

September 23, 2016

Tom Phillips
Superintendent of Schools
Watkins Glen Central School District
303 12th Street
Watkins Glen, New York 14891

Re: Case No. 02-16-1269
Watkins Glen Central School District

Dear Mr. Phillips:

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 Watkins Glen Central School District (the District). The complainant alleged that the District discriminates on the basis of disability by failing to designate and disseminate contact information for a Section 504 Coordinator (Allegation 1); and by failing to adopt and publish grievance procedures for the prompt and equitable resolution of complaints alleging discrimination/harassment on the basis of disability (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 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 Section 504 and the ADA.

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

Section 504 Coordinator

The regulation implementing Section 504, at 34 C.F.R. §104.7(a), states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the requirements of Section 504 and its implementing regulation. OCR determined that the District has designated its Director of Student Services as its Section 504 Coordinator. Therefore, OCR determined that the District has complied with the regulation implementing Section 504, at 34 C.F.R. §104.7(a) with respect to designating a Section 504 Coordinator.

Notice of Non-Discrimination

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), requires that recipients notify participants, beneficiaries, applicants and employees that it does not discriminate on the basis of disability.¹ The notification is to state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The regulation, at 34 C.F.R. §104.8(a), also requires each such recipient to include in the notice the identity of its designated Section 504 coordinator(s). The regulation, at 34 C.F.R. § 104.8(b) provides that if a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a), including the identify and contact information for its designated Section 504 Coordinator.

OCR determined that the District does not publish a single non-discrimination notice, but publishes several non-discrimination notices in various publications. For example, OCR determined that the District's 2015-2016 Student/Parent Handbook (the handbook), Section XI, entitled, "Equal Opportunity" included a non-discrimination notice, but it did not identify the Section 504 Coordinator, and did not state that inquiries could be referred to the Section 504 Coordinator or OCR. Instead, it stated that the Superintendent was the individual "designated to handle inquiries regarding the District's non-discrimination policies." OCR determined that the District's Board Policy 1.1, "Anti-Discrimination Policy", includes a non-discrimination notice; however, this policy did not identify the Section 504 Coordinator or state that inquiries can be referred to the Section 504 Coordinator or OCR. OCR further determined that the District's September 2015 newsletter, "Messenger," contained a non-discrimination statement that did not state that the District does not discriminate on the basis of color; did not state that the District does not discriminate on the basis of sex; and referred inquiries to OCR or the District's superintendent, but did not refer inquiries to the Section 504 Coordinator. OCR also determined that the District's Board Policy Number 1.22, entitled "Section 504 Annual Notice", did not identify the Section 504 Coordinator. Based on the foregoing, OCR determined that the

¹ In addition, the regulations implementing Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Boy Scouts of American Equal Access Act of 2001 contain similar requirements for recipients to notify beneficiaries and others of its obligations under the respective regulation and/or that it does not discriminate on the basis of race, color, national origin, sex, age, and certain patriotic youth groups covered by Title 36. (See 34 C.F.R. §§ 100.6(d), 106.9, 110.25, and 108.9, respectively.)

District's statements of non-discrimination fail to comply with the regulation implementing Section 504, at 34 C.F.R. § 104.8(a).

Grievance Procedures

The regulation implementing Section 504, at 34 C.F.R § 104.7(b) provides that recipients shall adopt grievance procedures that incorporate appropriate due process standards that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation. Elements for determining if procedures are prompt and equitable include whether the procedures: (a) provide for notice to students and employees of procedures, including where complaints can be filed; (b) apply to discrimination and harassment by employees, students, and third parties; (c) provide for adequate, reliable and impartial investigation, including an opportunity to present witnesses and evidence; (d) have reasonably prompt timeframes for major stages of the grievance process; (e) provide for written notice to the parties of the outcome; and, (f) provide assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.

OCR determined that the District's grievance procedures for complaints of discrimination, set forth in the District's Board Policy 1.1, "Anti-Discrimination Policy", do not state that they apply to third parties; do not contain a prohibition against retaliation; do not provide for the parties to submit witnesses or other evidence; nor is there an assurance that the District will take steps to correct the discriminatory effects of any harassment on the complainant and others, if appropriate. Therefore, OCR determined that the District failed to adopt grievance procedures for the prompt and equitable resolution of complaints of disability discrimination and harassment, in compliance with the regulation implementing Section 504, at 34 C.F.R § 104.7(b).

On September 23, 2016, the District agreed to implement the enclosed resolution agreement in order to resolve the compliance concerns. OCR will monitor the implementation of the resolution agreement.

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 Crystal Johnson, Senior Investigator, at (646) 428-3821 or crystal.johnson@ed.gov; or James Moser, Compliance Team Attorney, at (646) 428-3792 or james.moser@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXX