



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

April 3, 2020

Superintendent John A. Provost  
Northampton Public Schools

Via email: jprovost@northampton-k12.us

Re: Complaint No. 01-20-1033  
Northampton Public Schools

Dear Dr. Provost:

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 Northampton Public Schools (District). The Complainant alleged that the District discriminated against her son (Student) on the basis of disability by failing to “[p]rovide [him] XXXXX XXX XXX XX XXX XXXXXX XX XXXX XXXX XXXXX XXXX XXXX XX XXXX XXX XX XXXX XXXX XX XXXX XXX XXXXX,” as required by his Individualized Education Program (IEP), in his XXXXX class between XXXXX XX, 2019 and XXXXX XX, 2019. 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. § 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. § 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 on November 14, 2019:

Whether the District failed to “[p]rovide [the Student] XXXXXXXXXXXXXXXXXXXX XX XXXXX,” as required by the Student’s IEP, in his XXXXX classes between XXXXX XX, 2019 and XXXXX XX, 2019, and whether doing so denied the Student a free appropriate public education, in violation of 34 C.F.R. §§ 104.33(a) and (b), and 28 C.F.R. § 35.130.

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



- 3) She continues to embed references to XXXXXXXXXXXX as being a result of students XXXXX, such as with XXXXXXXXXXXX, rather than presenting them as a normal part of the education process.

What would be most helpful is a direct conversation about how this is a binary situation; the XXXXXXXXXXXX . . . are either being provided, or they aren't. Are you her evaluator . . . ? The second piece that would be very helpful is a plan for ensuring they are providing [sic] moving forward. [The Student]'s parents are not wrong to be questioning what assurances they have that it will be done, when it hasn't been resolved yet. This is something they got out ahead of and have every reason to expect would have been resolved earlier in the year.

The Principal responded that she was “concerned that the [Student's] issues may have gotten a bit lost as [they] addressed other issues as well, although [they] were very clear about the expectation.” She asked the Associate Principal to “follow up with [the XXXXX Teacher] regarding the [Associate Director's email] with an offer of support if she needs clarification.” The Associate Director responded that “providing the [Student and XXXXXXXXXXXX] with a copy [of the XXXXXXXXXXXX] . . . provides both additional opportunities to access them, but also serves as a way for [the District] to monitor the consistency with which they are being provided.”

The Associate Principal then emailed the XXXXX Teacher, with the Student's Special Educator and Principal copied, to remind her to “provide the XXXXX XXXXX (or so) to meet the classroom expectations in XXXXXXXXXXXX form,” “XXXXX them,” and give a XXXX “to him and to the [XXXXXXXXXXXX] in the classroom, who will give a XXXX to” the Special Educator to “XXXXXX XXXXXXXX them with” the Student. She also noted that they had “discussed the way in which [the XXXXX Teacher] ma[d]e XXXXX for students based on XXXXXXX” and that she would “update those XXXXX as additional options for all students, not qualifying them for students who are XXXXXXX, have XXX XXXXXXXXXXX, etc.” She concluded by asking the XXXXX Teacher to “let [her] know if [she] need[ed] additional training in XXXXXXXXXXX.”

The Principal emailed the Complainant on XXXXX XX, 2019 that she and the Associate Principal “met with [the XXXXX Teacher] on . . . XXXXX XX,” “the issues have been addressed,” and they expected the Student would “consistently receive XXXXXXXXXXXXXXXX XXXXXXXX.” The Associate Director added that an “additional layer that has the potential to be both of direct benefit to [the Student], but also serves as a progress monitoring tool for [the District] to monitor the fidelity of implementation of the accommodations would be to provide XXXXXXXXXXXX to XXXXXXXXXXXX, who can then ensure [the Special Educator] receives them.”

The Complainant responded that she agreed that “providing “XXXXXXXXXXXX” to the Special Educator “will help support [the Student's] learning and . . . serve as a monitoring tool.” The Complainant later advised that she had “learned that [the Student] received XXXXXXXXXXXX yesterday” but “did not realize that XX XXXXXXXXXXXX since the entire class received & worked on XXXXXXXXXXXX together.” She

noted that he now “has a better understanding of what XXXXX will look like, and that they may be XXXXX to the entire class.”

On XXXXX XX, 2019, the Complainant emailed the Special Educator to inquire if she had “XXXXXXXXXXXX,” as the Student had reported that “he had not received any since [the Complainant] last checked in with” the Special Educator. The Special Educator responded that she had not “XXXXXXXXXXXX,” and she “checked [the XXXXX Teacher’s] XXXX & didn’t find any XXXXX or new information.”

On XXXXX XX, 2019, the Special Educator emailed the Complainant to ask if she was “pleased with XXXXX [the Student had] been receiving from XXXXX.” The Complainant responded, “[n]ot really,” as she “d[id]n’t feel like he [wa]s receiving XXXXX about what’s taught in class,” and the “XX,” with “lots of info XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.” The Special Educator responded that she “felt the same way about the XXXXX, but wanted to hear from [the Complainant] before [she] gave [her] 2 cents.” She noted that the “last XXXXX she provided seemed like a XXXXX, but one had to find their own answers.”

On XXXXX XX, 2019, the Associate Principal emailed the XXXXX Teacher and Special Educator to ask if “XXXXXXXXXXXX [were] still being given and supported.” On XXXXX XX, 2019, she emailed again to state that she “ha[d]n’t heard back from [the XXXXX Teacher or Special Educator] about this email.” On XXXXX XX, 2019, the XXXXX Teacher responded that she “continue[d] to give XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX,” and asked if the Associate Principal “would . . . like a sample.” She added that the class was “beyond the part of the year where there are a lot of XXXXX – but lots of XXXXX XXXXXX and XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXX.”

Later that day, the Complainant emailed the Principal, Associate Principal, Associate Director, and Special Educator to inform them that the Student “had received some XXXXX” in XXXXX class, but they did not feel that the Student was “XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX.” She reported that “XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX,” as there is “XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.” She asserted that “XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXX, and do not provide a XXXXX XX XXXXXXXXXXX that is taught in class.”

The Associate Director responded that

[i]t is absolutely the purpose of XXXXX to be available at the XXXX XX XXXXX and used to XXXXXX XXXXX with any XXXXXXX XXXXXXX during lecture or other presentation of curriculum content. . . The value of the sheets, both as intended and as you referenced, is in their XXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXX. Part of the conversation can also be the degree to which [the Student] has internalized the skills associated with utilizing

the XXXXXXXXXXXX, and providing him with any additional instruction necessary for him to derive the benefit of the XXXXX. . . . One factor that appears to be emerging has been the desire for specificity of XXXXX within a context of ambiguity. By that I mean we don't know that XXXXX are part of the instruction daily, and as a result there is less clarity about what frequency of provision is consistent with our shared expectation.

The Complainant responded that she “agree[d] that there is uncertainty about the frequency of provision of XXXXX, and [was] aware that this may be dependent upon the topic being studied and supporting activities that occur during some class periods.” She “remain[ed] concerned about the infrequency of XXXXX” and “that the XXXXX are being provided XXXXXXXXXXXX XXXXXXXXXXXX” rather than “as intended to alleviate the challenge of [the Student] XXXXXXXXXXXX XXXXXXX during class.” She reported that the Student “ha[d] not had a chance to ‘internalize the skills associated with utilizing XXXXXXXXXXXX’ because he ha[d] not had a chance to utilize the XXXXX intended,” and the Student “receives a lot of support from [the Special Educator] . . . in accessing the XXXXX curriculum,” which “is not reflected in the grades shown in” the student information system.

On XXXXX XX, 2019, the Associate Director emailed the XXXXX Teacher and Associate Principal to “schedule a time for the three of us to . . . establish a shared vision, understanding, and expectation regarding . . . our process for ensuring the XXXXXXXXXXXX are serving their intended purpose.” The Associate Principal added that she “would not want this delayed.” The XXXXX Teacher responded that

this whole email chain really doesn't work – the timing is off as none of us really have time to check our email enough to sort out this kind of thing. With regards to the “I would not want this delayed,” I feel as if this entire thing has been managed in an extremely odd fashion from minute one. As a result I will require union representation at any meeting of this sort, and if you'd like to know why, you can come and ask me in person. I am very uncomfortable about this situation as I am the teacher doing XXXXXXXXXXXX – other teachers are not, yet I am the one being singled out. We are in XXXXXXXXXXXXXXXXXXXX. The student in question is getting and has been getting XXXX grades and is a XXXX XXXXX of his XXXXXXX. If this sounds hostile, blame it on the problems of email. I'm not feeling hostile, simply confused by how this situation has been handled from day one.

The Complainant informed OCR that on XXXXX XX, 2019, the Special Educator told her “that XXXXXXXXXXXX have not been provided recently.”

On XXXXX XX, 2019, the Associate Director emailed the Associate Principal to inform her that he needed her and the Principal's “intervention over the next XX weeks to ensure things proceed in the way [they] discussed when [he], [the Associate Principal], and [the XXXXX Teacher] met” in XXXXX 2019 to discuss “expected practice around XXXXXXXXXXXX provision.” He wrote that in “the absence of that direct intervention, [he] ha[d] concerns that [the XXXXX



### Analysis

The evidence reviewed to date indicates that the Complainant and several District employees believed that the XXXXX Teacher may not have been implementing the provision of the Student's IEP concerning XXXXXXXXXXXX from the date that the provision went into effect – XXXXX XX, 2019 – through the end of the 2018-2019 school year. Although the District attempted to resolve the alleged ongoing failure to implement the Student's IEP on a number of occasions, the evidence does not indicate that these steps were successful in fully resolving these concerns. The District did not reconvene the Student's IEP team between XXXXX and XXXXX 2019 to address this issue with the Complainant or the XXXXX Teacher to determine whether the Student's receipt of FAPE may have been affected by the alleged ongoing failure to implement the Student's IEP.

### 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.<sup>1</sup> 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.

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<sup>1</sup> The *Case Processing Manual* is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

Sincerely,

/s/

Timothy Mattson  
Compliance Team Leader

Enclosure

cc: Colleen Shea, Esq. (via email: CShea@SCMLLP.COM)