

Mr. Armand Pires  
Interim Superintendent  
Medway Public Schools  
45 Holliston Street  
Medway, Massachusetts 02053

Re: Complaint No. 01-15-1176  
Medway Public Schools

Dear Mr. Pires:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is closing the investigative phase of the above-referenced complaint that was filed against the Medway Public School District (District). The Complainant alleged that the XXXXXXXX School (School), a part of the XX XXXXXXXX Collaborative (Collaborative), retaliated against her daughter (Student), after the Complainant questioned School staff about their alleged failure to implement a goal of the Student's Individual Education Program (IEP).

As explained below, prior to OCR completing its investigation, the District agreed to resolve the retaliation allegations by entering into a voluntary resolution agreement (Agreement) that OCR has determined resolves those complaint allegations.

OCR investigated this complaint under the jurisdiction of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found 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 found at 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination based on disability and retaliation against individuals who advocate on behalf of rights protected by those laws. 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 elementary and secondary school program.

The complaint involves events at or taken by the Collaborative and School. However, neither the Collaborative nor the School are recipients of Federal financial assistance from the Department, nor are they public entities operating education systems. Because the District placed the Student at the School pursuant to an IEP, it is the District that is responsible for not only ensuring that the Student's IEP is implemented, but also for ensuring that the Collaborative and School do not retaliate against the Student (or the Parents) for disability-based advocacy. Accordingly, our investigative activities focused on the actions of the Collaborative and School and their coordination with the District, the entity responsible for the Collaborative and School's compliance under Section 504 and Title II with regard to the Student.

OCR accepted the following issue for investigation:

- Whether the School retaliated against the Student in her out-of-District placement because of the Complainant’s disability-related advocacy concerning the Student’s job site placement for her Work-Based Learning Program, in violation of 34 C.F.R. Section 104.61 and 28 C.F.R. Section 35.130, which incorporates by reference 34 C.F.R. Section 100.7(e).

During the course of OCR’s investigation, OCR reviewed documentation, including the Student’s 2014-2015 XX XXXXXX Collaborative grade report and IEP effective February 6, 2015. Before OCR went onsite to interview School staff and review additional documents, the District requested to resolve this complaint in accordance with Section 302 of OCR’s *Complaint Processing Manual* (CPM) although it explicitly denied that it was in violation of any and all applicable laws or regulations.

### Legal Standards

The Section 504 implementing regulation at 34 C.F.R. § 104.61 incorporates by reference the procedural provisions of the regulation implementing Title VI at 34 C.F.R. § 100.7(e), which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing in connection with a complaint. The regulation implementing Title II, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

When investigating a complaint of retaliation, OCR determines whether: (1) the complainant engaged in a protected activity; (2) the complainant experienced a materially adverse action by the recipient; and (3) there is a causal connection between the protected activity and the materially adverse action. If one of the elements cannot be established, then OCR finds insufficient evidence of a violation.

If all elements are established, a *prima facie* case of retaliation exists. OCR then inquires whether the recipient had a legitimate, non-retaliatory reason for taking the adverse action. If so, the evidence is analyzed to determine whether the preponderance of the evidence establishes that the proffered reason is merely an excuse or pretext for retaliation. While OCR would need to address all of the elements to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation.

### Investigation and Resolution

The Complainant alleges that she engaged in protected activity from February 6 to March 1, 2015, when she questioned School staff’s alleged failure to implement the Transition/Career Planning goal in the Student’s IEP. Specifically, the IEP stated that the Student would participate in a Work-Based Learning program at a job site in the career field of her choice (XXXXXX studies), and the Complainant disagreed with the job site offered to the Student.

With regard to the alleged adverse actions, the Complainant alleged that School staff: issued the Student failing academic and “unacceptable” effort grades in every subject for Term 4; marked the Student absent from school when she was being privately tutored during Term 4; issued incident reports concerning the Student’s behavior; and relocated the Student’s desk and belongings to another classroom. Both the Complainant and District recognize that in Term 4, for each course, the Student received failing (XX) academic and “unacceptable” effort grades. The District contends that the grades were low due to the Student falling within the School’s policies regarding excessive absenteeism. The District also disputes Complainant’s assertion that the Student was permitted to attend private tutoring in lieu of School, so that her absences should have been excused. Additionally, the District denied that staff retaliated by issuing incident reports concerning the Student’s behavior, and by relocating her desk and belongings to another classroom.

The District agreed to take a number of actions in accordance with the Agreement to resolve these allegations. These actions include: overseeing the School’s change of the Student’s Term 4 grades to withdrawal and notifying the parents; expunging two of the Student’s incident reports from Spring 2015; revising its anti-retaliation statement; obtaining and providing a copy of the School’s training materials to OCR, for review and approval; and providing documentation demonstrating that School staff and teachers received training to ensure that they understand their responsibilities related to the prohibition against retaliation.

OCR determined that the Agreement is aligned with the allegations and with information obtained by OCR. Accordingly, we are closing this investigation as of the date of this letter. Consistent with our usual practice, OCR will monitor the District’s implementation of the Agreement. OCR will close the monitoring of this matter, and will notify the parties in writing of the monitoring closure, once it determines that the District has satisfied the terms of the Agreement. The District has agreed to provide OCR with an initial monitoring report by December 15, 2015, and a final monitoring report on June 24, 2016.

The matters addressed in this letter are not intended and should not be construed to cover any other issues regarding the District’s compliance with the regulations implementing Section 504/Title II, or other laws enforced by OCR, that may exist but are not discussed here. Please note that the Complainant may have the right to file a private law suit regarding the matters raised in this case, whether or not OCR identified compliance concerns. Also, 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, OCR will seek to protect all personal information to the extent provided by law that, if released, could constitute an unwarranted invasion of privacy.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against the Complainant because she filed this complaint. If this happens, the Complainant may file another complaint alleging such treatment.

OCR thanks the District for its assistance in resolving this matter. If you have any questions regarding this letter and/or OCR’s investigative process, please feel free to contact Ms. Kennedy-

Merrill by telephone at (617) 289-0048 or by e-mail at [Carol.Merrill@ed.gov](mailto:Carol.Merrill@ed.gov), or OCR Attorney Abra Francois at (617) 289-0142 or by email at [Abra.Mason@ed.gov](mailto:Abra.Mason@ed.gov). You may also contact me directly at (617) 289-0120. Please refer to the complaint number noted above (01-15-1157) in any future telephone or written contact with OCR.

Sincerely,

Allen Kropp  
Acting Regional Director

Enclosure

cc: Paige Tobin  
Murphy, Lamere & Murphy P.C.