



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

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NEW JERSEY
NEW YORK
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November 24, 2014

Cammy J. Morrison
Superintendent of Schools
General Brown Central School District
17643 Cemetery Road
Dexter, New York 13634-0500

Re: Case No. 02-14-1308
General Brown Central School District

Dear Superintendent Morrison:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the General Brown Central School District. The complainant alleged that the District discriminated against her son (the Student) on the basis of his disability, when it transported him to his xxxxx of xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx xxxxxxxx placement more than one hour before the start of each school day during school year xxxx-xxxx; and transported him home from his xxxxx placement an hour before the end of each school day, from the beginning of school year xxxx-xxxx through xxxxxxxx x, xxxx (Allegation 1). The complainant also alleged that the District discriminated against the Student on the basis of his disability by treating him differently from non-disabled students or, in the alternative, retaliated for her filing a complaint with the New York State Education Department (NYSED) regarding Allegation 1, when it assigned the Student a new afterschool bus route that added an hour of travel time and over twenty miles to his bus route, from xxxxxxxx x, xxxx, through the end of school year xxxx-xxxx (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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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 both Section 504 and the ADA.

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 staff. OCR also reviewed information that the complainant and the District submitted. OCR made the following determinations.

During school year xxxx-xxxx, the Student, who resides within the District, was enrolled in the fifth grade in a xxxxxxxx xxxxxxxxxx program operated by the xxxxxxxxxx-xxxxx xxxxxx and located at the x.x. xxxxxx Middle School (the School) in the xxxxxxxxxx xxxx School District (District 2).¹

The District informed OCR that it develops bus routes to District schools, and to programs located in neighboring districts in which District students are placed, based on several factors, including historical data and routes; start and end times of programs; length of bus rides for passengers; and distances driven by passengers. The District stated that it tries to take into consideration parental concerns and individual student needs, but ultimately routes are determined to create the best solution for the greatest number of students, while considering traffic patterns and cost. During school year xxxx-xxxx, the District used two buses to transport students to and from various special education placements in neighboring school districts; bus xxx, which traveled to District 2 and programs located therein, including the School, and bus xxx, which traveled to the xxxxxx xxxxxx School District (District 3) and programs located therein.

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student on the basis of his disability, when it transported him to his xxxxxx placement more than one hour before the start of each school day during school year xxxx-xxxx; and transported him home from his xxxxxx placement an hour before the end of each school day, from the beginning of school year xxxx-xxxx through xxxxxxxx x,xxxx.

At the beginning of the school year, the Student was scheduled to ride Bus xxx (Trip A-B) to school; his scheduled pick up time from home was approximately 7:13 a.m., and his drop off time at the School was approximately 7:40 a.m.² Instruction at the School began each day at

¹ The Student received special education and related aids and services pursuant to an Individualized Education Program (IEP) and was classified as xxxxxx xxxxxxxx xxxxxxxxxx.

² The Student did not ever use this bus route, as his parents instead elected to transport the Student to school.

8:40 a.m. Therefore, the Student was scheduled to arrive at school each day approximately one hour before the start of the instructional day.³ The District transported numerous disabled and non-disabled students to their respective schools before the start of the instructional day. The Student and one other disabled student (Student 2), who lived near the Student, were the only two students the District transported to the School during school year xxxx-xxxx; and the only District students on a bus that arrived at their respective schools an hour before the start of the school day. The arrival times of other disabled students and nondisabled students residing in the District but attending out-of-district schools varied, with most arriving at their respective schools approximately fifteen to twenty minutes prior to the instructional day.

With respect to the Student's departure from school, at the beginning of the school year, the Student was scheduled to ride Bus xxx (Trip A-B) from school; his scheduled pick up time from school was approximately 2:00 p.m. and his drop off time at home was approximately 2:15 p.m. The Student's instructional day ended each day at 3:00 p.m. Therefore, the Student was scheduled to depart from school each day approximately one hour before the end of the instructional day. Other disabled District students and nondisabled students who were placed at out-of-district schools departed from their respective schools at the end of the instructional day, or ten to fifteen minutes prior to the end of the instructional day.

The District asserted that the Student's early arrival and departure times were the result of the complainant's request, made shortly before the start of school year xxxx-xxxx, that the Student attend the School, rather than the xxxxxx xxxxx Intermediate School, as initially agreed at a xxxx xx, xxxx Committee on Special Education meeting. The District stated that at the time of the complainant's request, the bus schedules and routes for all District students attending out-of-district schools were already in place. Therefore, the Student was moved to Bus xxx at the last minute, in order to accommodate the complainant's request that the Student be placed at the School; the District was unable to devise a plan to pick the Student up from home or from School later while still ensuring that all students riding Bus xxx were transported to school and home at a reasonable time. The District asserted that it explored a number of potential solutions to address the complainant's concerns regarding the Student's early arrival and departure times, including offering to switch the Student's placement back to xxxxxx xxxxx Intermediate School, which the complainant declined; and attempting to contract with a neighboring school district and a private transportation contractor to hire them to transport the Student to and from school, which ultimately could not be arranged.

The regulation implementing Section 504, at 34 C.F.R § 104.33(a), provides that a recipient that operates a public elementary or secondary education program or activity shall provide a free, appropriate public education (FAPE) to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation, at 34 C.F.R. § 104.33(b)(1)(i), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The implementation of an IEP is one means of meeting this standard.

³ Staff was on-site to supervise students who arrived before the start of the instructional day.

With respect to the Student's morning bus assignment, OCR determined that there was insufficient evidence to substantiate that the Student's arrival at school an hour before the start of the instructional day was contrary to his IEP or otherwise constituted a denial of a FAPE. Moreover, even though the Student's arrival time was earlier than most students, OCR did not find evidence to substantiate that the District's decision to assign the Student to Bus xxx, and to pick him up from home at the established time, was because of or motivated by his disability. Specifically, the weight of the evidence indicated that the District made the assignment only after the complainant requested to have the Student attend the School, well after the bus schedules and routes for all District students attending out-of-district schools had already been determined; and most disabled students attending out-of-district schools had arrival times comparable to those of non-disabled students attending out-of-district schools.

With respect to the Student's afternoon bus assignment, OCR determined that as a result of the Student's early pick up from school, he missed certain instruction and activities in which he was entitled to participate pursuant to his IEP. The District acknowledged that the Student's initial afternoon bus route assignment meant that he left school an hour before the end of each school day. On or about xxxxxxxx x, xxxx, the District reassigned the Student to Bus xxx (Trip C-D), which picked him up from the School at approximately 3:01 p.m., at the end of the instructional day. OCR determined that during the period from the beginning of school year xxxx-xxxx until on or about xxxxxxxx x, xxxx, when the District changed the Student's afternoon bus assignment, the District failed to provide the Student with access to all instruction and activities in which he was entitled to participate pursuant to his IEP, due to his leaving school an hour early each day; thereby denying the Student a FAPE during this period.

On November 24, 2014, the District entered into a resolution agreement with OCR to resolve this compliance concern. 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 of this complaint allegation.

With respect to Allegation 2, the complainant alleged that the District discriminated against the Student on the basis of his disability by treating him differently from non-disabled students or, in the alternative, retaliated for the complainant's filing a complaint with NYSED regarding Allegation 1, when it assigned the Student a new afterschool bus route that added an hour of travel time and over twenty miles to his bus route, from xxxxxxxx x, xxxx, through the end of school year xxxx-xxxx.

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 suffered 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 during fall xxxx, when she complained to NYSED that the District was discriminating against the Student on the basis of his disability by transporting him home from his xxxxx placement an hour before the end of each school day. OCR determined that the District was aware of this protected activity.

As set forth above, on or about xxxxxxxx x, xxxx, the District reassigned the Student to Bus xxx (Trip C-D), so that he could be picked him up from the School at approximately 3:01, at the end of the instructional day. The bus was scheduled to drop the Student off at home at approximately 4:07 p.m., for a total travel time of approximately 66 minutes and 31.5 miles. OCR determined that prior to xxxxxxxx x, xxxx the Student was on a bus that dropped him off at home at approximately 2:15 p.m., for a total travel time of approximately 15 minutes and 11.6 miles. Therefore, the Student's new bus route added approximately 51 minutes and 19.9 miles of travel home.

According to the District, Bus xxx was the only bus available to pick the Student up from the School at the end of the school day.⁴ The District informed OCR that in order to pick up students attending xxxxx programs in District 3 before staff left the relevant buildings for the day, students picked up from the School could not be dropped off at their homes prior to picking up students in District 3 buildings. Additionally, if students picked up from the School were dropped off at home prior to picking up students in District 3 buildings, some such students attending programs in these buildings would not get home until nearly 5:00 p.m.⁵ The District also provided documentation to OCR showing that several nondisabled students in the District were assigned to buses that result in travel times of an hour or more in each direction.

Based on the foregoing, OCR determined that the District proffered legitimate, nondiscriminatory and non-retaliatory reasons for assigning the Student a new after-school bus route that added an hour of travel time and over twenty miles; namely, the District assigned the Student to the only bus available to pick him at the end of his school day, thereby ensuring that he receive all required instruction; and altering that bus route to drop the Student at home earlier would result in some other students on the bus route attending other schools having to remain at their schools unsupervised, and would increase the travel times of numerous other students on the bus. OCR did not find evidence to substantiate that these reasons were a pretext for discrimination or retaliation. Therefore, OCR determined that there was insufficient evidence to substantiate that the District discriminated against the Student on the basis of his disability by treating him differently from non-disabled students or, in the alternative, retaliated for the complainant's filing a complaint with NYSED regarding Allegation 2, when it assigned the Student a new after-school bus route that added an hour of travel time and over twenty miles,

⁴ The District asserted that it tried to locate a private contractor to transport the Student to and from the School in an effort to alleviate the complainant's concerns, but none of the contractors operating in the District were willing to provide such transportation.

⁵ The District conducted a trial run of the complainant's proposed alternate route for Bus xxx, during ideal driving conditions; even under such ideal conditions, the proposed alternate route would add 15 to 30 minutes to the home arrival times of other students on the bus.

from xxxxxxxx x, xxxx, through the end of school year xxxx-xxxx. Accordingly, OCR will take no further action regarding Allegation 2.

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 about OCR's determination, please contact Diane Castro, Equal Opportunity Specialist at (646) 428-3808, or diane.castro@ed.gov; or John Collins, Senior Compliance Team Attorney, at (646) 428-3810 or john.collins@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.