



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I

5 POST OFFICE SQUARE, 8<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

AUG 05 2010

Non Responsive

Ms. [REDACTED]

MA

Re: Complaint No. 01-10-1225  
Amherst Public Schools

Non Responsive

Dear Ms. [REDACTED]

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR), is dismissing the above-referenced complaint that you filed against the Amherst Public Schools (District). In your complaint, you allege that the District retaliated against you and your son when it stopped sending a bus monitor to your house before school in January 2010, and separately when it imposed "meeting norms" on some special education meetings. We have determined that your allegations would not, if true, constitute a violation of the laws enforced by OCR and we are therefore dismissing this complaint effective the date of this letter.

OCR evaluated your complaint under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104 (Section 504), as well as Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination on the basis of disability, as well as retaliation. The District is subject to the requirements of Section 504 because it receives Federal financial assistance from the U.S. Department of Education. In addition, the District is subject to the requirements of Title II because it is a public entity that operates an elementary and secondary education system.

OCR staff called you on July 22 and 26, 2010 to gather additional information about your complaint and to explain OCR's complaint-processing procedures. You told OCR that in January 2010, the District stopped sending a bus monitor to your home each morning before school to help your son, who has a disability, get ready and get to the bus.

You told OCR that you believe the District stopped sending the bus monitor to your home because in November 2009, after speaking with a substitute bus monitor who told you how difficult it was for her to come to your house in the morning, you asked her the name of her supervisor because you did not want a particular supervisor involved in services for your son. You told OCR that after your conversation with the substitute bus monitor, you expressed to the Assistant Principal that you did not believe the work arrangement for the substitute bus monitor was fair and in January 2010, the District stopped sending bus monitors to your home. The Assistant Principal told you that the District stopped sending bus monitors to your home because the contract the school has with paraprofessionals does not include staff visiting homes. You told OCR that in July 2010, you learned from the District's Attorney that the bus monitors stopped coming to your home because you had asked the substitute bus monitor who her supervisor was.

Regarding your allegation that the District retaliated against you by imposing meeting norms, you told OCR that in 2005 the Special Education Parent Advisory Committee worked with the District's administration to develop meeting norms that over time have become tools for the District to retaliate against parents who advocate for their children in IEP meetings. At OCR's request, you provided OCR with a copy of the meeting norms, which state, for example, "participants will follow the agenda set by the Team" and "participants will express their opinions professionally and respectfully".

You told OCR that you feel silenced, threatened, and like you are no longer part of the team because of the meeting norms. You said that on two occasions since the meeting norms were put into place, you have been asked to take a five-minute break because of the meeting norms, and you cancelled one team meeting because you were so upset that the meeting norms were being used.

As OCR staff explained to you, to have sufficient information to open an investigation of a claim of retaliation under the laws enforced by OCR, the complaint must allege that: (1) the individual engaged in a protected activity by exercising a right or taking some action that is protected under the Federal laws that OCR enforces; (2) the recipient (here, the District) had notice of the individual's protected activity; and (3) the District took an adverse action against the individual at the same time or sometime after the individual engaged in the protected activity.

We considered your allegation that the District retaliated against you by stopping the bus monitor from coming to your home because you talked to the Assistant Principal about the challenges the substitute bus monitor faced getting to your home in the mornings, and because you asked the substitute bus monitor about her supervisor. As OCR staff explained to you, although you have advocated for your son who has a disability, which is a protected activity under the laws enforced by OCR, in this instance you did not attribute what you allege was retaliation to that protected activity. Instead, you alleged that the change in the substitute bus monitor coming to your home in mornings is retaliation for your discussion of her logistical challenges in performing her duties, and/or your inquiry about her supervisor. Discussing logistical challenges in performing one's duties and/or inquiring about an individual's supervisor does not constitute a protected activity under the laws enforced by OCR. Without evidence of a protected activity related to this allegation, OCR will not proceed to investigate a claim of retaliation.

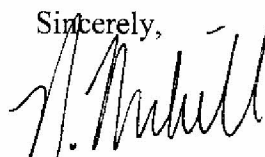
OCR also notes that you raised your concern about the bus monitor coming to your home in the mornings in a hearing request to the Bureau of Special Education Appeals (BSEA) that you subsequently settled through mediation. OCR does not investigate allegations that have been addressed in another forum if OCR has reason to believe that the other forum's resolution of the matter met OCR's standards. Without making a determination regarding whether BSEA's resolution met OCR's standards, OCR will not open an investigation into this retaliation claim because, as we have stated above, you have not alleged any protected activity.

Related to your complaint about meeting norms, you alleged that the meeting norms were used in retaliation for your ongoing advocacy in team meetings and other settings for your son as a

person with a disability. Such advocacy is considered a protected activity under Section 504 and Title II. Since the advocacy occurred in team meetings for your son, you have alleged that the District had notice of your protected activity. However, to constitute an adverse action, an action must be likely to cause lasting, tangible harm. Although the use of meeting norms has been upsetting to you, reading aloud guidelines for professional conduct to be used during meetings and requesting a five minute break if a team member becomes emotional or upset are not actions that cause lasting and tangible harm. Without an adverse action, OCR does not have sufficient information to open an investigation into this retaliation claim.

For the reasons described above, we are closing your complaint effective the date of this letter. We are sorry we were not able to assist you with your concerns. If you have any questions or concerns regarding this letter, please contact Civil Rights Investigator Linda Huynh at (617) 289-0013 or by email at [Linda.Huynh@ed.gov](mailto:Linda.Huynh@ed.gov). You may also contact Civil Rights Attorney Kate Upatham at (617) 289-0051 or me at (617) 289-0045.

Sincerely,



Ralph A. Montalvo  
Compliance Team Leader

