



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

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

NOV 21 2011

Complaint No. 01-12-1016
Amherst-Pelham School District

Mr. [REDACTED]

MA

Non Responsive

Non Responsive Dear Mr. [REDACTED]:

On October 14, 2011, the U.S. Department of Education's (Department), Office for Civil Rights (OCR) received the above-referenced complaint that you filed against the Amherst-Pelham School District (District) alleging discrimination against your son on the basis of disability. You also informed us that you had previously filed a complaint with the Massachusetts Department of Elementary and Secondary Education (MADESE) with overlapping allegations, and provided a copy of MADESE's Closure Letter dated September 23, 2011. Your complaint also included allegations against MADESE and, although you have not filed a complaint against MADESE with OCR, we are also responding to those allegations in this letter.

OCR spoke to you via telephone on October 31, 2011, and reviewed the additional information you provided on November 8, 2011. As explained to you in a telephone call on November 9, 2011, and, again below, OCR is dismissing your complaint. For purposes of this letter, OCR will refer to each allegation by its letter designation in your complaint.

OCR is responsible for enforcing 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), both of which prohibit discrimination on the basis of disability. The District is subject to the requirements of Section 504 because it is a recipient of Federal financial assistance from the Department, and it is subject to the requirements of Title II because it is a public entity operating an educational system.

Regarding allegation (A)(3), you allege that MADESE discriminated against your son on the basis of disability when it would not investigate, due to lack of jurisdiction, your allegation that the goals in his IEP were not measurable. As explained via telephone, OCR does not have the authority to question MADESE's jurisdiction and is dismissing this allegation because it fails to state a violation of Section 504, Title II, or any of the laws OCR enforces. During the phone call, we also explained that whether the goals in an IEP are measurable or not is not a matter appropriate for OCR to investigate. OCR does not second-guess or review substantive educational decisions, such as the appropriateness of goals and how they are measured, so long as a school district adheres to the procedural requirements of Section 504. As MADESE informed you, any disagreement or concern that you may have regarding the measurability of the goals in your son's IEP is a matter to be addressed by your son's IEP team. Failing resolution with your son's IEP team, you have the right to a due process hearing conducted by an impartial hearing officer. You indicated to OCR that the District provided you with your procedural safeguards explaining your right to a due process hearing. To request a hearing, you may contact the MADESE at:

Bureau of Special Education Appeals
75 Pleasant Street
Malden, MA 02148-4906
781-338-3398 (fax)
<http://www.doe.mass.edu/bsea/forms.html> (hearing form)

Regarding allegation (A)(7), you allege that the District discriminated against your son when it did not provide you with an advanced copy of a draft IEP as it said it would. As you acknowledged in your complaint, MADESE ruled on this issue and found that the law does not require the District to provide you with drafts. Because MADESE applies similar investigative and legal standards as OCR and MADESE has already addressed this allegation, OCR is dismissing this allegation.

Regarding allegation (B), you allege that the District retaliated against your son when it amended its policy of issuing progress reports four times a year to twice a year after you pointed out that the District was not following its written policy. During the October 31, 2011, telephone call, OCR explained to you that in evaluating an allegation of retaliation, OCR looks for information suggesting that: (1) a complainant engaged in a protected activity; (2) the District had notice of the protected activity; (3) the District took an adverse action against you; and (4) there is sufficient information to infer a causal connection between the protected activity and the adverse action. In addition, OCR explained that an adverse action is not just a transient, unpleasant incident, but also an action that causes a lasting and tangible harm or has a deterrent effect on a complainant.

Your MADESE complaint constitutes a protected activity of which the District had notice. When asked what adverse action you or your son experienced as a result of the policy change, you stated that "it is deleterious to [your] ability to track [your son's] progress," and damages him more than other students "given the nature of [his] disability." While OCR can appreciate your desire to receive progress reports more frequently, the fact that all students, including your son, receive the same number of progress reports each year suggests that the change in policy was not an action specifically targeting you or your son. You also told OCR that you had asked your son's IEP team for more frequent progress reports, but the team disagreed with the need for that. OCR explained, as above, that you should address such a disagreement over a substantive educational decision with an impartial hearing officer. Therefore, OCR is dismissing this allegation because without alleging an adverse action, it fails to state a retaliation allegation under a law OCR enforces.

Regarding allegation (C), you allege that MADESE discriminated against your son when it failed to cite the District for retaliation after it amended the written progress report policy that was the subject of allegation (B). As with allegation (A)(3), OCR does not have the authority to question MADESE's decision that the District's policy brought the District into compliance with state law. Regardless, as with allegation (B), the underlying allegation of retaliation does not provide information suggesting there was an adverse action. Therefore, OCR is dismissing this allegation because it fails to state a violation of Section 504, Title II, or any of the laws OCR enforces.

Regarding allegation (D), you allege that the District discriminated against your son when it disagreed with you about the need for an independent evaluation and how this evaluation would be implemented. The need for an independent evaluation and the evaluation itself are substantive educational decisions best addressed by the team or at due process. In your November 8 email to OCR, you also cited the delay in the District providing you with a response to your request for an evaluation. However, this

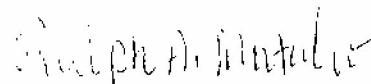
matter was already resolved in your MADESE complaint. You also cited state law regarding independent evaluations, but OCR does not enforce state law. Therefore, OCR is dismissing this allegation.

Regarding allegation (E), you allege that the District discriminated against your son when the school principal suggested, outside of a team meeting, that your son take an alternate assessment after he performed poorly on the MCAS, the state testing program. You told OCR that the principal made the suggestion to you twice. However, you informed OCR that she did not make any decision about what exam he should take unilaterally or outside of an IEP team process. Therefore, OCR is dismissing this allegation because it fails to state a violation of Section 504, Title II, or any of the laws OCR enforces.

Regarding allegation (F), you allege that the District discriminated against your son when it refused to fulfill your request for documents in accordance with the "MA Public Records Laws." As OCR explained, OCR does not have jurisdiction to enforce state law. Therefore, OCR is dismissing this allegation because it fails to state a violation of Section 504, Title II, or any of the laws OCR enforces.

We thank you for bringing your concerns to our attention and are sorry that we are unable to assist you further in this matter. If you have any questions regarding this letter, please contact Molly O'Halloran, Civil Rights Investigator, at (617) 289-0058, or molly.o'halloran@ed.gov, or Sandy Lin, Civil Rights Attorney, at (617) 289-0095 or sandy.lin@ed.gov. You may also contact me directly at (617) 289-0045.

Sincerely,



Ralph A. Montalvo
Compliance Team Leader