, Pupil Personnel Services Director, and District Counsel then met with the Parent and Complainant on XXXX XX. According to the District, during this meeting the District apologized to the Parent, offered to apologize to the Student, and provided

non-confidential information about the XXXX XXXX XXXX Teacher. On XXXXX XX, the Principal and School XXXXX met with the Student.

On XXXXX XX, 2019, the Complainant filed a complaint with the XXXXX XXXX XXXX XXXX XXXXXXX, alleging that the Student was the target of ongoing harassment by his XXXX teacher. In response to this complaint, the Assistant Superintendent² interviewed the Complainant, Parent, and the Student, who identified additional incidents of alleged harassment, including the aforementioned incidents involving the Teacher. This prompted the Assistant Superintendent to investigate both the allegations filed with XXXXXXX as well as those allegations raised during the interviews.

Relevant to the issue that remains under OCR investigation, the Assistant Superintendent investigated the Student's XXXXX XXXX in XXXX class. According to the Assistant Superintendent's findings, the Student reported that "XXXX XXXX XXXX XXX XXXXXXX." The Assistant Superintendent noted that student witnesses and the Teacher "indicated that the XXXX XXXXXXX as described was accurate, although all students were subject to that same XXXXX XXXXX so that an XXXX XXX XXX XXXX XXXX in the class." The Assistant Superintendent concluded that he was "not able to substantiate the allegation related to XXXX concerns."

On XXXXXXXX X, the Teacher provided the District with a written summary of how she implemented the Student's IEP in her class. She explained that she XXX the Student between XXXX XXXX and close to XXXXXXX and consulted with the School XXXXX to create a XXXX XXXXX. The Teacher also met with Student's special education team on several occasions to ensure she was meeting the Student's social and emotional needs. The Student was allowed XXXXX and access to the XXXXX and was required to XXXX XXX XXXXX, as were all other students. The Teacher wrote that she was aware of the Student's XXXXX XXX XXX, so she XXXXX XXXXX XXXX XXX XXXX XXXXXXX. The Teacher noted that her classes allowed for XXXXXXX XXXXX and students regularly XXXXX XXXXX XXXXX. Moreover, she incorporated "strategies to build XXXX XXXXXXX" and would "build their successes" by, e.g., XXXX XXX XXX, XXXX XXXX XXXX XXXX, and XXXXXXX.

The District then conducted a Section 504 investigation of the two issues OCR initially opened for investigation and issued a letter of findings on XXXX XXX, 20XX. The Section 504 Coordinator first investigated whether the Student's teacher failed to fully implement his IEP and was unable to substantiate this allegation. The Section 504 Coordinator did, however, substantiate that the Teacher made two remarks "directed toward [the Student's] XXX XXX XXX XXXXX XXXX XXXX XXXXX." The Section 504 Coordinator also confirmed that "XXXX, XXXX, XXXXX action has been/will be taken as to the XXXXXXX teacher in connection with a XXXXXXX XXX XXXXXXX involving the Student."

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to each qualified student with a disability in its jurisdiction. An appropriate education is regular or

² The Assistant Superintendent is now the Superintendent of Schools.

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 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.

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.

Analysis

Based on the evidence obtained to date, OCR was unable to conclude whether the District failed to implement provisions of the Student's IEP between XXXX and XXXX 2018, and if so, whether doing so denied the Student a FAPE. Specifically, OCR has not reached a determination regarding the Parent's assertion that the Teacher did not implement the following provisions: "XXXXXXXX," "XXXXXXXX," and "XXXXXXXXXX"/"XXXXXXXX."

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. 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,

Timothy Mattson
Compliance Team Leader

Enclosure

cc: Thomas Nuttall, Esq.