

MASSACHUSETTS TEACHERS ASSOCIATION

DIVISION OF LEGAL SERVICES

2 HERITAGE DRIVE, 8TH FLOOR
QUINCY, MASSACHUSETTS 02171-2119

GENERAL COUNSEL

REBECCA YEE

DEPUTY GENERAL COUNSEL

RYAN M. LEACH

617.878.8000

1.800.392.6175

FAX: 617.248.6921

STAFF COUNSEL

MATTHEW D. JONES
RICHARD A. MULLANE
LAURIE R. HOULE
QUESIYAH S. ALI
RYAN P. DUNN
ASHLEY F. WALTER
MARK A. HICKERNELL
JONATHAN M. CONTI
JENNIFER L. MACDOUGALL

PARALEGAL

KATHY NAGLE
SARAH B. KELLEY

Via Electronic Mail

December 18, 2020

Jennifer Boulais, Chief Human Resources Officer

Worcester Public Schools

boulaisj@worcesterschools.net

RE: Demand to Cease and Desist

Dear Ms. Boulais:

I write on behalf of the Educational Association of Worcester (EAW) to demand that you immediately cease and desist from acting in bad faith when engaging in the interactive process with our nearly 200 affected members who each made a lawful request for a reasonable accommodation. Both the ADA and Chapter 151B require the employer to engage in good faith and with a sincere effort in finding a reasonable accommodation that ensures the health and safety of employees while allowing them to effectively perform their essential duties. Here, it has become our understanding that your recent actions are contrary to these legal requirements. Considering the record-setting surge of the pandemic across the state and country, and with no agreement on an MOA, we refuse to tolerate any short-cuts or disregard to the health and well-being of our members, especially those with a medical condition or disability that makes them most vulnerable to Covid-19.

We are disappointed to learn that you are needlessly and unlawfully expediting the interactive process. Even though requests for an accommodation were submitted in the summer prior to the start of the school year, you notified the affected employees only three days ago on Tuesday, December 15 to direct them to submit answers to disability-related inquiries by the end of the following day on Wednesday, December 16. You also scheduled interactive process meetings prior to this arbitrary deadline. When MTA field representatives objected to the insufficiency of a 24-hour period for an employee to prepare for an interactive process meeting (such as securing an updated doctor's evaluation or retaining a third-party representative to accompany them), you completely dismissed our legitimate reasons by wrongfully misstating guidelines related to an employee's legal rights during an interactive process meeting.

You further double-downed by announcing that you intended to complete the interactive process meetings within two weeks before the end of the year. This is clear evidence of bad faith and your true intention to rush and unilaterally drive the interactive process of almost 200 individual employees during a time consumed by the upcoming holidays and a global pandemic. Even in the best of times, it is almost impossible for an employer to meaningfully engage and conclude interactive process meetings for 200 individual employees in a mere two weeks.

Moreover, during a recent interactive process meeting with an employee who is 15-weeks into a high-risk pregnancy, you completely failed to consider, and essentially rejected, her request to continue working remotely without providing any suggestions for other reasonable accommodations and without any mention of an undue hardship. In fact, when asked what would happen if the District cannot accommodate her request for remote teaching, you indifferently brought up termination before any other reasonable or viable option. Not only was your response harsh and insensitive, but it also seems very discriminatory and retaliatory.

We strongly urge you to reschedule these meetings for after the end of the holidays to allow our members additional time to retrieve an updated physician certification in order to have a meaningful interactive process discussion. We also encourage you to find a global solution for this issue at the bargaining table with EAW and MTA. But if you do not cease and desist at once, we will have no choice but to pursue all legal remedies available to us under the law.

Thank you for your anticipated cooperation. Please contact me at ryee@massteacher.org or 617-878-8245 if you have questions.

Respectfully,

/s/ Rebecca Yee

REBECCA YEE
General Counsel
Massachusetts Teachers Association (MTA)

CC: Maureen Binienda, Superintendent, WPS – biniendam@worcesterschools.net
Theresa Reichert, Director of Human Resources, WPS - treichert@worcesterschools.net
Roger Nugent, President, EAW – roger@eawunion.org
Beth Kaake, Field Representative, MTA – bkaake@massteacher.org
Mark Baranoff, Regional Representative, MTA – mbaranoff@massteacher.org
Ian Jackson, Regional Organizer, MTA – ijackson@massteacher.org
Taylor Brennan, Regional Director, MTA – tbrennan@massteacher.org
Mike Fadel, Director of Field & Organizing, MTA – mfadel@massteacher.org
Lisa Gallatin, Executive Director/Treasurer, MTA – lgallatin@massteacher.org