



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

January 27, 2020

Jessica Nixon
Chief of Staff & Operations
Maine Department of Education
By email: jessica.nixon@maine.gov

Re: Complaint No. 01-20-1052
Maine Department of Education

Dear Jessica Nixon:

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 Maine Department of Education (MDOE). The Complainant alleges that MDOE does not have a process for requesting disability-related accommodations during due process hearings or responding to such requests. As explained further below, before OCR completed its investigation, MDOE 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 MDOE 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 allegation was timely filed, OCR opened the following legal issue for investigation:

- Whether MDOE discriminates against individuals with disabilities by failing to use a procedure for requesting accommodations during due process hearings (and the related process) or for responding to such requests, in violation of 34 C.F.R. Section 104.4 and 28 C.F.R. Section 35.130.

The Section 504 regulation, at 34 C.F.R. Section 104.4(a) and (b), provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient's programs or activities on the basis of disability. The Section 504 regulation, at 34 C.F.R. Section 104.4(b)(i), (ii), (iii), and (vii),

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

prohibits a recipient from, among other things, denying a qualified person with a disability the opportunity to participate in a service, affording an opportunity to participate that is not equal to that afforded to others, providing a service that is not as effective as that provided to others, and limiting the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. Similar prohibitions are found in the Title II regulation, at 28 C.F.R. Section 35.130(a) and (b). Furthermore, the Title II regulation, at 28 C.F.R. Section 35.130(b)(7), requires a public entity to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Whether a particular modification or service would fundamentally alter the program is determined on a case-by-case basis.

Summary of Preliminary Investigation

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

In Maine, disputes under the Individuals with Disabilities Education Act are resolved through mediations, complaint investigations, and due process hearings administered by MDOE.

The information obtained by OCR to date indicates that MDOE provides two forms for requesting due process hearings: the Due Process Hearing Request Form and the Due Process Expedited Hearing Request Form. Both forms state at the bottom:

The State of Maine Department of Education provides equal opportunity in its programs and services. If you need accommodations, please contact the Due Process Secretary Associate, at 207-624-6644, Maine Replay 711 or email: Dueprocess.DOE@maine.gov.

Although these forms direct individuals to request accommodations through the Due Process Secretary Associate, some individuals may articulate requests for accommodations to hearing officers during the due process hearing and related process. MDOE acknowledged to OCR that its hearing officers would benefit from training to ensure that they know to refer individuals who request accommodations to the correct person. In addition, MDOE acknowledged to OCR that MDOE does not have a formal policy when considering requests for accommodations.

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, MDOE expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and MDOE resulted in MDOE signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor MDOE's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address MDOE'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 MDOE 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,

Adrienne M. Mundy-Shephard
Chief Attorney

Enclosure

cc: Sarah A. Forster, Maine Assistant Attorney General