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October 12, 2012

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MA

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Office for Civil Rights  
US Department of Education  
5 Post Office Square, 8th Floor  
Boston, MA 02109-3921

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**Re:** [REDACTED] **Complaint and Pelham School District**

To whom it may concern:

On May 25, 2011, I filed a complaint with the Massachusetts Department of Elementary and Secondary Education alleging several violations of state and federal laws. While the MA DESE resolved some of my concerns to some extent by indicating that the district was in fact out of compliance, several problems have continued since the DESE closed my case. I am also concerned at this juncture about discrimination and/or retaliation we have experienced following my complaint to MA DESE.

Attached please find the following supporting documents:

- A copy of the complaint I filed against the Amherst-Pelham School District, dated May 25, 2011;
- A copy of the response submitted by Amherst-Pelham on July 13, 2011;
- A copy of a public records request I submitted to the district on July 18, 2011;
- A copy of the MA DESE's findings, dated July 25, 2011, relative to my complaint;
- A letter from Amherst-Pelham to MA DESE dated July 31, 2011, challenging one of MA DESE's findings of non-compliance;
- A letter from the Superintendent of Amherst-Pelham dated August 4, 2011, asserting that the district would not comply with my public records request unless I agreed to pay them "in excess of \$20,000";
- A letter I submitted to the Secretary of State, dated August 9, 2011, appealing Amherst-Pelham's refusal to fulfill my public records request;
- A copy of the corrective action plan, dated September 12, 2011, submitted to MA DESE by Amherst-Pelham;
- A copy of the MA DESE's letter closing its investigation;
- Emails from [REDACTED] to me and to Dr. [REDACTED] indicating that the district is considering not paying for the independent evaluation;

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- An email from Lisa Desjarlais (through DESE Mail Service) with information about the MCAS Alternate Assessment.

My original complaint to MA DESE asserted the seven issues listed below, concerning which MA DESE made the following findings:

1. *The district did not respond in a timely or appropriate manner to my request for an evaluation.* MA DESE found the district to be out of compliance on this issue.
2. *The district did not perform data collection in conformance with my son's IEP, and therefore did not comply with the performance criteria required pursuant to the IEP.* MA DESE found the district to be out of compliance on this issue.
3. *The IEP proposed for my son by the district did not contain current performance levels as required by law. Furthermore, as a result, many of the IEP goals currently proposed for my son by the district are not measureable and/or substantially similar to prior IEP goals.* MA DESE indicated that this concern was outside of its jurisdiction and would not be investigated.
4. *The district did not reply in compliance with the law to my request for an independent education evaluation, and not reply at all to a second request for a different independent evaluation.* MA DESE found the district to be out of compliance on these issues. While the MA DESE ordered corrective action on this issue, it did not direct the district to respond to me in any way and/or send me a formal agreement. To date, I have not received any compliant documentation and/or guidelines whatsoever in connection with my request for these evaluations, and the district is now accusing me of hiring an unacceptable independent evaluator and preparing to not pay for the evaluations. In fact, the district has still not responded at all to my second request for an independent evaluation.
5. *The district refused to provide a legally compliant number of IEP progress reports for my son.* MA DESE found the district to be out of compliance on this issue, but subsequently found the district to be in compliance after Amherst-Pelham changed its district-wide policy to conform to its practice of providing only two annual progress reports.
6. *The special education director informed me that the independent evaluator may not be permitted to conduct observations of [REDACTED]* MA DESE found the district to be in compliance on this issue, after the district permitted my independent evaluator to observe the program. (This issue has been resolved to my satisfaction.)
7. *I requested a copy of the draft IEP before the meeting, but the school did not provide it to me.* MA DESE found the district to be in compliance on this issue, although MA DESE noted that it encourages districts to share drafts. Nonetheless, I specifically informed the district that I required an advance copy of the draft in order to meaningfully participate in the meeting, and the district agreed to provide it to me (see my original complaint). As a result, I was unable to be prepared for the meeting and was therefore unable to participate meaningfully.

Since this original complaint, it has become clear that several issues remain unresolved. Also, several new issues have arisen. Therefore, I hope that the Office for Civil Rights can assist me with resolving several issues, as follows:



A. I would like guidance on whether or not the MA DESE should have investigated and made a finding on my complaints numbered 3 and 7 above. I think that the MA DESE discriminated against my son on the basis of his disability when it refused to require the school district to ensure that my son's IEP contained measureable annual goals, and refused to find the district out of compliance for its failure to provide me with a draft IEP, as requested and promised.

- Number 3: While I would understand the question of *whether or not the goals are appropriate* to be 'outside the jurisdiction' of MA DESE, the question of *whether the goals are measureable* is a concrete question of observable fact.
- Number 7: While I understand that the district is not required to provide me with drafts, the facts remain that 1) I requested the drafts; 2) the district agreed to provide drafts; and 3) I informed the district that I would be unable to meaningfully participate if I was not provided with an advanced copy of the draft. Ultimately, when all of the school district staff has seen the draft before the Team meeting, but a parent is denied access to the draft, the playing field is significantly shifted against the parent. Furthermore, it is my understanding that I have access to my son's student records regardless, and that I am entitled to a copy of whatever is in his file.

B. The Amherst-Pelham school district discriminated against my son on the basis of his disability and/or retaliated against him when, as a direct result of my correctly pointing out that its progress reporting practice was not in compliance with the law, it amended its policy to justify its a) failure to provide progress reports in the past; and b) providing fewer progress reports to my son and to all special education students throughout the district.

C. The MA DESE discriminated against my son on the basis of his disability when it failed to cite the district for its retaliatory change in its district-wide progress reporting policy.

D. The Amherst-Pelham school district discriminated and/or retaliated against my son on the basis of his disability by, I believe, misrepresenting the law concerning independent evaluations. As far as I know, the only requirement is that the evaluator be qualified. It is my understanding that 'independent' in this context simply means 'someone who does not work for the district'. Furthermore, despite MA DESE investigating this issue and finding the district to be out of compliance, I still, to date, have never received a single formal document indicating that the district will fund the evaluations (FBA and assessment of [REDACTED]'s independence). *Thus, still, I have no guidelines whatsoever from the district about who can conduct the evaluation and/or how the district plans to pay for these evaluations!* The evaluator I selected has been operating completely blind to the process and procedure for getting paid for his work. *See attached emails from Ms. [REDACTED] to me and to Dr. [REDACTED]* Furthermore, Dr. [REDACTED] is not doing anything "for me privately" outside the scope of these two evaluations. My understanding is that I hired him to perform the two independent evaluations I requested, and the district will pay him, and this is how the process works.

I'm not sure legally who he "works for" under these circumstances, but frankly, without appropriate, legally complaint responses from the district, I have no information on this other than to say that I requested these evaluations months and months ago, and the district is now telling me after the fact that they do not want to pay him, even though they are otherwise required to do so, because he's not independent. This is unacceptable, and my son is in the middle, with our ability to meet his needs already significantly delayed by the district's inaction.

- E. The Amherst-Pelham school district discriminated against my son on the basis of his disability when it proposed, outside a team meeting, that he take the alternate assessment "portfolio" version of the MCAS. This conversation was verbal and took place on September 23, 2011; specifically, the school's principal, Lisa Desjarlais, proposed that [REDACTED] take the Alternate Assessment. My understanding is that the determination of how a student takes MCAS is a Team determination. I later learned that [REDACTED] performed poorly on MCAS, so it seems that despite the fact that the Team determined (recently, in fact) that [REDACTED] was capable of taking the MCAS with accommodations, Ms. Desjarlais is interested in changing the method of test taking rather than working with the Team to ascertain why [REDACTED] has not acquired the requisite skills to perform well on the test, as he is entitled to, AND WHAT THE Team can do to address that. Furthermore, my understanding is that passing the MCAS alternate assessment does not meet the criteria needed to earn a high school diploma, and would thus significantly limit [REDACTED]'s future options. *See attached email dated September 23, 2011, which appears to be from "Department of Elementary and Secondary Education Mail Service". This is information about the MCAS Alternate Assessment that was forwarded to me by Ms. Desjarlais.*
- F. The Amherst-Pelham school district discriminated against my son on the basis of his disability when it refused to comply with my public records request unless I agreed to pay them "in excess of \$20,000" and/or failed to respond in accordance with the MA Public Records Laws. *See attached letters to district, from district, and to Secretary of State.*

Thank you in advance for helping me advocate for my son to receive the services and processes he is entitled to. I am frustrated that I cannot seem to get this process to work for my son's success and achievement. I am happy to answer any questions you may have or provide additional information or documentation.

Sincerely,