



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

April 29, 2021

Bridget A. Gough, Ed.D.
Superintendent
Walpole Public Schools
BGough@walpole.k12.ma.us

Re: Complaint No. 01-19-1231
Walpole Public Schools

Dear Superintendent Gough:

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 Walpole Public Schools (the District). The Complainant alleges that the District discriminated against her son (the Student) on the basis of disability. Specifically, the complaint alleges that in XXXXX, the District denied the Student the opportunity to participate in the District's XXXXXXXXXXXX XXXXXXXXXXXX program for XXXXXXXXXXXX based on 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), 29 U.S.C. Section 794, 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), 42 U.S.C. Section 12131 *et seq.*, 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 allegation for investigation:

Whether the District denied the Student the opportunity to participate in or benefit from a District benefit, aid, or service, or the District provided an aid, benefit, or service to the Student that is unequal, less effective, or different than that provided to others by denying the Student a seat in the District's XXXXXXXXXXXXXXXX, in violation of 34 C.F.R. Section 104.4, 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; and interviewed the Complainant and District staff.

The evidence obtained by OCR to date shows that in 2019, the District did not have a written policy for how XXXXX enrollment decisions were made. According to the District, its practice was to request student files from XXXXX once the District determined how many available seats it had for XXXXX students in each grade, and accept XXXXX students into the District in the order in which their files were received. The District informed OCR that it would sometimes request more files than slots available because some students would decline their offers. The District explained that students and their families are then invited to an informational meeting with the school where the District expects to have a slot available. If a family elects not to attend the informational meeting, the District no longer considers the student for an available seat. Otherwise, the District informed OCR that the informational meeting plays no role in the District's enrollment decisions.

With regard to special education, the XXXXXXXXXXXX told OCR that when a XXXXX applicant has a Section 504 plan or an Individualized Education Program (IEP), the District will have a special education team look to see if they can accommodate the student. This happens before and after the informational meeting. The XXXXXXXXXXXX informed OCR that during her time at the District, the District has never rejected a XXXXX applicant because of their disability.

The District informed OCR that for the XXXXXXXXXXX school year, it expected to have three available XXXXXXX slots at the District's XXXXXXXXXXXXXXXXXXXX (the School). According to the District, it requested that XXXXX forward eight student files for these XXXXXXX slots.

The Student's application was among those forwarded to the District. The XXXXX application asked whether the Student had an IEP or Section 504 Plan. At the time the Complainant filled out the Student's application, the Student did not have either. After receiving the Student's application, the District invited the Complainant and the Student to visit the School. OCR has encountered conflicting evidence regarding whether the District informed the Student that he was being accepted into the District's XXXXX program at the time it invited the Student to the meeting.

On XXXXXXX, the Complainant and the Student attended the meeting with the District at the School. During the meeting, the Complainant informed District staff that the Student had an upcoming evaluation for an IEP. The parties offered differing accounts of how District staff reacted to the information during the meeting.

On XXXXXXX, the District informed the Complainant by email that the District would not be able to move forward with the Student's XXXXX enrolment "due to [D]istrict enrolment" and that it would instead return the Student's file to XXXXX for consideration elsewhere. The District explained to OCR that it had received five applications from XXXXXXX prior to receiving the Student's application, and that three of those students had accepted the three

available XXXXXXXXXX slots. OCR has not yet completed its investigation and would need to review additional records and conduct additional interviews to verify the District's account and reach a compliance determination.

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. 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.

Sincerely,

Abra Francois
Compliance Team Leader

Enclosure