



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921

Ms. Jean Franco
Superintendent
Lowell Public Schools
Henry J. Mroz Central Administration Offices
43 Highland Street
Lowell, Massachusetts 01852

Re: OCR Complaint No. 01-13-1236

Dear Superintendent Franco:

On July 19, 2013, the U.S. Department of Education, Office for Civil Rights (OCR), opened a complaint of disability discrimination against the Lowell Public Schools (District). OCR understood that the Complainant alleged that the District discriminated against the Student and other students with disabilities at the J.G Pyne Arts Magnet School (School) during the 2012-2013 school year by denying them access to emergency medications during School extracurricular events, field trip days, and during lockdown procedures. The Complainant also alleged that the District retaliated against her by restricting her access to the School building and requiring her to relocate to a janitor's closet to provide the Student's noontime medication dosage as a result of her advocacy for the Student's rights.

OCR enforces Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990, and its implementing regulation at 28 C.F.R. Part 35 (Title II). Section 504 and Title II prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities. These regulations also prohibit retaliation, intimidation or the interference with the exercise of any right protected by Section 504 and Title II. As a recipient of Federal financial assistance from the U.S. Department of Education and as a public entity, the District is subject to these laws.

During the fall of 2013, OCR staff obtained information from the District regarding the Complainant's allegations, including copies of the Student's Section 504 plan, the District's policies and procedures with regard to storage of emergency medications and field trips/extracurricular activities, and the School's emergency response manual, including lockdown procedures. The District also provided OCR with photographs of the "janitor's closet" and a narrative response to the allegations. OCR also spoke with District Counsel, Attorney Jane Mosher-Canty, and the Complainant multiple times during the fall of 2013. The following is a brief summary of OCR's observations.

Access to Medications for Field Trips and Extracurricular Activities

The laws enforced by OCR require that school districts provide qualified students with disabilities an opportunity to benefit from the district's program equal to that of students without disabilities. One aspect of providing this

opportunity can be ensuring that medication is available if needed for students with disabilities, for extracurricular activities, field trips and in unusual circumstances such as lockdowns.

OCR reviewed the District's policies and procedures for medication storage, medication protocols for field trips and extracurricular activities, and the District's emergency procedures manual. OCR found that the District's policies provide for student medication to be stored in a locked cabinet in the nurse's office, with both the nurse and the Principal having a key to obtain access. The District informed OCR that when a student requiring access to emergency medication attends a field trip, the District ensures that medication is available to the student by hiring a substitute nurse to accompany the student(s) while the main School nurse stays back to attend to other students in the building. The District also informed OCR that the District provides access for students to their medication for extracurricular activities when it is a School-sponsored activity such as sports, band, etc. For non-School sponsored activities, whereby other organizations use the School building for their after-school programs (i.e. Girl Scouts, YMCA, etc.), the sponsoring organization retains the responsibility to provide access to its students for their medication. Based on OCR's review of the District's policies and procedures, we found the policies to be neutral and non-discriminatory on their face. Further, during our interviews with the Complainant, while she expressed general concerns about students' access to medications, she could not provide OCR with any specific examples of students who had been adversely affected by the District's policies and procedures. Therefore, OCR has determined it appropriate to dismiss this allegation effective the date of this letter.

Access to Medication during Lockdowns

OCR's review of the District's emergency procedures manual revealed that in the event of a building emergency, the nurse coordinates care for the School's at-risk students. The District also distributes a list to all staff identifying by name and photograph all of the students who have XXXXX with a notation that any of those students should be allowed to go see the nurse any time they request it.

During our interviews with the Complainant, while she expressed general concern that students' emergency medications were locked in the nurse's office and would be generally unavailable to students during any given lockdown drill or procedure, she did not have any examples of any student who had been adversely affected by the District's current policies on medication storage. District Counsel indicated, after consulting with the City of Lowell's Department of Public Health School Health Unit and the District Physician that the District was willing to invite the Complainant to provide drinks and snacks to the School to stock the Student's classroom(s) and that the Student was welcome to bring a fanny pack to the School stocked with the same items, in order to ensure that in the event of a lockdown he would have access to adequate food and drink. The District further indicated that there were a number of other diabetic students in the School already doing so. OCR also noted that this practice was one of the general recommendations contained on the XXXXX website. Because the Complainant expressed an interest in having the Student stock other health-related items in the fanny pack, such as XXXXX supplies, OCR recommended, and the District agreed, that the Student's Section 504 team reconvene to discuss the appropriateness of incorporating said items in the Student's fanny pack. Thus, prior to OCR making a formal determination of compliance on this issue, the District offered to proactively resolve this allegation as described here and in the enclosed resolution agreement (Agreement) and OCR found the District's offer sufficient to resolve this allegation.

Retaliation

The laws enforced by OCR also prohibit retaliation. Retaliation can be found when 1) an individual engaged in a protected activity; 2) the district knew about it; 3) the district took an adverse action at the same time as or after the protected activity; and 4) there was a causal connection between the protected activity and the adverse action. If all of these elements are established, OCR next considers whether the district has a legitimate, non-retaliatory reason for the adverse action and whether that reason is a pretext for retaliation.

The Complainant alleged that as a result of her advocacy for the Student's rights, the District retaliated against her by restricting her access to the School building, and reassigning her and the Student to a "janitor's closet" to provide the Student's noontime medication dosage.

With regard to the Complainant's access to the School building, OCR requested and reviewed the School's policies for visitors and discussed these policies with the District. OCR found that the School requires outside visitors to have made an appointment, and to sign in at the main office prior to visiting in the building. According to the District, in order to maintain an optimal education environment and minimize distractions to the curriculum, each visitor needs to have a stated purpose for being in the School building at any given time. The School maintains a parent/volunteer office where parent volunteers are welcome to go when working on various volunteer projects. In its data response the District asserted that all parents are treated equally, and that in the morning it is expected that each parent "leave their child at the door and say goodbye when their child gets in line and enters with their class." According to School administrators, "they cannot have every parent enter the building with their child first thing in the morning" and "ever since the School shooting in Newtown, Connecticut, [they] have tightened [their] safety practices and procedures. [They] started having staff meet the students at the doors and escort them, limiting the number of visitors entering through the doors with the students, inquiries over the intercom before entrance, etc."

The Complainant informed OCR that she visits the School on a daily basis to administer the Student's noontime medication dosage. OCR discussed with the Complainant whether she had ever been denied entrance to the School at other times during the school day when she had a prior appointment, or when she was volunteering, and she had not. Based on our review of the District's data request, including its policies and procedures, testimony from District staff, and our interviews with the Complainant, OCR found insufficient evidence in support of the allegation that the District retaliated against the Complainant by restricting her access to the School building. Specifically, there was no indication that the District's enforcement of its visitor's policies and practices had any tangible adverse effect on her ability to visit the School on a daily basis. As such, we are dismissing this allegation effective the date of this letter.

With regard to the Complainant's concern about being relocated to the "janitor's closet", she clarified for OCR that she visits the School each day around noontime to administer the Student's mid-day insulin dosage as she did not want anyone in the School, including the nurse, administering insulin to the Student. She explained to OCR that last year she and the Student were permitted use of a larger classroom, which she found preferable. Both the Complainant and the District subsequently provided OCR with photographs of what the District calls the "repurposed classroom", which OCR reviewed. The District informed OCR in its data response that this small classroom, which had previously been used for storage, had been repurposed by the School for use as a Student Support Room and would be used, not only by the Complainant and the Student, but also by mental health counselors from local agencies who provide school-based counseling at the School. The District also informed OCR that this classroom was offered to the Complainant and the Student because it offered them privacy, and proximity to the Student's class, the cafeteria, and the boy's restroom. The District also asserted that this space was optimal as the Complainant frequently chooses to stay in the School building longer than the 15 minutes allotted for the noontime visit for medication administration, and in this new space, she is able to remain longer because it does not need to be vacated for any classes starting at 1 pm. After speaking with the Complainant and District Counsel about this allegation, without making a determination on the other aspects of our retaliation analysis, OCR determined that the District proffered legitimate, non-retaliatory reasons for offering this space to the Complainant for the Student's noontime medication administration, and there is no evidence to indicate that these reasons are pretextual. OCR therefore found insufficient evidence in support of this allegation and we will take no further action on this allegation effective the date of this letter.

Conclusion

On January 24, 2014, the District, without admitting to any violations of Federal laws enforced by OCR, voluntarily signed the enclosed Agreement to resolve the allegation concerning access to medications during lockdowns. The Agreement commits the District to: 1) Notify the Complainant in writing that she is welcome to provide snacks and drinks to the Student's classroom(s) and/or stock a "fanny pack" for the Student to carry around with said items, in order to address his need for ready access to food and drink in the event of School lockdown procedures, and 2) Extend an invitation to the Complainant to reconvene the Student's Section 504 team to discuss her request to supplement the Student's "fanny pack" with various health-related items, including emergency medications for the Student's disabilities. The District also agreed that in the event of an impasse among team members regarding the appropriateness of any given item for inclusion in the "fanny pack", the Complainant will be provided with procedural safeguards in accordance with Section 504.

When fully implemented, this Agreement will be sufficient to resolve the allegation concerning access to medication during lockdowns. As was noted above, OCR dismissed the allegations related to access to medication during field trips and extracurricular activities and found insufficient evidence of retaliation; therefore, OCR will take no further action regarding those allegations. OCR is informing the Complainant of this resolution by concurrent letter and will monitor the District's full implementation of the commitments contained in the Agreement.

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.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, would reasonably be expected to constitute an unwarranted invasion of privacy.

We wish to thank you and your staff, especially District Counsel Jane Mosher-Canty, Principal Wendy Crocker-Roberge, and XXXXXXXXXXXXXXX, for your time and assistance with the resolution of this case. If you have any questions regarding this letter, you may contact Ms. Khouani by telephone at (617) 289-0036 or by e-mail at Mary-Anne.Khouani@ed.gov, or OCR Senior Elizabeth Bagdon by telephone at (617) 289-0020 or by e-mail at Elizabeth.Bagdon@ed.gov. You may also contact me directly at (617) 289-0051.

Sincerely,

Kate Upatham
Acting Team Leader/Civil Rights Attorney

Enclosure

cc: Jane Mosher-Canty, Esq.