



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

September 18, 2019

Christina Gentile  
Director of Student Services  
Newburyport Public Schools  
Via E-Mail: [cgentile@newburyport.k12.ma.us](mailto:cgentile@newburyport.k12.ma.us)

Re: Complaint No. 01-19-1179  
Newburyport Public Schools

Dear Christina Gentile:

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 Newburyport Public Schools (the District). The Complainant alleged that the District discriminated against her child (Student) on the basis of disability. Specifically, the Complaint alleged that:

In developing or modifying the individualized education program (IEP) for the Student at the XXXXX XX, XXXX meeting, the District failed to consider relevant data in making a decision regarding the Student's placement.

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. 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. 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:

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

- Whether, in interpreting evaluation data and in making placement decisions, the District failed to draw upon and carefully consider information from a variety of sources and ensure that the placement decisions are made by a group of persons, including persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options, in violation of 34 C.F.R. Section 104.35(c)(1)-(3) 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, including the “XXXXXX XXXXX XXXX X” at issue in the complaint. OCR also interviewed the Complainant and District’s Director of Student Services. Based on OCR’s review of documents and interviews with the Complainant and District staff, OCR is preliminarily concerned whether the District considered all relevant information regarding the Student’s placement at the team meeting on XXXXX XX, XXXX. In order to complete its investigation and make a compliance determination, OCR would need to conduct interviews with additional District staff and other persons at the XXXXX XX, XXXX team meeting, and review additional documentation related to this meeting.

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 that were opened for 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 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/ Timothy Mattson

Timothy Mattson  
Compliance Team Leader

cc: Sean Gallagher, Superintendent (via e-mail: [sgallagher@newburyport.k12.ma.us](mailto:sgallagher@newburyport.k12.ma.us))