



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

32 OLD SLIP, 26th FLOOR
NEW YORK, NY 10005-2500

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November 15, 2013

Dr. Larrie Reynolds
Superintendent
Mount Olive Township School District
89 Route 46
Budd Lake, New Jersey 07828

Re: Case No. 02-13-1206
Mount Olive Township School District

Dear Dr. Reynolds:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Mount Olive Township School District (the District). The complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, by failing to evaluate the Student to determine his eligibility for special education and related aids and services in a timely manner during school year 2012-2013 (Allegation 1). The complainant also alleged that the District discriminated against the Student on the basis of his disability, or in the alternative retaliated for her advocacy on the Student's behalf, by leaving the Student unsupervised for approximately four hours on April 29, 2013 (Allegation 2).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

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The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d et seq., 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 regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In its investigation, OCR interviewed the complainant and District personnel. OCR also reviewed documentation that the complainant and the District submitted.

OCR determined that during school year 2012-2013, the Student was an XXXXXX-grade student enrolled at the Mount Olive Middle School (the School).

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student, on the basis of his disability, by failing to evaluate him to determine his eligibility for special education and related aids and services in a timely manner during school year 2012-2013. The complainant stated that on August 20, 2012, prior to the beginning of school year 2012-2013, she contacted the District to request an Individualized Education Plan (IEP) for the Student and was told that the District could not schedule a Child Study Team (CST) meeting for the Student because school was not in session. The complainant asserted that at that time, she advised the District's Director of Special Services that the Student had a diagnosis of XXXXX XXXXXX and XXXXXXXXXXX XXXXXX and XXXXXXXXXXXXXXX XXXXX and was attending a full-time inpatient/outpatient treatment program. The complainant alleged that when she renewed her request on September 14, 2012, the District informed her that her request would be held in abeyance pending the Student's return to full-time enrollment status at the School. The complainant stated that on September 21, 2012, she submitted another written request for an evaluation of the Student, stating that the Student had been released from his treatment program and would be returning to school full-time.¹ The complainant stated that the District failed to respond to her request in any way until November 13, 2012; and that the CST did not convene until January 14, 2013. The complainant asserted that at the meeting, she provided the CST consent to evaluate the Student, but the CST took no further action until she asked about the status of the Student's evaluation in February 2013. The complainant asserted that the District thereafter developed an interim Section 504 Plan for the Student, dated February 28, 2013. The complainant stated that the CST did not develop an IEP for the Student until April 15, 2013.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), provides that it is a district's responsibility to conduct an evaluation, in accordance with the requirements of 34 C.F.R. §104.35(b), of any student who needs or is believed to need special education or related aids or services because of a disability.

¹ The complainant also stated that in support of the request, she submitted a family dynamics and psychological evaluation of the Student, dated June 26, 2012.

The District, including the SPED Director, denied that the complainant requested an evaluation for the Student on August 20 or September 14, 2012, as alleged; however, based on documentation that the District provided, OCR determined that as of September 6, 2012, the District was aware that the Student was attending an inpatient/outpatient treatment program for a XXXXXXXXXXXX XXXXXX.² OCR also determined that on September 21, 2012, following the Student's discharge from the treatment program, the complainant submitted a written request that the District evaluate the Student.

The District acknowledged to OCR that it did not take any action regarding the complainant's request until November 13, 2012, citing personnel changes in the School's administration. OCR determined that the District attempted to schedule a CST meeting in November and December 2012, and early January 2013, but the parties were unable to meet due to scheduling conflicts.³ OCR determined that the CST held a meeting concerning the Student on January 14, 2013, to determine whether the Student was eligible for special education and related aids and services. At the meeting, the CST determined that the Student had difficulties in the learning and social/emotional "domains", and was eligible for special education and related aids and services. The CST also determined that the Student required psychological and educational assessments. OCR determined that the complainant gave written consent for the Student to be evaluated on January 14, 2013.

OCR determined that following an inquiry by the complainant in February 2013, the District developed a Section 504 Plan for the Student, as an interim measure, during a meeting held on February 28, 2013; and began implementing the Section 504 plan pending the remaining evaluations.⁴ OCR determined that the District thereafter conducted an educational assessment and psychological evaluation of the Student on March 5 and March 8, 2013. OCR further determined that the CST found the Student eligible for special education and related aids and services, and developed an IEP, during a meeting held on April 15, 2013.⁵

Based on the foregoing, OCR determined that as of September 6, 2012, the District was aware that the Student was enrolled in the treatment program because of a disability, and was on notice that it would be obligated to evaluate the Student upon his release from the program to determine the Student's eligibility for special education and related aids and services. OCR determined that even after receiving written notice of the Student's release from the program and the complainant's request to evaluate the student on September 21, 2012, the District unreasonably delayed commencing the evaluation process until November 13, 2012, and did not begin

² OCR determined that on September 6, 2012, the District authorized the Student to receive home instruction/tutorial services while attending the program during the school day.

³ OCR learned that the scheduling conflicts included the complainant's unavailability for proposed dates in November 2012, the complainant's cancellation of two meetings in December 2012, and the District's postponement of a meeting in January 2013.

⁴ OCR determined that in developing the Student's Section 504 Plan, the District relied on the family dynamics and psychological evaluation that the complainant provided, dated June 26, 2012. OCR determined that the Student's Section 504 Plan, dated February 28, 2013, required that the District provide the Student with XXXXXXXXXXXX XXXXXXXX and testing modifications.

⁵ OCR determined that the Student's IEP, dated April 15, 2013, required the District to provide the Student with study skills/resource center, in class support, and other modifications such as permitting him to choose reading material as well as topics that might interest him.

providing related aids and services to the Student until February 28, 2013. Although the District began providing related aids and services to the Student on February 28, 2013, pursuant to a Section 504 plan, OCR found no evidence that the District considered whether the Student required compensatory services for the five months between September 2012 and February 2013, when he was not receiving any services.

The District agreed to implement the enclosed resolution agreement to resolve OCR's concerns with respect to Allegation 1. OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

Regarding Allegation 2, the complainant alleged that the District discriminated against the Student on the basis of his disability, or in the alternative retaliated against the Student for her advocacy on his behalf, by leaving the Student unsupervised for four hours on April 29, 2013. In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant/injured party was subjected to an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activity when she participated in disability-related advocacy on the Student's behalf during school year 2012-2013. OCR determined that the District was aware of the complainant's protected activity.

OCR determined that in a letter to the District, dated April 24, 2013, the complainant requested that the District permit the Student "opt out" of the New Jersey Assessment of Skills and Knowledge (the Exam) and instead assign the Student to a room where he could work on other projects. OCR determined that the complainant sent the Student to school on April 29, 2013, which was the first of three testing days.⁶ OCR determined that the Principal permitted the Student to remain in the conference room in the office to work on some school projects for the duration of the Exam, as the complainant requested. The Principal, as well as three XXXXXXXXXXXX who sat immediately outside of the conference room, stated that the door to the room was left open, so the XXXXXXXXXXXX could see into the conference room at all times; that they occasionally checked on the Student; and, that the Student did not seem agitated or disturbed at any time.⁷ School personnel denied that the Student was unsupervised at any time.

⁶ OCR determined that the School's administration of the Exam for Xth-grade students took place over the course of three days: April 29, May 1, and May 2, 2013.

⁷ In addition, OCR determined that the Exam was administered for three hours, between 8:30 and 11:30 a.m. District personnel stated that the Student was permitted to leave the room at the conclusion of the test period. Further, OCR determined that for the remaining two testing days, the complainant kept the Student at home.

Based on the foregoing, OCR determined that there was insufficient to substantiate the complainant's allegation that the District discriminated against the Student on the basis of his disability, or in the alternative retaliated against the Student for her advocacy on his behalf, by leaving the Student unsupervised for four hours on April 29, 2013. Accordingly, OCR will take no further action regarding Allegation 2.

As stated above, the attached resolution agreement addresses Allegation 1. OCR will monitor the implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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 may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Letisha Morgan, Senior Compliance Team Investigator, at (646) 428-3827 or letisha.morgan@ed.gov; or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXX XX XXXXXXXX, Esq. (w/encl.)