



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

September 11, 2020

Superintendent Bonny L. Gifford  
By email: kathleenthner@dartmouthschools.org

Re: Complaint No. 01-20-1212  
Dartmouth Public Schools

Dear Superintendent Gifford:

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 Dartmouth Public Schools (District). The Complainant alleges that the District discriminated against her son (Student) on the bases of race and disability. Specifically, the complaint alleges that on XXXXXXXX, a XXXXXXXX teacher (Teacher) harassed the Student, who is mixed race XXXXXXXXXXXXXXXXXXXX for wearing a hoodie in class by commenting to the Student, “you look like you are about to rob a convenience store.” The complaint alleges that there were white students wearing hoodies in class that day, and the teacher did not make a similar comment to those students. The complaint also alleges that after this incident, the Student left class and put his hoodie back on, at which point the teacher accosted him in the hallway, yelled at him, and eventually called security to remove the Student from the hallway. The complainant asserts that she requested that the District investigate the matter, but the District failed to appropriately do so (Allegation 1). The complaint also alleges that the District has failed to implement provisions of the Student’s Section 504 plan, including failing to XXXXX, XXXXX, and XXXXX. (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) pursuant to Section 302 of OCR’s *Case Processing Manual*.

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. OCR also 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. In addition, OCR 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, Title II and Title VI.

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

Because OCR determined that it has jurisdiction and that the allegations were timely filed, OCR is opening the following legal issues for investigation:

- Whether the District failed to respond in a reasonable, timely, and effective manner to racial harassment of the Student of which the District had notice during October 1, 2019, in violation of 34 C.F.R. Section 100.3(a) and (b).
- Whether the District failed to implement provisions of the Student’s Section 504 plan during the 2019-2020 academic year, and whether doing so denied the Student a free appropriate public education (FAPE), in violation of 34 C.F.R. Sections 104.33(a) and (b), and 28 C.F.R. Section 35.130.

### **Legal Standards**

Title VI prohibits discrimination on the bases of race, color, or national origin in any program or activity receiving federal financial assistance. Racial harassment that creates a hostile environment is a form of discrimination. Once a recipient has notice of a racially hostile environment, the recipient has a legal duty to take reasonable steps to eliminate it. Thus, if OCR finds that the recipient took responsive action, OCR will evaluate the appropriateness of the responsive action by examining reasonableness, timeliness, and effectiveness.

In addition, 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.

### **Summary of Preliminary Investigation**

During the investigation, OCR reviewed documents provided by the District and interviewed the Complainant and the Student’s father. Specifically, the District provided a copy of its Letter of Finding dated October 10, 2019 (Letter) describing the Assistant Principal’s investigation of the XXXXXXXX incident, but it did not provide any documentation of witness interviews or other documents related to its investigation. The Letter found that the Teacher’s comment was not discriminatory on the basis of race or disability. In addition, the District provided OCR with a copy of the Complainant’s January 24, 2020, local grievance against the District complaining that the Assistant Principal’s investigation was insufficient, along with a copy of the District’s

February 10, 2020 response to the Complainant’s local grievance that affirmed the Assistant Principal’s investigation and conclusion as outlined in the Letter.

The District also provided OCR with three versions of the Student’s Section 504 plans that were in effect at different times during the 2019-2020 school year, along with other relevant documentation. The District asserted that the Student’s Section 504 plans did not permit him to wear a hood or require daily check-ins. The District confirmed that while the Student’s Section 504 plan did not specifically XXXXXX. Lastly, the District also stated that it did provide the Student XXXXX, but it did not provide documentation on this issue. The Complainant and the Student’s father did not inform OCR about any specific information when the Student’s teachers had refused to provide him XXXX, nor could they identify any XXXX.<sup>1</sup>

The District’s data indicated that it convened Section 504 team meetings for the Student in March 2019, December 2019, and February 2020. The meeting in February was a facilitated Section 504 team meeting. Before OCR completed its investigation, the District expressed a willingness to resolve this complaint on July 10, 2020.

### **Resolution**

Regarding Allegation 1, OCR has identified issues that require further investigation prior to making a compliance determination. For example, while it is undisputed that the District timely responded and investigated the XXXXXXXX incident, the District produced no contemporaneous reports of its investigation, and the documentation the District provided to OCR did not indicate whether it considered issues that may be relevant to a Title VI determination, such as whether the Teacher’s comment was only directed at the Student or also at other white students also wearing hoods that day; other student-witnesses’ understanding of the comment; and what information the District relied upon beyond the Teacher’s explanation that his comment was not based on disability or race. Nor does the Local Grievance Report Findings clarify these issues.

Regarding Allegation 2, OCR has not completed its investigation as to whether FAPE was provided under these circumstances.

As noted above, 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.

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<sup>1</sup> The Complainant and the Student’s father asserted that because the District provided its weekly updates to the parents on Fridays, the *parents* often learned of homework assignments days after the Student would have received the assignment earlier in the week. Based on this, they claimed generally that the “extra time” allotted to the Student should begin when they learned of the assignment on any given Friday, not when the Student and his classmates would have received the assignment.

**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,

Abra Francois  
Compliance Team Leader

Enclosure

cc: cat@lyonsandrogers.com