



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

February 24, 2022

Linus J. Guillory Jr., PhD
Superintendent of Schools
Public Schools of Brookline
By email: linus_guillory@psbma.org

Re: Complaint No. 01-21-1573
Public Schools of Brookline

Dear Superintendent Guillory:

The U.S. Department of Education, Office for Civil Rights has completed its investigation of the complaint we received on XXXXX XX, XXXX against Public Schools of Brookline. The Complainant alleged that the Special Education Parent Advisory Council (SEPAC) for the District retaliated against her and other parents who have advocated for students with disabilities, by amending its bylaws to prevent individuals who file complaints against the District from occupying SEPAC Board positions.

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 U.S. Department of Education. 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.

The laws enforced by OCR also 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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the District; interviewed the Complainant, District faculty/staff, and former/current members of SEPAC.

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II, which the District agreed to resolve through the enclosed resolution agreement.

OCR's findings and conclusions are discussed below.

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

Background

SEPAC is a parent group that advises the District’s School Committee on matters relating to students with disabilities within the District. General Law Ch. 71B, Section 3, requires that each school district establish a SEPAC; the regulation states in part: part:

Membership shall be offered to all parents of children with disabilities and other interested parties. The parent advisory council duties shall include but not be limited to: advising the school committee on matters that pertain to the education and safety of students with disabilities; meeting regularly with school officials to participate in the planning, development, and evaluation of the school committee's special education programs. The parent advisory council shall establish by-laws regarding officers and operational procedures. In the course of its duties under this section, the parent advisory council shall receive assistance from the school committee without charge, upon reasonable notice, and subject to the availability of staff and resources.

The SEPAC Executive Board confers regularly with the Deputy Superintendent for Student Services about disability-related matters raised by SEPAC members. The Deputy Superintendent informed OCR that the District provides organizational support to SEPAC. The organizational and administrative support provided by the District includes, but is not limited to: the District securing public meeting space for SEPAC, the District hosting virtual Zoom meetings for SEPAC, the District posting SEPAC materials and information on the District’s website, District staff providing copying services for SEPAC materials, and the District paying for SEPAC’s membership to the Federation for Children with Special Needs’ Massachusetts Association of Special Education Parent Advisory Councils.

On XXXXX XX, XXXX, SEPAC held its monthly meeting. On this meeting’s agenda was a vote to change SEPAC’s by-laws. One of the proposed changes to the by-laws included limits on who could participate as a SEPAC Executive Board member. Specifically, the proposed changes prohibited anyone who was “[i]n a formal dispute with [the District]” from running for or holding a position as Chair, Secretary or Webmaster of SEPAC. Before closing the meeting, SEPAC approved these changes to the by-laws.

According to a former SEPAC Chair, who participated in drafting the by-laws adopted by SEPAC on XXXXX XX, XXXX, the language limiting Executive Board member participation was intended to formalize a procedure that had been informally adopted by previous SEPAC members to prevent conflicts occurring between SEPAC and the District. The former SEPAC Chair told OCR that a draft of the by-laws was sent to the District’s Deputy Superintendent before the XXXXX XX, XXXX meeting but that the District did not provide any input on the draft.

OCR’s investigation revealed that at least one individual, the former XXXXXXXX of SEPAC, withdrew her candidacy for SEPAC Executive Board Chair as a result of the XXXXX XX, XXXX by-law vote because she had filed a complaint against the District related to special

education or related services and was “[i]n a formal dispute with [the District]” at the time of the XXXXX XXXX SEPAC Executive Board election.

On XXXXX XX, XXXX, the SEPAC XXXXX informed OCR that the SEPAC by-laws had been revised to remove the language limiting those who could participate as a member of the SEPAC Executive Board. Elections for new SEPAC Secretary and Webmaster are not scheduled to take place before XXXXX XXXX while elections for new SEPAC Chair are not scheduled to take place before XXXXX XXXX. At no time has the District stopped providing supports noted above, to SEPAC.

Legal Standards

Under the Section 504 regulation, at 34 C.F.R. § 104.4(b)(1)(v), and the Title II regulation, at 28 C.F.R. § 35.130(b)(1)(v), a District may not aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the District’s program or activity. In determining whether a District is providing significant assistance to an outside entity, OCR considers the substantiality of the relationship between the District and the other entity, including financial support by the District, and whether the other entity’s activities relate so closely to the District’s program or activity that they fairly should be considered activities of the District itself. If a District provides significant assistance to an outside entity and the entity is shown to have discriminated on the basis of disability, the District must take steps to obtain compliance from the outside entity or terminate its assistance.

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 various forms of discrimination on the basis of disability, including discrimination against any individual who exercises any right that is protected 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.¹

Analysis

OCR determined that the District did aid or perpetuate discrimination against qualified individuals who engaged in disability-based advocacy by providing significant assistance to SEPAC, which discriminated against those who engage in disability-based advocacy in providing any aid, benefit, or service to beneficiaries of the District’s program or activity.

OCR first determined that the District provided significant assistance to SEPAC. The evidence showed that the District maintains a substantial relationship with SEPAC through its administrative assistance, financial support, and continued interaction between the SEPAC Executive Board and District staff. While OCR recognizes that the discriminatory by-laws at the heart of OCR’s investigation are no longer in effect, the District has taken no steps to obtain compliance from SEPAC in remedying the continued discriminatory effects of the XXXXX XX,

¹ These guarantees are commonly referred to as a prohibition against retaliation.

XXXX by-law amendments, which will remain in effect through new SEPAC elections in spring XXXX and spring XXXX, nor has the District terminated its assistance to SEPAC.

OCR next determined that the SEPAC's XXXXX XX, XXXX amendments to its by-laws discriminated against individuals who exercised or wished to exercise their rights by engaging in formal dispute with the District. The XXXXX XX, XXXX by-law amendments did this by effectively prohibiting any individual from seeking a position as a SEPAC Executive Board member if that individual was currently exercising or wished to exercise rights guaranteed by Section 504 and Title II, such as advocating on behalf of students with disabilities by filing a complaint with or against the District. The evidence showed that at least one individual was directly affected by the XXXXX XX, XXXX by-law amendments for having filed a formal complaint related to special education or related services, and was effectively disqualified from seeking a leadership position with SEPAC. As such, OCR determined that SEPAC discriminated against at least one individual who engaged in a right or activity protected by Section 504.

Based on all of the evidence gathered during the course of OCR's investigation, OCR found sufficient evidence that the District did aid or perpetuate discrimination against qualified individuals who engaged in disability-based advocacy by providing significant assistance to SEPAC, which discriminated against those who engage in disability-based advocacy in providing any aid, benefit, or service to beneficiaries of the District's program or activity in violation of 34 C.F.R. § 104.4(b)(1)(v), and 28 C.F.R. § 35.130(b)(1)(v).

Conclusion

On February 23, 2022, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant when the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance. OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information if necessary to determine whether the District has fulfilled the terms of the Agreement. Once the District has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement entered into by the District on February 23, 2022, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 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. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Sincerely,

Meighan A. F. McCrea
Supervisory Civil Rights Attorney

Enclosure

cc: Colby Brunt, Esq.