



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

October 27, 2021

James F. Jette
Superintendent, Milton Public Schools
By email: jjette@miltonps.org

Re: Complaint No. 01-21-1555
Milton Public Schools

Dear Superintendent Jette:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights received against Milton Public Schools (District). The Complainant alleged that the District discriminated against her daughter on the basis of disability by failing to evaluate the Complainant's daughter for Section 504 eligibility after finding her ineligible for an Individualized Education Program (IEP), and instead placing the student on an Individualized Curriculum Accommodation Plan (ICAP). 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.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 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, 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 U.S. Department of Education. Because the District receives federal financial assistance from the U.S. Department of Education 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 the District failed to evaluate the Student who, because of disability, needed or was believed to need special education or related services, before taking any action with respect to the initial placement of the Student in regular or special education, in violation of 34 C.F.R. Section 104.35(a) and 28 C.F.R. Section 35.130.

Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the District, and interviewed the Complainant and District staff.

For the XXXXXXXX school year, the Student was in the XXXXX grade and was enrolled in the District's XXXXXXXXXXXXXXXXXXXXXXXX. At the Complainant's request, the District evaluated the Student for special education services during the XXXX of XXXX. (The Student had been evaluated by the District in the XXXX of XXXX and found ineligible.) The Complainant also brought the Student to an independent evaluator in XXXXXXXXXXXXXXX, who diagnosed the Student with XXXXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXX. The independent evaluator's neuropsychological evaluation report was provided to the District during the special education evaluation, and included the Student's diagnoses.

On XXXXX XX, XXXX, the District convened an IEP team meeting where they discussed the Student's eligibility for special education services based on the District's evaluation findings. The School's Team Chair was on XXXX leave beginning at the end of XXXXXXXX XXXX, so an interim Team Chair was in place for this meeting. In an interview with OCR, the interim Team Chair stated that the independent evaluator's diagnosis was interpreted by the school's psychologist at this meeting. By notice dated XXXX XX, XXXX, the District found the Student ineligible for special education services. The team did not evaluate the Student for eligibility under Section 504. The interim Team Chair told OCR that the student was not evaluated for eligibility under Section 504, in part because "[the parents] were saying there was a major life function impacted at home, and we were not seeing it at school." The current Team Chair told OCR that she could not speak to why eligibility under Section 504 was not evaluated because she was on leave, but it would be her typical practice following an ineligibility determination under the Individuals with Disabilities Education Act to consider Section 504 eligibility.

The District instead recommended the Student Support Team process, and placed the Student on an ICAP, which is developed pursuant to the District Curriculum Accommodation Plan. Under Massachusetts law, every school district must create a District Curriculum Accommodation Plan. *See* Mass. Gen. L. c. 71, § 38Q1/2. A Student Support Team can create an ICAP to specify the learning needs of a particular student and identify accommodations, such as check for understanding frequently, provide visual and transition cues, and communicate with parents frequently. OCR notes, however, that unlike a Section 504 Plan, there are no clear procedural requirements or a recourse process.

The District contends that the parents agreed to utilize the ICAP. However, the Complainant states that they were not satisfied with the District's evaluation and requested a Section 504 meeting. By email on XXXXX XX, XXXX and XXXXX X, XXXX, the Complainant requested a Section 504 eligibility meeting be held for Student. The response from the District references the prior ineligibility findings under the Individuals with Disabilities Education Act. On XXXXX XX, XXXX, the interim Team Chair responded to the Complainant stating that the District was "XXX XX XXXXXXX XXXXX XXX XXXXXXX XXXXXXX XXXXXXX" and that the Student was not eligible "XXX XX XX XXXXXXX XX X XXXXXXX." The interim Team Chair's response to the XXXXX XX email was that she was "XX XXXXXXX XX

XXXXXX XXX XXX XXX” and that she “XXXXXX XX XXXXXX XX XXXX
XXXXXXXXXX XX XXXXXXXX” before reconvening the Team. In an XXXXX XX, XXXX
email, the interim Team Chair again stated, “XX XXX XXXXXXXX XX XXXXX XXX
XXXXXXXX XX XXX XXXXXXXXXX XXXX XX XXX XXXX XX XX XXXXXXX XXX
XXXXXXXX XXXXXXXX XX XXXXX XX XX XX XXXXXXXX XX XXX XXXXXXX XX
XXXXX.” Additionally, in response to the Complainant’s repeated requests to District staff, the
Principal followed up with the Complainant on XXXXX XX, XXXX by email asking “XXX
XXX XXXXXXX XXXXXXX XXX XXXXXXX XX XXX XXX XXXXXXX?”

On XXXXX XX, XXXX, the Student Support Team held a ICAP meeting and modified the
ICAP to include the collection of more data. The parents were not in attendance at this meeting.
The Student Support Team reconvened on XXXXX XX, XXXX to review the ICAP and the data
collected. The parents were also not in attendance at this meeting, and the notes reflect the team
was to set up a meeting with the parents to discuss the findings. The District decided to continue
the ICAP into grade X.

After the OCR complaint was opened and subsequent conversations with OCR, the District held
a Section 504 eligibility meeting on XXXXX XX, XXXX and determined that the Student is
eligible for a Section 504 Plan.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a school district to evaluate any
student who needs or is believed to need special education or related services due to a disability.
A district must conduct an evaluation before initially placing the student in regular or special
education and before any subsequent significant change in placement.

To be protected under Section 504, a student must be determined to: (1) have a physical or
mental impairment that substantially limits one or more major life activities; or (2) have a record
of such an impairment; or (3) be regarded as having such an impairment. Section 504 requires
that school districts provide a free appropriate public education to qualified students in their
jurisdictions who have a physical or mental impairment that substantially limits one or more
major life activities.

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. OCR would like to make you aware that individuals who file complaints with OCR 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/

Michelle Kalka
Compliance Team Leader

Enclosure

cc: Bettina Toner, Esq.