



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

August 20, 2020

Superintendent John Goldhardt
By email: superintendent@mansd.org

Re: Complaint No. 01-20-1116
Manchester School District

Dear Superintendent Goldhardt:

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 Manchester School District (District). The complaint alleges that the District discriminates against a student (Student) on the basis of disability, and that the District retaliated against the Student's mother (Complainant) for advocating on the Student's behalf. Specifically, the complaint alleges that the District discriminates by excluding the Student from a range of extracurricular activities by failing to provide notice to you of activities such as field trips, fundraisers, the turkey trot, and class pictures (Allegation 1). Also, the complaint alleges that the District has retaliated against the Complainant by preventing her from going to the Student's classroom to observe the Student. The Complainant alleges that the District previously permitted her to observe the Student, but after she complained to the District that the Student's substantially separate classroom was hot, smelled of feces and trash, and lacked an air conditioning unit, the District would no longer grant permission for her to visit the classroom and observe the Student (Allegation 2). 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. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or their implementing regulations, or who files a complaint, testifies, assists, or participates in a proceeding under these laws. 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.

OCR opened the following legal issues for investigation:

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

- Whether the District discriminated against the Student based on disability by treating the Student differently than students without disabilities, when it failed to notify the Complainant of various extracurricular offerings, such as field trips, fundraisers, races, and class photos, while it provided notice of these activities to families of students without disabilities by sending home notices with the students, in violation of 34 C.F.R. Section 104.4 and 28 C.F.R. Section 35.130.
- Whether the District retaliated against the Complainant for complaining about the conditions in the Student’s classroom (including the failure to provide an air-conditioning unit as required by the Student’s IEP) that she observed during a scheduled observation of the classroom by refusing permission for additional opportunities to observe the Student, in violation of 34 C.F.R. Section 104.61 (incorporating 34 C.F.R. Section 100.7(e) by reference) and 28 C.F.R. Section 35.134.

Summary of Preliminary Investigation

As part of its investigation, OCR spoke to the Complainant and the District’s Director of Student Services (Director). OCR also reviewed emails provided by the Complainant.

The Student attends a District middle-school and has an Individualized Education Plan (IEP). The Complainant alleges that the Student is not being included in extracurricular school activities (such as fundraisers, the turkey trot race, concerts, field trips, and after school activities) as a result of the failure of teachers and administrators to inform the Complainant about such activities by sending home information with the Student as they do for other students.

The Complainant also alleges that, since she complained to the District about the conditions of the Student’s substantially separate classroom on XXXXXXXXXXXX , the District has prevented her from visiting the school to observe the Student’s classroom. The Complainant alleges that, prior to her complaints about the Student’s classroom, the District regularly permitted her to visit the Student’s classroom.

In support of her allegation of retaliation, the Complainant provided OCR with an email between the District and herself. In the email, the Director wrote to the Complainant: “I am respectfully asking for a meeting or a phone call so that I can ensure that you fully understand the law based on your ask. There are two possible scenarios that I think you are asking about: 1. If you are asking to observe your daughter in the school to make recommendations for her IEP instruction, services or programming then I am denying this request as the law doesn't permit it. 2. If you are asking to volunteer or visit for an activity at school (such as holiday activities, science experiments, etc.) then I will discuss this with the principal. However, you may very well be asking for something outside of these two scenarios this is why I would like to speak with you.” The Complainant explained to OCR that she interpreted this email to mean that she could not visit the Student’s classroom.

The Director disputed the Complainant’s allegations. Regarding the allegation of exclusion from extracurricular activities, the Director asserted that at least some of the activities, such as the turkey trot, were only open to students on an invitation basis if they had qualified for the race.

She also asserted that if there were instances where the Student was not sent home with certain notices, it would have occurred inadvertently because there has been no intention to exclude the Student from activities. Regarding the retaliation allegation, the Director asserted that while parents may visit their child's classroom after getting approval from the school's principal, it was the District's general policy that parents were not permitted to observe the classroom to ensure that IEP provisions are being implemented. The Director stated that the Complainant insisted on visiting the classroom to ensure that the Student's IEP was being implemented, and it was for that reason that permission was not granted. The Director asserted that the Complainant would have been permitted to visit the classroom for volunteer or other opportunities like any other parent, but the Complainant insisted on visiting specifically for IEP-related purposes. The Director informed OCR that the District did not have a written policy on regarding classroom observation.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the District's programs or activities on the basis of disability. The Section 504 regulation, at 34 C.F.R. § 104.37, requires school districts to afford students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities. Furthermore, school districts must ensure that students with disabilities participate in nonacademic and extracurricular services and activities with students without disabilities to the maximum extent appropriate to the needs of each student with a disability. A school district that offers physical education courses or athletics must provide students with disabilities an equal opportunity to participate. OCR interprets the Title II regulation to provide the same protections as Section 504.

In addition, the Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

In analyzing an individual's claim of retaliation against a recipient, OCR analyzes whether: (1) the recipient knew the individual engaged in a protected activity; (2) the individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. If all these elements are present, this establishes an initial, or *prima facie*, case of retaliation. OCR then determines whether the recipient has identified a legitimate, non-retaliatory reason for taking the adverse action. OCR next examines this reason to determine whether it is a pretext for retaliation, or whether the recipient had multiple motives (illegitimate, retaliatory reasons and legitimate, non-retaliatory reasons) for taking the adverse action. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the recipient proffered a legitimate, non-retaliatory reason for the action at issue and that the reason was not pretextual, then OCR will find insufficient evidence of a violation.

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 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.

Sincerely,

Abra Francois
Compliance Team Leader

Enclosure