



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

September 14, 2020

Dr. Marguerite Connolly
Superintendent

By email: connollym@weston.org

Re: Complaint No. 01-20-1210
Weston Public Schools

Dear Superintendent Connolly,

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 Weston Public Schools (District). The Complainant alleged that in fall 2019, the District discriminated against the Student by denying him an opportunity to participate in the high school XXXX XXXX because he was unable to attend mandatory XXXXXXXX XXXXXXXXXXXX for reasons relating to 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 in fall 2019 the District discriminated against the Student based on disability by denying him an opportunity to participate in XXXX XXXX to the same extent as students without disabilities, in violation of 34 C.F.R. § 104.37, and 28 C.F.R. § 35.130(a).

Legal Standards

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

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student's plan or as otherwise agreed to by the student's team. If OCR finds that a district has not implemented a student's plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the district to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

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.

Summary of Preliminary Investigation

As part of its investigation, OCR spoke to the Complainant and the District counsel. OCR also reviewed email correspondence provided by the Complainant and the District in its data response.

The Student was enrolled as a XXXXXX at the District high school for the 2019-2020 school year and has an Individualized Education Plan (IEP). The Complainant alleges that in fall 2019, the District discriminated against the Student by denying him an opportunity to participate in the high school XXXX XXXX (XXXX) because he was unable to attend mandatory XXXXXXXX XXXXXXXXXXXX for reasons relating to his disability.

OCR's review of the District's and Complainant's email correspondence indicated that on September XX, 2019, the Complainant informed the XXXXX teacher (Teacher) that the Student could not attend the mandatory XXXXXXXX XXXXXXXXXXXX on XXXXXXXX because he had private XXXXXXXX at the same time. The Complainant also asked the Teacher for flexibility while noting that the Student received accommodations pursuant to his IEP.

On September XX, 2019, the XXXXX Director (Director) provided the Complainant an excerpt from the High School Program of Studies description of XXX XXXXXXXX II (which included a reference to required XXXXXXXXXXXX and XXXXXXXXXXXXXXX outside of normal school

hours), and suggested that they schedule a meeting to explore the options available for the Student to participate in the XXXX. While the Complainant confirmed that she and her husband spoke with the Director, the discussion did not resolve her concerns. Accordingly, the Complainant contacted the Superintendent and a member of the School Committee to complain that the Director was being “inflexible” and recommending that the XXXX hold XXXXXXXXXXXX in the mornings before the start of school. Both the Director and the School Committee member responded to the Complainant’s email by declining her suggestion to reschedule the XXXXXXXX XXXX XXXXXXXXXXXX due to an existing School Committee policy precluding before-school activities.

The Complainant informed OCR that she also contacted the Student’s Guidance Counselor to inquire whether the Student’s IEP included any accommodations that would allow him to miss XXXXXXXX XXXXXXXXXXXX. The District’s data indicates that the Guidance Counselor informed the Complainant that her inquiry into the Student’s IEP revealed that it did not preclude him from participating in the XXXXXXXX XXXX XXXXXXXXXXXX.

Both the Complainant and the District confirmed that during the first week of October 2019, the Student subsequently chose to XXXXXXXX of the XXXX after speaking with the Guidance Counselor and the Teacher about XXX options. In early October, the Complainant spoke with the Director of Special Education and emailed the Superintendent about the Student’s inability to participate in the XXXX.

The Complainant and the District provided conflicting information about what modifications the District offered to the Student to enable him to continue participating in XXXX. Notwithstanding these conflicting accounts, the District’s data indicates that on October XX, 2019, the Superintendent emailed the Student’s father to confirm the District’s position that the Student could participate in the XXXX even if he did not attend XXXXXXXX XXXXXXXXXXXX by taking the course pass/fail. The Superintendent further explained that the Student would not play in the first XXXXXXXX of the season or be in all XXXXX during other XXXXXXXXXXXX throughout the season. The Complainant confirmed that the Superintendent reiterated this offer in November 2019.

Both the Complainant and the District informed OCR that the Student’s IEP team convened in November 2019 to discuss other IEP related issues, but did not discuss the Student’s participation in the XXXX at that meeting, or any other IEP meeting in fall 2019.

Resolution

OCR has not completed its investigation as to whether the Student’s participation in the XXXX was required to provide the Student a free appropriate public education (FAPE) or was an extracurricular or nonacademic activity. Further, OCR has not completed its investigation as to whether the District denied the Student a FAPE or an equal opportunity to access XXXX.

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, District counsel expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and

District counsel resulted in the District signing the enclosed Agreement which, when fully implemented, will address the allegation raised in the complaint. OCR will monitor the District's implementation of the Agreement.

Conclusion

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,

/s

Abra Francois
Compliance Team Leader

Enclosure

cc: Angela Smagula, Esq. (by email: asmagula.law@gmail.com)