

August 8, 2016

Alex Anemone, Ed.D.  
Superintendent of Schools  
West Milford Township School District  
Administration Building  
46 Highlander Drive  
West Milford, New Jersey 07480

Re: Case No. 02-16-1193  
West Milford Township School District

Dear Superintendent Anemone:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the West Milford Township School District. The complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, by failing to provide him with fidget toys, including a thera-band, from September 2015 to February 22, 2016, as stipulated in the Student's Section 504 Plan for school year 2015-2016.

OCR is responsible for enforcing 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.

In its investigation, OCR interviewed the complainant and District staff. OCR also reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

During school year 2015-2016, the Student was enrolled in the XXXX grade at XXXX School (the School). He is XXXX and XXXX. The Student was eligible to receive related aids and services pursuant to Section 504 plans, dated April 29 and November 4, 2015.

The complainant alleged that the District discriminated against the Student, on the basis of his disability, by failing to provide him with fidget toys, including a thera-band, from September 2015 to February 22, 2016, as stipulated in the Student's Section 504 Plans for school year 2015-2016. The complainant informed OCR that the District began providing the Student with fidget toys in the classroom only after a Section 504 committee meeting held on February 22, 2016, during which the absence of fidget toys was discussed.

OCR determined that, among several other provisions, the Student's Section 504 plans for school year 2015-2016 contained a provision that states that the Student will be "allow[ed] fidget toys – squeeze balls, foot fidget – for use in classroom."<sup>1</sup> OCR determined that the Student's teacher was aware of the Student's Section 504 plan in September 2015, including the provision of the fidget toys; however, she stated that she did not receive any for the Student at the beginning of the school year. The teacher also stated that the Student did not exhibit any behavioral or attention issues in the classroom in the absence of the fidget toys. According to the teacher, the Student was focused, finished his work, and did not engage in off-task behaviors related to his XXXX. The teacher stated that the School's Principal (the Principal) provided her with the fidget toys in February 2016, and instructed her to implement the Student's use of the fidget toys, which she did throughout the remainder of the school year.

The Principal informed OCR that he does not know why the fidget toy provision was not implemented in the beginning of September 2015, and suggested that it was an "oversight." The Principal stated that he discussed the matter with the teacher and was convinced that the Student was able to participate appropriately and receive the benefits from the educational program in the absence of the fidget toys. He stated that he nonetheless instructed the teacher to start using the fidget toys with the Student after the above-mentioned Section 504 committee meeting on February 22, 2016.

Based on the foregoing, OCR determined that the District failed to provide the Student with fidget toys, including a thera-band, from September 2015 to February 22, 2016, as stipulated in the Student's Section 504 plans for school year 2015-2016. The District's failure to appropriately implement the Student's Section 504 plans violated 34 C.F.R. § 104.33(b)(1)(i).

On August 8, 2016, the District agreed to implement the enclosed resolution agreement in order to resolve the allegation. OCR will monitor the implementation of the resolution agreement, which addresses the compliance concerns identified above.

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

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<sup>1</sup> The District informed OCR that gripping squeeze balls and/or using a foot fidget can be used for a student's sensory needs and decrease a student's anxiety. A foot fidget is a thera-band placed around the legs of a student's chair so the student can tap or push down on it with his or her feet to release excess energy.

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, please contact Crystal Johnson, Senior Investigator, at (646) 428-3821 or [Crystal.Johnson@ed.gov](mailto:Crystal.Johnson@ed.gov) or Gina Damasco, Compliance Team Attorney, at (646) 428-3924 or [Gina.Damasco@ed.gov](mailto:Gina.Damasco@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXX