



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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BOSTON, MA 02109-3921

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April 20, 2023

Heather Bouchey, Ph.D.
Interim Secretary of Education
Vermont Agency of Education
By email: heather.bouchey@vermont.gov

Re: Complaint No. 01-22-1419
Vermont Agency of Education

Dear Interim Secretary Bouchey:

This letter is to notify you that the U.S. Department of Education, Office for Civil Rights (OCR) has opened for investigation the above-referenced complaint filed against the Vermont Agency of Education (AOE). The complaint alleges that the AOE is discriminating against students on the basis of disability. Specifically, the complaint alleges that since at least June 2021, the AOE has prevented school districts in the state from considering or meeting the needs of students with disabilities as a result of its guidance to school districts limiting their ability to make individualized determinations that allow for the mandatory masking of students and staff as a reasonable modification to ensure that students with disabilities have equal access to in-person learning without incurring an elevated risk of severe illness due to COVID-19.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving 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), 42 U.S.C. Section 12131 *et seq.*, 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. Because the AOE receives federal financial assistance from the U.S. Department of Education and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

OCR is opening the following allegation for investigation:

- Whether the AOE limited school districts' ability to make individualized determinations that allow for the mandatory masking of students and staff as a reasonable modification, thereby discriminating against students with disabilities who are at an elevated risk of severe illness from COVID-19 by denying them an equal educational opportunity to access in-person learning, in violation of 34 C.F.R. Sections 104.4(a) and 104.33 – 104.35, and 28 C.F.R. Sections 35.103(a) and 35.130.

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

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Please note that opening the complaint for investigation in no way implies that OCR has made a determination on the merits of the complaint. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the Complainant, the AOE, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and fully responds to the allegation in accordance with the provisions of the *Case Processing Manual*, available at <http://www.ed.gov/ocr/docs/ocrcpm.pdf>. Please also note that complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Our goal is the prompt resolution of the complaint. Information on OCR's complaint processing procedures is available at <http://www.ed.gov/ocr/complaints-how.html>. Please note the section on resolution of a complaint prior to the conclusion of an investigation. If the AOE expresses an interest in resolving the complaint and OCR determines that resolution of the complaint prior to the completion of the investigation is appropriate, OCR may attempt to negotiate an agreement with the AOE pursuant to Section 302 of the *Case Processing Manual*.

Attached is a request for data necessary to investigate this complaint. OCR requests that the AOE submit this information within 15 calendar days of the date of this letter. We prefer that you submit information electronically, if feasible. If any item in our request is unclear, or if you experience any difficulty complying with this request, please contact us as provided below prior to the expiration of the 15-day period. Please be aware that OCR may need to make additional requests for information in the future. If OCR needs to conduct an on-site investigation, we will notify you in advance.

Please be advised that the AOE 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 Senior Civil Rights Attorney Melissa Kirby at (617) 289-0067 or by email at Melissa.Kirby@ed.gov.

Sincerely,



Meighan McCrea
Compliance Team Leader

Data Request
OCR Complaint No. 01-22-1419
Vermont Agency of Education

Please submit the following information to Senior Civil Rights Attorney Melissa Kirby within 15 calendar days of the date of this letter. We prefer that you submit information electronically, if feasible. If you are sending a large electronic file, please contact OCR for directions on how to upload the file to OCR's secure file-sharing platform. Additionally, if any of the information is available online, you may provide the URL in lieu of hard copy documents. Please note that OCR is not requesting, and the AOE should not provide, any social security numbers in response to this data request. You can send the information to the mailing address on the enclosed letter, fax it to (617) 289-0155, or email it to Melissa.Kirby@ed.gov. If any item in our request is unclear, or if you experience any difficulty complying with this request, please contact us prior to the expiration of the 15-day period. Please be aware that OCR may need to make additional requests for information in the future. If OCR needs to conduct an on-site investigation, we will notify you in advance.

Preservation of requested and relevant data and documents: OCR may request supplemental data and documents that are relevant to the allegation(s) under investigation. To ensure that OCR can assess the recipient's compliance with the statutory and regulatory obligations at issue in this investigation, please ensure that recipient employees preserve the data and documents requested below for the timeframe specified in these requests and going forward until OCR closes this case. Please also ensure that recipient employees preserve other data and documents that are relevant to the allegation(s) under investigation until OCR closes this case.¹

For June 1, 2021 to the present, please provide the following:

1. The name, title, and contact information of the AOE's:
 - a. Contact person for this complaint;
 - b. Person authorized to resolve this complaint; and
 - c. Person designated to coordinate its compliance with Section 504 and Title II.

2. A copy of all written policies, procedures, and/or guidance, and a narrative of all unwritten policies, procedures, guidance, and/or practices that the AOE has adopted with respect to schools, school districts, or school or district employees within the state to ensure that individualized needs for modifications, supports, and placement of students who are at an elevated risk of severe illness from COVID-19 are met. Include in your response all policies, procedures, guidance and/or practices concerning the masking of students and staff as a reasonable modification to ensure that students with disabilities have equal access to in-person learning without incurring an elevated risk of severe illness from COVID-19.

3. A copy of all communications between the AOE and school districts, schools, and/or

¹ The regulation implementing Title VI, at 34 C.F.R. §§ 100.6(b) and (c), requires that a recipient of federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination. This requirement is incorporated by reference in the Section 504 and Title II regulations.

members of the public regarding whether schools and school districts may require masking of students and staff as a reasonable modification to ensure that students with disabilities have equal access to in-person learning without incurring an elevated risk of severe illness from COVID-19. For communications to or from parents/legal guardians of students with medical conditions believed to put those students at an elevated risk of severe illness from COVID-19, please see Request No. 4 below.

4. A copy of all communications the AOE has received from parents/legal guardians of students with medical conditions believed to put those students at an elevated risk of severe illness from COVID-19 regarding the use of masks in schools, including as a reasonable modification.

With regard to each communication in the response to Request No. 4, please provide:

- a. All written responses and a narrative of all oral responses by the AOE to the communication.
 - b. A description of AOE actions taken as a result of the communication.
 - c. Copies of notes from meetings and discussions; reports; memoranda; letters, email messages or other correspondence; and other documents regarding the actions taken or contemplated by the AOE.
 - d. The name and title of all individuals at the AOE who participated in developing or implementing the response to each communication, including the role each played.
5. The names and titles of all persons who assisted in the preparation of these data responses.
 6. You are invited, but not required, to provide a narrative response to the allegation in this complaint.
 7. Any other information that the AOE believes will be helpful to OCR or relevant in this investigation.