



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

March 2, 2022

Superintendent Roger Forget  
By email: rforget@uppercapetech.org

Re: Complaint No. 01-21-1630  
Upper Cape Cod Regional Vocational Technical School

Dear Superintendent Forget:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received against Upper Cape Cod Regional Vocational Technical School. The Complainant alleges that the School discriminated against her daughter (Student) on the basis of disability. Specifically, the complaint alleges that School staff discriminated by telling the Student that she would not be able to  
XXX class because of her health status, telling her that they did not want her in a shop class because of her disabilities, and discussing her Individualized Education Program (IEP) in front of the class. As explained further below, before OCR completed its investigation, the School expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. Hereinafter, OCR will refer to you as “the Superintendent.”

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 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 (Title II), 42 U.S.C. § 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 School 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.

OCR opened the following allegation for investigation:

Whether the School discriminated against the Student based on disability by treating her differently than students without disabilities when a teacher told her that she could not fully participate in XXXXXXXX class, stated that he did not want her in his XXXX because of her disabilities, and discussed her IEP in front of the entire class, in violation of 34 C.F.R. Section 104.4 and 28 C.F.R. Section 35.130.

Summary of Preliminary Investigation

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



but day by day it is a case-by-case [sic] based upon  
XXXXXXXXXXXXXXXXXXXX. XXXX are a “no go” right now. Safety is and  
must be considered.

The next day, the XXXXXX emailed the meeting notes to the Complainant, along with a list of  
XXXXXXXXXX that the XXXXXX Teacher purportedly mentioned during the meeting. He  
stated that the impact of XXXXXXXXXXXXXXXXXXXX on the Student’s XXXXXXXXXXXX was  
of greatest concern for the XXXXXX Teacher and noted that the School would use any  
medical documentation the Complainant provided to structure the Student’s learning  
environment in the shop.

In a XXXXXXXXXXXXXXXXXXXX, email to the XXXXXX, XXXXXX, and the Principal, the  
Complainant quoted the XXXXXX Teacher as having said at the meeting, “I did not want her  
in the shop because of her health condition. I told them that but they allowed her in.” There is no  
evidence suggesting that any School staff disputed the Complainant’s characterization of what  
the XXXXXX Teacher had said. The Complainant wrote that she felt the XXXXXX  
Teacher’s judgment as to what the Student was or wasn’t allowed to do in the shop may be  
clouded by his opinion that the Student should not have been allowed to enroll in the shop.

The Complainant provided the School four letters from the Student’s medical providers dated  
between XXXXXXXXXXXXXXXXXXXXXXXXXXXX. The letters state that there are no  
known medical concerns with the Student’s unrestricted participation in the  
XXXXXXXXXXXXXXXXXXXXXXXXX shop.

On XXXXXXXXXXXX, the Complainant emailed the Superintendent and Principal to remind them  
of the XXXXXX Teacher’s alleged statement that he did not want the Student in his shop class  
because of her disabilities. She outlined additional concerns that she had with the XXXXXX  
Teacher and asserted that his behavior had caused XXXXXXXX for the Student, XXXXXXXXXXXX

The Principal responded the same day that he had forwarded the Complainant’s email to the  
XXXXXX and the XXXXXXXX so they could “bring [him] up to speed on how things are going  
in XXXXXXXXXXXX.” He noted that both Directors would contact the Complainant directly.

On XXXXXXXXXXXXXXXXXXXX, the Complainant emailed the XXXXXX to express concern that the  
XXXXXXXXX Teacher was teaching the shop class rather than the XXXXXXXXXXXXXXXXXXXX  
Instructor, as the Complainant and Student had previously understood. She asked that the  
Student’s XXXXXX be updated so that she could  
XXX when feeling XXXXXXXX due to  
her interactions with the XXXXXXXX Teacher.

The XXXXXXXX responded the following day, agreed to revise the XXXXXXXX, and stated that he  
would forward a draft to the Complainant for review. The Complainant responded that the  
previous day, the XXXXXXXX Teacher had “called out every student on [an] IEP[] in front of all  
the students in the classroom,” “stated ‘this is about your IEPs,’” and “asked every student on an  
IEP ‘What can I do to help you learn this year.’” The Complainant explained that the Student  
was angry and embarrassed that she had been publicly identified as having an IEP, and she noted

that some of the other students felt similarly. She said the XXXXXXXX Teacher's conduct was discriminatory, illegal, against the Student's civil rights, and she noted that it was the second time this year he had done this to the Student.

On XXXXXXXXXXXXXXXXXXXX, XXXXXXXX responded that he had looked into the Complainant's concerns and had determined that the XXXXXXXX Teacher had called the Student out in class about her IEP in a general manner to better reach his class and assure that all of the students' educational requirements and needs would be met regarding their learning styles and/or IEPs. He claimed that the XXXXXXXX Teacher had been genuine in asking what he could do to help students learn, and he shared that during professional development, it was emphasized that teachers need to be all inclusive and understanding of their students' needs, including the School's special needs population. He concluded by writing that he hoped that his email alleviated the Complainant's concerns.

The Superintendent asserted to OCR that the School had investigated the issues brought forth by the Complainant and, in addition to the email correspondence discussed above, School staff had communicated with the Complainant orally to inform her about their investigation.

The School provided a grievance procedure to OCR, which the Superintendent conceded was outdated and had not been used as far as he could remember because the School had not received any disability discrimination complaints. Among other things, the grievance procedure does not address how non-students should file disability discrimination complaints with the School, how the School will respond to such complaints from non-students, how the School will investigate any complaint it receives alleging disability discrimination, whether the School will notify the parties to the complaint of the outcome of its resolution process, or whether the School will address any violations of Section 504 and Title II that it finds occurred and take steps to prevent their recurrence.

### **Legal Standard**

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient's programs or activities on the basis of disability. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the recipient treated the qualified individual with a disability less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.33, also requires recipients 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. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require public entities 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 recipient 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 recipient 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. § 104.35(a), also requires a recipient to evaluate any student who needs or is believed to need special education or related services due to a disability. A recipient must conduct an evaluation before initially placing the student in regular or special education and before any subsequent significant change in placement.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), also requires recipients that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public entities that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

OCR considers a number of factors in evaluating whether a recipient's grievance procedures comply with the requirements of Section 504 and Title II, including whether the procedures provide for the following: notice of the procedures to students, parents, and employees; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation; reasonably prompt timeframes for various stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that any violations will be addressed and steps will be taken to prevent recurrence.

In addition, a recipient must respond promptly and equitably to notice of possible disability discrimination by investigating or otherwise resolving the concern; the failure to respond to notice of an alleged violation of Section 504 or Title II is itself a violation of Section 504 and Title II. Although the reasonableness of the recipient's response will vary depending on the circumstances, in all cases the inquiry should be prompt, thorough, and impartial. If an investigation reveals that disability discrimination occurred, a recipient must take prompt and effective steps reasonably calculated to end the discrimination, remedy its effects, and prevent it from recurring.

### **Analysis**

Based on the preliminary investigation done to date which consists primarily of documentary evidence provided by the School and the Complainant, OCR is concerned the School's Section

504/Title II Grievance Procedures are not in compliance, and that the School may not have responded promptly and equitably to the Complainant's allegations of possible disability discrimination. Specifically, OCR would need to conduct further investigation by interviewing School staff to understand how the School responded to the Complainant's allegations, and what notice of outcome the School may have orally provided the Complainant. In addition, in light of the potential deficiencies in the Grievance Procedures, OCR is concerned that the School may not have responded to other possible incidents of disability discrimination of which it had notice. Finally, OCR is concerned and that the Student's ability to access her education may have been adversely affected by XXXXXX alleged discriminatory conduct and the School's potentially inadequate response.

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the School expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the School resulted in the School signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the School's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School'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 School 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/ Paul Easton

Paul Easton  
Compliance Team Leader

Enclosure