



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

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November 20, 2014

Dr. Paul J. Padalino
Superintendent of Schools
Kingston City School District
61 Crown Street
Kingston, New York 12401

Re: Case No. 02-14-1376
Kingston City School District

Dear Dr. Padalino:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the Kingston School District (the District). The complainant alleged that the District discriminates on the basis of disability. Specifically, the complainant alleged that the District failed to implement her daughter's (the Student's) Section 504 Plan by failing to provide her with a transportation plan that reduces time on the school bus.

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.

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

The complainant alleged that the District failed to provide the Student with a transportation plan that reduces time on the school bus, as required by the Student's Section 504 Plan.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that a district shall provide a free appropriate public education (FAPE) to each qualified student with a disability its jurisdiction, regardless of the nature or severity of the student's disability. Further, pursuant to 34 C.F.R. § 104.33(c)(2), if a recipient places a student with a disability or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of 34 C.F.R. Part 104, the recipient shall ensure that

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adequate transportation to and from the aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the aid, benefits, or services operated by the recipient.

At the beginning of school year 2013-2014, the Student was enrolled in the third grade and was receiving special education and related aids and services pursuant to a Section 504 Plan, dated May 2, 2013. The Student's Section 504 Plan, dated May 2, 2013, did not include any provisions regarding the Student's transportation.

During school year 2013-2014, the Student rode the bus to and from school each school day until March 18, 2014, or thereabout; travelling on the bus 45-60 minutes each way. The complainant informed the District on or about March 19, 2014, that because of the Student's disability, the length of the bus ride to and from school was adversely affecting her.¹ The complainant requested that the Student's Section 504 Plan be revised immediately to include a transportation accommodation that would limit the Student's bus ride to 30 minutes; and indicated that she would be driving the Student to and from school until a plan reducing the Student's travel time on the bus could be put into place. On March 19, 2014, the complainant began driving the Student to and from school.

During a meeting convened on April 8, 2014, the School's Section 504 Committee determined that based on the Student's behavioral needs, a transportation plan reducing the Student's travel time on the bus to 30 minutes or less might be necessary. The Principal informed OCR that after considering various options, the Section 504 Committee developed a transportation plan that would require the District to provide a separate small bus to transport the Student to and from school, contingent upon the complainant's submission of medical documentation supporting the need to reduce the Student's time on the bus to 30 minutes or less per trip.

Upon receipt of the requested medical documentation on April 25, 2014, the Principal signed the Section 504 Plan previously developed at the April 8, 2014 Section 504 meeting and submitted it to the District's Section 504 Coordinator, to obtain authorization from the Board of Education for the transportation department to arrange small bus services for the Student. The Principal advised OCR that she did not receive the Board's authorization to proceed until mid-June 2014; and decided that since the school year was nearly over, the District would implement the transportation plan at the beginning of the following school year, school year 2014-2015. In the interim, the complainant continued to drive the Student to and from school until the end of the school year 2013-2014. Nothing in the language of the Section 504 Plan developed on April 8, 2014, and signed on April 25, 2014, could be reasonably interpreted to mean that the provision stipulating a "transportation plan that reduces time on the school bus" was to take effect starting in school year 2014-2015. Rather, it was clear that the intention was to have the plan take effect during school year 2013-2014.²

Based on the foregoing, OCR determined that the Section 504 Plan developed for the Student on April 8, 2014, and approved on April 25, 2014, required that the District provide to the Student transportation to and from

¹ The Student has been diagnosed with post-traumatic stress disorder. The complainant reported to the District that the Student "cannot handle more than 30 minutes in an unstructured peer situation" and that after which, she "will lie on the seats, on the floor, move about the bus while frequently engaging in deeply distressing conflict with other riders" and experience "somatic [problems], headaches, stomachaches, anxiety and pervasive fear of failure due to bus conduct that is not in her control." The bus driver had filed separate incident reports with the District regarding the Student's conduct on January 15 and March 14, 2014, citing some of the behaviors the complainant described.

² The Principal acknowledged that the complainant's request, received by the District on March 25, 2014, called for an "immediate amendment to the [Student's] 504 Plan" providing for "arrangements to limit [the Student's] bus ride to 30 minutes each way."

school with 30 minutes or less of travel time. OCR further determined that the District failed to provide such services as stipulated in the Student's Section 504 Plan from April 28 to June 25, 2014.³

On November 20, 2014, the District signed an agreement, a copy of which is enclosed herewith, which when fully implemented will resolve the aforementioned concerns relating to the allegation. OCR will monitor the implementation of the resolution agreement. If the District fails to implement the terms of the agreement, OCR will immediately 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 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 Gary Kiang, Senior Attorney, at (646) 428-3761, or Gary.Kiang@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

³ From the beginning of school year 2014-2015, the Student received transportation services on a small bus to and from school with a travel time of approximately 20-25 minutes.