



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

July 27, 2020

Superintendent Brenda Cassellius
By email: superintendent@bostonpublicschools.org

Re: Complaint No. 01-20-1117
Boston Public Schools

Dear Superintendent Brenda Cassellius:

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 Boston Public Schools (District). The Complainant alleges that the District discriminated against her son (Student) on the basis of disability and perceived national origin/ethnicity, and subjected her to retaliation. Specifically, the complaint alleges that the District discriminated against her son, based on disability and his perceived national origin/ethnicity, when District staff opined that he was not eligible for an Individualized Education Program (IEP) because his disability was “cultural” (Allegation 1). The Complainant further alleges that a special education team refused to consider an outside evaluation that she provided from XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX during a meeting to evaluate the Student’s eligibility for special education services (Allegation 2). Finally, the Complainant alleges that the District retaliated against her, after she filed a complaint with OCR about the above allegations, by XXXXXXXXXXXXXXXXXXXX XX XXXXXXXXXXXX (Allegation 3). As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve Allegation 1 by taking the steps set out in the enclosed Resolution Agreement (Agreement). After carefully considering all of the information obtained during the investigation, including reviewing documents provided by the Complainant and the District and interviewing the Complainant, OCR found insufficient evidence to support Allegations 2 and 3.

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.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the bases of race, color, or national origin in any program or activity receiving federal financial assistance from the Department.

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

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. Section 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

If the evaluative team determines that a student has an impairment that substantially limits a major life activity, the team next decides which regular or special education and related aids and services are needed to meet the student’s individual educational needs as adequately as the needs of students without disabilities are met.

The Title VI regulation, at 34 C.F.R. Section 100.3(a), provides that no person 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 race, color, or national origin.

When investigating an allegation of different treatment based on national origin, OCR first determines whether there is sufficient evidence to establish an initial, or *prima facie*, case of discrimination. Specifically, OCR determines whether the District treated the Complainant/Student less favorably than similarly situated individuals of a different national origin. If so, OCR then determines whether the District had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the District is a pretext, or excuse, for unlawful discrimination.

The Title VI regulation, at 34 C.F.R. Section 100.7(e), prohibits retaliation against any individual who asserts rights or privileges under Title VI or who files a complaint, testifies, assists, or participates in a proceeding under Title VI. The Section 504 regulation also 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, by incorporating the retaliation provisions of the Title VI implementing regulation. Finally, The Title II regulation, at 28 C.F.R. Section 35.134, contains a similar prohibition against retaliation.

In analyzing an allegation of retaliation, OCR examines whether: (1) the recipient knew the individual engaged in a protected activity;³ (2) the individual experienced an adverse action caused by the recipient;⁴ 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. If OCR finds that the reason was pretextual, then OCR will make a finding of retaliation; conversely, if OCR finds that the

³ A “protected activity” is the exercise of a right that is protected under OCR’s non-discrimination laws.

⁴ An adverse action is something that could deter a reasonable person from engaging in further protected activity.

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.

Analysis

Allegation 1

OCR determined that the evidence obtained to date suggests that a District staff member may have opined that the Student was not eligible for an IEP because his disability was “cultural.” The Complainant asserted that District staff informed her during the Team meeting the Student’s disability was “cultural,” and that she was asked during the meeting about “who has visited her home” and “whether her son has left the country.” While the Principal informed OCR that she spoke with the individual who led the Team meeting in which the “cultural” comment was allegedly made, the District did not provide any additional evidence regarding the comment. Accordingly, the District has not provided evidence to refute the Complainant’s account regarding the alleged comment, nor has it provided evidence establishing the specific wording of the comment or the context in which it occurred.

Based on the above, the evidence obtained to date suggests that the District may have determined that the Student was ineligible for an IEP due to “cultural” factors without having identified the specific factors, and whether and how they impacted the Student’s progress and achievement apart from any disabilities. OCR determined that this raises preliminary concerns regarding whether the District appropriately evaluated the Student with respect to his disabilities, and whether its decision was related to the Student’s national origin. Accordingly, OCR determined that the evidence obtained to date raises a preliminary concern that the District may have discriminated against the Student on the basis of disability and national origin.

OCR is also concerned that the materials used by the District in evaluating and placing students with disabilities may not accurately state the requirements set forth in the regulations implementing Section 504. Specifically, the District’s template used to create Section 504 plans references “reasonable accommodations, and/or related services, and/or materials in order to participate in and/or have access to the general curriculum.” OCR determined that the evidence obtained to date raises concerns in that the references to “reasonable accommodations” and “participat[ing] in and/or hav[ing] access to the general curriculum” are not consistent with the requirements of Section 504 with respect to FAPE. Specifically, Section 504 states that districts must provide eligible students with regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met. Accordingly, OCR determined that the evidence to date raises preliminary concerns about the template for Section 504 plans used by the District and its practices with respect to this document (and any other similar materials).

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 Allegation 1 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

XXXXXXXXXXXXXXXXXXXXX Accordingly, OCR finds insufficient evidence to substantiate Allegation 3 and will take no further action on it.

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. The complainant has a right to appeal OCR’s determination as to Allegations 2 and 3 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the District may 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/

Meighan A.F. McCrea
Compliance Team Leader

Enclosure

cc: Dara Yaffe, Esq.
Michael Leung-Tat, Esq.