



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

September 5, 2019

Dr. Matthew H. Malone
Superintendent of Schools

By email: mmalone@fallriverschools.org

Re: Complaint No. 01-19-1197
Fall River Public Schools

Dear Dr. Malone:

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 Fall River Public Schools (District). The Complainant alleges that the District discriminated against her son (Student) on the basis of disability. Specifically, the complaint alleges that the Student was excluded from a XXX 2018 field trip because of his disability. 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.

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 denied the Student the opportunity to participate in or benefit from a District benefit, aid, or service, or provided an aid, benefit, or service to the Student that is unequal, less effective, or different than that provided to others by denying him the opportunity to attend a XXXXX 2018 field trip, in violation of 34 C.F.R. Section 104.4, and 28 C.F.R. Section 35.130.

Summary of Preliminary Investigation

During the 2018-2019 school year, the Student was in XXXX at the XXXXXX School in Fall River. The Student has XXXXXXXXXXXX. The Student's Individual Education Program (IEP)

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

contains significant behavioral services and supports. In the fall of 2018, the Complainant requested that the Student be moved to a substantially separate classroom, rather than a therapeutic school. The Student’s IEP team agreed to conduct an extended evaluation at the XXXXX School (School). The Student was placed in a substantially separate classroom at the School in late XXXX 2018.

The Complainant alleged that on XXXX, 2018, the day before a planned field trip¹, the Student’s teacher called her and said the “school made a mistake inviting [the Student] for a field trip.” The Complainant also told OCR that the teacher also called on XXXXXX, 2018 to say that she [the teacher], “cannot tolerate [the Student’s] behavior anymore, and it is not fair that [the teacher] has to deal with [the Student] in her classroom.” The Complainant reported to OCR that she told the Assistant Principal about these calls, to which the Assistant Principal responded the Student was supposed to be invited on the field trip, the situation, “wasn’t fair,” and she would speak with the Student’s teacher. The Complainant stated that she does not believe the Assistant Principal took any further action. The Student returned to the XXXXX School in XXXXX at the conclusion of the extended evaluation.

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

The District’s data response stated that the Student was invited on the field trip, which it said was
XX
XX
XX
XX
XX

The District also provided OCR with the Student’s attendance records, which indicate that he was absent from school on XXXXXX, 2018, the day of the field trip. There is no reason indicated for the absence.

If OCR continued to investigate, OCR would conduct interviews with District staff to determine whether the Student was in fact excluded from the field trip, and if so, whether this alleged exclusion was related to his disability. OCR has a preliminary concern that the Student may have been excluded, or made to feel unwelcome, due to disability-related behaviors.

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.

¹ The evidence obtained to date does not indicate whether the Student’s IEP team considered whether any related aids and services would be needed for field trips.

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/

Meighan A.F. McCrea
Compliance Team Leader

Enclosure

cc: Michael Joyce, Esq.