



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

November 26, 2019

Superintendent Cara E. Murtagh
By email: murtaghc@peabody.k12.ma.us

Re: Complaint No. 01-19-1223
Peabody Public Schools

Dear Superintendent Cara E. Murtagh:

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 Peabody Public Schools (District). The Complainant alleges that the District discriminated against her child (Student) on the basis of disability. Specifically, the complaint alleges the District failed to implement the Student's Section 504 plan on March 19, 2019 when the District did not bring the Student immediately to the nurse when the Student's XXXX XXXX XXXX XXXX. 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, 29 U.S.C. § 794, (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, 42 U.S.C. § 12131 *et seq.* (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.

Background¹

The Student, who is diagnosed with XXXX and has a Section 504 Plan, was in XXXX grade during the academic year 2018-2019. Due to the Student's XXXX, he wears a XXXX XXXX that XXXX his XXXX XXXX XXXX and makes a XXXX XXXX when his XXXX XXXX XXXX.

According to the District, on the morning of March 19, 2019, the Principal of the Student's school received an allegation that the Student had made XXXXX against others while XXXX a XXXX XXXX with other students outside of school. The District reported to OCR that the

¹ During the investigation, OCR reviewed and analyzed documents provided by the Complainant and the District.

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Principal removed the Student from the classroom to speak with him about the allegation. The District told OCR that the Principal conveyed to the Student the seriousness of the allegation and informed him that there would be a meeting later that day with the other students, their families, the School Resource Officer, and the Principal to resolve the issue.

While the Complainant and the District agree that the Principal spoke to the Student outside the classroom, there is a factual dispute concerning the events that followed. The Complainant alleges that while the Student was in the hallway speaking with the Principal, his XXXX XXXX XXXX, but the Principal disregarded it and directed him not to go anywhere. The Complainant told OCR that the Student’s Section 504 plan requires that he be escorted to the nurse’s office if the XXXX XXXX. According to the Complainant, the Student’s classroom teacher “finally” XXXX XXXX and brought him to the nurse’s office. The Complainant alleged that the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX. By contrast, the District maintains that the XXXX XXXX XXX. The District asserts that the Principal concluded his meeting with the Student and returned the Student to his classroom. According to the District, the Student’s teacher noticed that the Student was visibly upset and crying, so the teacher brought him to the nurse’s office. The District told OCR that none of the staff members working with the Student that morning XXXX XXXX XXXX XXXX XXXX XXXX XXXX. The District also noted that the XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX and that the “Student’s teachers had previous experience contacting the School Nurse when the Student’s XXXX XXXX and responded to the alarm appropriately on a consistent basis.”

The District reported that once at the nurse’s office, the nurse performed a health check on the Student. The nurse’s medical log reflects two health complaints, “XXXX” (logged at 10:25) and “Mental/Behavioral Health Support” (logged at 10:31), and one comment: “Teacher requested student have a health check as well as student dealing with classmate issues.” The medical log reflects that the nurse XXXX the Student’s XXXX XXXX XXXX to be XXXX, his temperature to be at 99.9, and that the Student was “crying hard [but] denies feeling sick.” By contrast, the Complainant asserts that the Student’s XXXX XXXX XXXX was XXXX; the Complainant informed OCR that the Student’s physician at XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX.

The Student was permitted to telephone the Complainant, and she picked him up from the school that morning.²

OCR reviewed the Student’s Section 504 plan. As relevant here, the plan included the following provisions: “Allow student access to the nurse’s office, as needed.”; “Provide access to a school nurse. The school will have at least one person available at all times to assist the student as needed and without delay.”; “A plan to deal with emergencies will be developed by ... (school nurse) and attached and made a part of this plan.”; “[School nurse] will develop a health plan detailing all of the medical needs of the student. It is the parents’ responsibility to provide health care instructions and to obtain the child’s physician’s signature endorsing the healthcare plan.”; and “Student must be accompanied to the nurse’s office.” The District also provided OCR with

² The Complainant and the Student returned to the school later that day for a meeting concerning the allegations against the Student.

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 of Evidence Obtained to Date

OCR’s investigation to date revealed conflicting evidence as to whether the Section 504 plan was implemented on March 19, 2019. First, there is conflicting evidence as to whether the XXXX XXXX XXXX: the District contends that it did not and the Complainant contends that it did. OCR does note that the nurse’s log for the morning includes a complaint related to the Student’s XXXX, but OCR has not determined if this concern was due to the XXXX XXXX, a possible concern about the Student’s stress level exacerbating his XXXX, or some other reason. OCR has not conducted interviews of District staff, the Student, or others in the area to make a determination as to whether the XXXX XXXX XXXX XXXX XXXX XXXX XXXX

However, even assuming that the XXXX XXXX XXXX XXXX, OCR has concerns that the parties may not share an understanding as to what, if anything, the Section 504 plan requires in this circumstance. The District noted that the Section 504 plan nowhere requires that the Student be escorted to the nurse when the XXXX XXXX XXXX XXXX. The District further cited to the April 10, 2019 e-mail from the Student’s healthcare provider to maintain that the Student’s healthcare provider has not recommended such a measure. By contrast, the Complainant asserts that when XXXX XXXX XXXX, the Section 504 plan requires that the Student raise his hand and ask to visit the nurse, and then be accompanied to the nurse’s office. Although OCR does not see any language in the plan itself concerning XXXX XXXX, the handwritten note on the “Information about XXXX for School Staff” document does require that the Student “check in” with the nurse when XXXX. At this point in the investigation, OCR has not questioned the District as to whether this document represents the “plan to deal with emergencies” that the Section 504 plan requires the nurse to develop and that must be incorporated into the Section 504 plan; whether that is a different document that OCR was not provided; or whether that document has not actually yet been created.

OCR does note, however, that the Student was escorted to the nurse on March 19, 2019, though, according to the Complainant, not until a good deal of time had passed. Assuming that the XXXX XXXX XXXX XXXX and that the Student’s Section 504 plan did require that he be brought to the nurse, OCR has not conducted interviews to determine whether this alleged delay in this one instance amounted to a denial of a FAPE.

Conclusion

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 the allegation 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,

/s/ Michelle Kalka

Michelle Kalka
Compliance Team Leader

Enclosure

cc: kmp@snclegal.com