



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION I

CONNECTICUT  
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NEW HAMPSHIRE  
RHODE ISLAND  
VERMONT

November 18, 2022

Jeffrey Granatino  
Superintendent

By email: [jwgranatino@mpsd.org](mailto:jwgranatino@mpsd.org)

Re: Complaint No. 01-22-1308  
Marshfield Public Schools

Dear Superintendent Granatino:

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 Marshfield Public Schools (District). The Complainant alleges that the District discriminated against his son (Student), on the basis of disability. Specifically, the Complainant alleges that the District denied the Student a free appropriate public education (FAPE) during XXXXXXXXXXXXX school year, following a bullying incident that occurred on XXXXXXXXXXXXX, by failing to assess whether the Student's educational needs had changed as a result of the bullying (Allegation 1), and failing to implement the Student's Individualized Education Program (IEP) for several weeks following the XXXXXXXXXXXX incident (Allegation 2). As explained 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 U.S. Department of Education. 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 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.

During the investigation, OCR reviewed documents provided by the Student's parents and the District; spoke to a District administrator; and interviewed the Student's parents.

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

[www.ed.gov](http://www.ed.gov)

## Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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 school 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 to determine whether this failure resulted in a denial of a FAPE.

The bullying on any basis of a student with a disability who is receiving services pursuant to a Section 504 plan or IEP can result in a denial of FAPE that must be remedied under Section 504. A district has an ongoing obligation to ensure that a qualified student with a disability who receives Section 504/IEP services and who is the target of bullying continues to receive a FAPE. Accordingly, as part of a district's appropriate response to bullying on any basis, the district should convene the Section 504/IEP team to determine whether, as a result of the effects of the bullying (e.g., adverse changes in the Student's academic performance or behavior), the student's needs have changed such that the student is no longer receiving FAPE. If the district suspects the student's needs have changed, the Section 504/IEP team must determine the extent to which additional or different services are needed, ensure that any needed changes are made promptly, and safeguard against putting the onus on the student with a disability to avoid or handle the bullying. In addition, when considering a change of placement, a district must continue to ensure that Section 504/IEP services are provided in an educational setting with persons who do not have disabilities to the maximum extent appropriate to the needs of the student with a disability.

## Findings of Fact

During XXXXXXXXXXXXXXXXXXXXXXXXXXXX, the Student was enrolled in the XXXXXXXX grade at XXXXXXXXXXXXXXXXXXXXXXXXXXXX (School). The Student XXXXXXXXXXXX and receives special education under an IEP.

### *The Student's IEP*

The District convened the Student's IEP team for his annual review meeting on XXXXXX XXXXXX. The Student was placed XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX. The Student's IEP, signed on XXXXXXXXXXXX provides that the Student should receive: XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX  
XX.

The IEP also provides that the Student should receive XXXXXXXXXXXXXXXXXXXX  
XX  
XX. In addition, the IEP calls for the  
Student to have XXXXXXXXXXXXXXXXXXXX  
XX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

*XXXXXXXXXXXX Incident*

It is undisputed that on XXXXXXXXXXXX, an XXXXXX grader (Student A) engaged in a  
significant bullying incident against the Student. That same day, the School investigated the  
incident, found Student A responsible, and issued him a 10-day out-of-school suspension.  
School administrators also met with the Student’s parents the day of the incident.

*The Student’s Attendance Following the XXXXXXXXXXX Incident*

The Student did not attend school the day following the incident. He returned to school on  
XXXXXXXXXXXX (while Student A was still serving his suspension). That same day, the  
Principal spoke by phone with the Student’s parents again regarding the incident. According to  
the Principal’s notes, they brainstormed actions staff could take to help the Student feel safe in  
school (e.g., assigning staff to monitor both students, check-ins with the Student), but that the  
parents stated that the Student would only feel safe if Student A was not there. District records  
indicate that the Student attended school and received IEP services during the remainder of  
Student A’s suspension, i.e., from XXXXXXXXXXXXXXXXXXXXXXX.

After Student A returned to school on XXXXXXXXXXX, the Student did not attend school in-  
person XXX  
XX. The District  
reported to OCR that the School set up virtual schooling for the Student on XXXXXXXX.  
District records indicate that after the XXXXXXXX incident, the Student missed  
approximately XXXXXX of in-person learning and that the School provided links for him to  
participate virtually in his classes on XX of those days.

*The Student’s Receipt of IEP Services*

The District provided OCR with documentation regarding the Student’s receipt of IEP services  
during this period. These records suggest that the Student missed some IEP services due to  
absences. For example, his providers’ notes and e-mails indicate that the Student missed  
multiple XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Documentation  
provided by the District includes some communications reflecting attempts by his service  
providers to makeup and/or reschedule some IEP sessions.



## **Analysis**

The evidence obtained to date suggests that the District was on notice that the Student's needs may have changed as a result of the bullying incident that occurred on XXXXXXXXXXXXX, based on the Student's absences and information provided by his parents that he was afraid to return to school. While documentation provided by the District shows that School administrators/staff communicated with the Student's parents about how to support his return to school, and offered various supportive measures in the interim, it is undisputed that the District did not convene his IEP team to consider the impact of the bullying incident on the Student's receipt of FAPE during XXXXXXXXXXXXXXXXXXXX, for instance, whether his needs had changed.

The evidence obtained to date also indicates that the Student may not have received all of the services required by his IEP during XXXXXXXXXXXXXXXXXXXX. For example, documentation provided by the District, such as the Student's progress reports and his providers' notes, suggest that the Student missed multiple XX due to his absences. OCR notes that there is some evidence indicating that his providers did (or attempted to) provide makeup sessions for missed services.

## **Resolution**

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. The complainant may have a 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/

Meighan A.F. McCrea  
Compliance Team Leader

Enclosure