



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

July 20, 2016

Ileana Eckert
Superintendent
North Rockland Central School District
65 Chapel Street
Garnerville, New York 10923

Re: Case No. 02-16-1098
North Rockland Central School District

Dear Superintendent Eckert:

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 North Rockland Central School District (the District). The complainant alleged that the District discriminated against her son (the Student), (a) on the basis of his disability, or (b) in the alternative, retaliated for her prior disability-related advocacy, by failing to use the Student's xxxxxxxxxxx xxxxxxxxxxx xxxxxxx (XX Xxxxxxx), as required by his Individualized Education Program (IEP), from the beginning of school year 2015-2016 to the present (Allegation 1).

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 is also 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 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, 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 xxxxxxx 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. OCR also reviewed information that the complainant and the District submitted. OCR made the following determinations.

OCR determined that during school year 2015-2016, the Student was enrolled in the xxxxx grade at the Xxxx XXXXXXXXXXX XXXXXXXXX School (the School). The District's Committee on Special Education (CSE) classified the Student as having a "learning disability." The Student's IEPs for school year 2015-2016, dated Xxxx xxx xxx and XXXXXXXX xxx xxx, stated that the Student has XXXXXXXXXXX XXXXXXXX xxx and uses xx XXXXXXXX XXXXXXXX XXXX xxxxxx in the classroom to xxxxxxx xxx xxxxxxx xxxxxxx to assist in xxxxxxxxxxxxxx for xxx xxxxxxx xxx. The Student's IEPs state in the "Reteaching of Materials" that the Student's special education teacher would reteach concepts and skills as needed because the Student "xxx xxx xxx xxx xx a xxxxxx xxxxxx the xxx" of an XX XXXXXX; and, the "Information on Disability and Implications for Instruction" sections required that to support school personnel on behalf of the Student, consultation will be provided at the beginning of the school year so that such personnel is aware of the Student's xxxxxxx needs, management strategies, as well as xxxxxx and xxxxxxxxxxxxxx of the XX XXXXXX. The Student's IEPs state in the "XXXXXXX SxxServices" sections that the Student's teacher of the xxxx xxx xxx xx xxxxxxx (the Teacher) will monitor the XX XXXXXX throughout the year and troubleshoot should any xxxxxxxxxxx xxxxxxxxxxxxxx arise. The Student's IEPs did not specify the particular type of XX XXXXXX to be used.

With respect to Allegation 1(a), the complainant alleged that the District discriminated against the Student on the basis of his disability by failing to use the Student's XX XXXXXX, as required by his IEPs, from the beginning of school year 2015-2016 to the present. Specifically, the complainant informed OCR that on October 29, 2015, after the beginning of school year 2015-2016, the Teacher informed her that the District had failed to xxx xx the Student's XX XXXXXX for the school year. The complainant stated that the Teacher asked her when she would be able to provide the District with an updated xxxxxxxxxxxxxx xxxxxx for the District's records, as the XXX xxxxxxxxxxxxxx had instructed the Teacher not to provide the Student with the XX XXXXXX until the District received the updated xxxxxx.¹ The complainant stated that she told the Teacher that the Student's IEPs required that the District provide the Student with an XX XXXXXX, regardless of whether she had provided the xxxxxx; and, the Teacher stated that she would set up the XX XXXXXX that afternoon. However, the complainant stated that the Student reported thereafter that he was using the XX XXXXXX for only one hour per day during his math class. The complainant notified the Teacher of this in an email sent on November 3, 2015, and also notified members of the CSE and the School Principal.

The complainant asserted that as of the end of January 2016, the District rarely permitted the Student to use the XX XXXXXX; and when he was permitted to xxx xx, it was only for a short

¹ The complainant stated that the District expected to receive the xxxxxx during the summer of 2015; she provided the xxxxxx to the District sometime shortly before December 7, 2015.

period of time. The complainant further stated that the Student told her that on several occasions, when he asked one of his teachers to xxxx xx xxx XX Xxxxxx, she told him that the xxxxxxx xxx. The Student also stated that his classroom teacher frequently xxxxxx xxx xxx XX Xxxxxx, including when she spoke to other students.

The District acknowledged to OCR that it failed to provide the Student with his XX Xxxxxx, as required by his IEPs, from September 8, 2015, the first day of school year 2015-2016, through at least October 26, 2015. The District informed OCR that that it was initially delayed in xxxxxxxx the Student's XX Xxxxxx because of technical difficulties and supply shortages prior to and/or at the beginning of school year 2015-2016. The District stated that on October 26, 2015, it installed a "xxxxxxxx" XX Xxxxxx. This system included a speaker in front of the Student's classroom, and a microphone that his teachers used to amplify the sound for all students in the class, not just the Student. On November 30, 2015, the complainant submitted to the District an updated xxxxxxxxxxx xxxxxx for the Student. Based on that xxxxxx, the District changed the Student's XX Xxxxxx from a "xxxxxxxx" XX Xxxxxx to a personal XX Xxxxxx on December 16, 2015.²

The District did not provide to OCR any information to indicate whether it provided the Student with any alternative special education and related aids and services in lieu of the XX Xxxxxx, from September 8, 2015 to October 26, 2015. The District also did not provide to OCR documentation confirming that it consistently used the xxxxxxxx XX Xxxxxx from October 26, 2015 to December 16, 2015, in accordance with the Student's IEP, dated Xxx xxx xxxx. Further, the District did not provide documentation to OCR establishing that it provided to the Student the personal XX Xxxxxx approved on December 16, 2015, in accordance with the Student's IEPs dated Xxx xxx xxxx and Xxxxxxx xxx xxxx, from December 16, 2015 through the remainder of school year 2015-2016.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), requires recipients to provide a free appropriate public education to each qualified individual with a disability in the recipient's jurisdiction. In accordance with the regulation implementing Section 504, at 34 C.F.R. § 104.33(b), an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the student with a disability as adequately as the needs of non-disabled students are met; and, are based upon adherence to the evaluation and placement procedures set forth in the regulation. Implementation of an IEP is one means of meeting this requirement.

Based on the above, OCR determined that the District failed to provide the Student with an XX Xxxxxx in accordance with his IEPs from September 8, 2015 to October 26, 2015, as deemed necessary by CSE to meet the Student's individual educational needs as adequately as the needs for non-disabled students are met. Accordingly, OCR determined that the District is not in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.33.

On July 11, 2016, the District voluntarily agreed to implement the enclosed resolution agreement in order to resolve Allegation 1(a) without further investigation pursuant to Section 302 of OCR's *Complaint Processing Manual*.

² The Student's IEPs did not explicitly require the provision of one xxxx xx XX Xxxxxx over another.

With respect to Allegation 1(b), the complainant alleged that the District retaliated for her prior disability-related advocacy on behalf of the Student, by failing to use the Student's XX Xxxxxx, as required by his IEP from the beginning of school year 2015-2016 to the present. In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant/alleged injured party engaged in a protected activity; (2) whether the recipient was aware of the complainant's/alleged injured party's protected activity; (3) whether the complainant/alleged injured party was subjected to an adverse action contemporaneous with, or subsequent to, the recipient's learning of the complainant's/alleged injured party'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 a protected activity by advocating on behalf of the Student and her older son, in connection with their disabilities, during previous school years. OCR determined that the District was aware of the complainant's protected activity.

On July 11, 2016, the District voluntarily agreed to implement the enclosed resolution agreement to resolve Allegation 1(b) without further investigation, as set forth in Section 302 of the *Case Processing Manual*. OCR will monitor the implementation of the enclosed 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 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 Kathleen Ryder, Compliance Team Investigator, at (646) 428-3825 or kathleen.ryder@ed.gov; or, Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXXX XXXXXXXX, XXXX