



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

September 1, 2017

Superintendent Jennifer Fisher-Mueller  
960 Washington Street  
Canton, MA 02021  
By email: [fischer-muellerj@cantonma.org](mailto:fischer-muellerj@cantonma.org)

Re: Complaint No. 01-17-1063  
Canton Public Schools

Dear Superintendent Fisher-Mueller:

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 Canton Public Schools (the District). The Complainant alleged that the District failed to appropriately remedy the hostile environment created by disability harassment committed by a substitute teacher (Teacher) against the Student. Specifically, the Complainant alleged that, after the District investigated the Teacher's harassment of the Student, which took place on XXXX, 2016, and notified the Complainant that the Teacher would not be assigned to the Student's classroom again, the District proceeded to assign the Teacher to the Student's classroom XXXX, 2016. As explained further 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. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive 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) 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.

### **Legal Standards**

A District's failure to respond promptly and effectively to disability-based harassment that it knew or should have known about, and that is sufficiently serious that it creates a hostile environment, is a form of discrimination prohibited by Section 504 and Title II. A District may also violate Section 504 and Title II if an employee engages in disability-based harassment of students in the context of the employee carrying out his/her responsibility to provide benefits and

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

services, regardless of whether the District had notice of the employee's behavior. Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; physical conduct; or other conduct that may be physically threatening, harmful, or humiliating. Harassment creates a hostile environment when the conduct is sufficiently severe or pervasive as to interfere with or limit a student's ability to participate in or benefit from the District's programs, activities, or services. When such harassment is based on disability, it violates Section 504 and Title II.

To determine whether a hostile environment exists, OCR considers the totality of the circumstances from both an objective and subjective perspective and examines the context, nature, scope, frequency, duration, and location of incidents, as well as the identity, number, and relationships of the persons involved. Harassment must consist of more than casual, isolated incidents to constitute a hostile environment.

When responding to harassment, a District must take immediate and appropriate action to investigate or otherwise determine what occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved, the size and administrative structure of the school, and other factors. In all cases, however, the inquiry should be prompt, thorough, and impartial. If an investigation reveals that discriminatory harassment has occurred, a District must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.

### **Factual Background**

During the course of OCR's investigation, OCR reviewed information provided by the District and the Complainant, and interviewed the Complainant and Principal of the John F. Kennedy Elementary School. Based on the investigation to date, OCR is concerned whether the substitute teacher involved in this incident was properly informed of the Student's Individualized Education Program, and whether she treated the student inappropriately. OCR is also concerned that District staff may not be fully aware of the requirements established by Section 504 regarding the District's obligations to adopt and implement grievance procedures for reporting and investigating allegations of disability harassment or discrimination.

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. Subsequent discussions between OCR and the District resulted in the District signing the enclosed resolution agreement (Agreement), which, when fully implemented, will resolve the issues raised in these complaints. The terms of the Agreement are aligned with the complaint allegations and are consistent with Section 504 and Title II.

OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint.

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 the 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.

If you have any questions, you may contact Civil Rights Attorney Benita Brahmhatt at (617) 289-0055 or by e-mail at [Benita.Brahmbhatt@ed.gov](mailto:Benita.Brahmbhatt@ed.gov).

Sincerely,

Ramzi Ajami  
Compliance Team Leader

Enclosure

cc: Melissa Murray

**RESOLUTION AGREEMENT**  
OCR Complaint No. 01-17-1063  
Canton Public Schools

The U.S. Department of Education, Office for Civil Rights (OCR) opened an investigation into a complaint of disability discrimination filed by a parent on behalf of her child against the Canton Public Schools (District) (Complaint No. 01-17-1063). OCR investigated pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104; and Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35. Prior to the completion of OCR's investigation, and before any findings or determinations, the District and OCR agreed to enter into this resolution agreement (Agreement). The District has entered into this Agreement to resolve the issues in this investigation consistent with Section 302 of OCR's Case Processing Manual. Accordingly, the District agrees to take the following actions:

**Action Item 1: Substitute Teacher**

1. The District agrees not to employ the substitute teacher accused of harassment in any capacity in any District school building where the Student is registered.

**Reporting Requirement 1**

By September 1, 2017, the District will provide OCR with information demonstrating it has complied with Action Item 1.

**Action Item 2: IEP/504 Plan Information Provided to Substitute Teachers**

1. The District agrees to develop a policy/procedure to communicate to substitute teachers relevant information about the IEP/504 plans of any students under their supervision.

**Reporting Requirement 2**

By September 1, 2017, the District will provide OCR with a copy and information regarding its policy/procedure developed to comply with Action Item 2.

**Action Item 3: Revision of Section 504 Grievance Procedures**

1. The District will review its Section 504 grievance procedures and any related policies and procedures addressing disability harassment (if any), and revise where necessary to ensure compliance with this Agreement. In doing so, the District will revise or eliminate policies and procedures as appropriate, including by adding cross references and links between various documents/materials to ensure the policies and procedures, guidelines, and other materials are internally consistent, reference one another where appropriate, and do not contain conflicting information. These policies and procedures must contain the following elements, consistent with the requirements of 34 C.F.R. § 104.7:

- i. notice to students, parents/guardians, and employees of the grievance procedures, including where complaints may be filed;
  - ii. application of the grievance procedures to complaints alleging harassment carried out by employees, other students, or third parties;
  - iii. provision for adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
  - iv. designated and reasonably prompt timeframes for the major stages of the complaint process;
  - v. notice to the parties of the outcome of the complaint; and
  - vi. an assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.
2. The District agrees to promptly revise any related policies, procedures, and other materials in response to OCR feedback as required to comply with its obligations under the law.
3. The District will develop and implement a plan to disseminate information about its (revised) Section 504 grievance procedures to staff, students, and parents/guardians.
4. The District will provide training to all District staff on:
  - i. The District's (revised) Section 504 grievance procedures.
  - ii. The District's policy/procedure differentiating informal and formal complaints of harassment/discrimination, including the obligation to notify the complainant of the outcome of the investigation in both formal and informal processes.

### Reporting Requirement 3

- a. By September 1, 2017, the District will submit to OCR, for review and approval, revised policies and procedures demonstrating compliance with Action Items 3(1) and 3(2).
- b. By December 31, 2017, the District will provide OCR with documentation demonstrating that it has disseminated information about its 504 Grievance Procedures as required by Action Item 3(3).
- c. By December 31, 2017, the District will provide documentation of its training, including sign-in sheets showing attendance, as required by Action Item 3(4).

The District understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504 at 34 C.F.R Part 104 and the regulation implementing Title II at 28 C.F.R. Part 35. Upon completion of the obligations under this Agreement, OCR shall close this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

The District has designated Superintendent Jennifer Fischer-Mueller, with signatory authority to enter into this Agreement on the District’s behalf. This Agreement will become effective immediately upon the signature of the District’s representative below.

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Date

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Superintendent Jennifer Fischer-Mueller  
Canton Public Schools