



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

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November 8, 2013

Nicole Williams, Ph.D.
Superintendent
Poughkeepsie City School District
Jane Bolin Administration Building
11 College Avenue
Poughkeepsie, New York 12603

Re: Case No. 02-13-1201
Poughkeepsie City School District

Dear Dr. Williams:

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 Poughkeepsie City School District (the District). The complainant alleged that administrators at the Poughkeepsie Middle School (the School) treated her son (the Student) differently, because of his disability and race, by disciplining him with a 45-day out-of-school suspension in December 2012 (Allegation 1). The complainant also alleged that School staff treated the Student differently, on the basis of his disability, by separating him from other students during his scheduled lunch period, in or around February 2013 (Allegation 2). The complainant further alleged that in retaliation for her complaint regarding the Student's separation from other students during his lunch period, the Assistant Superintendent removed the Student from the School and required that he receive two hours daily of tutoring at an alternative instruction location, from February 2013 through the remainder of school year 2012-2013 (Allegation 3). In addition, the complainant alleged that in retaliation for her advocacy on behalf of the Student, the District filed a report of educational neglect regarding the Student with Child Protective Services (CPS), on or about April 30, 2013 (Allegation 4).

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also 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

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from the Department. In addition, OCR is 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 Title VI, 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, the Student, and District personnel. OCR also reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

OCR determined that the Student, who is black, was a XXXXXXXX-grade student enrolled at the School during school year 2012-2013. OCR also determined that the District's Committee on Special Education (CSE) had previously classified the Student as having an XXXXXXX XXXXXXXXXX and developed an individualized education program (IEP) for the Student for school year 2012-2013.

With respect to Allegation 1, the complainant alleged that administrators at the School treated the Student differently, because of his disability and race, by disciplining him with a 45-day out-of-school suspension in December 2012, for hitting a white student (Student 2) in the face. OCR determined that the Principal investigated an incident that occurred on November 30, 2012, involving the Student, Student 2, and another black student (Student 3) in the boys' bathroom. OCR determined that after interviewing all three students, as well as a teacher who witnessed the students exiting the bathroom, the Principal concluded that the Student hit Student 2 in the face while in the bathroom.¹ The Principal initially suspended the Student for 5 days, beginning December 3, 2012, pending a Superintendent's Hearing and manifestation determination review.

The regulations OCR enforces provide that an educational institution may discipline a disabled student in the same manner as it would discipline a nondisabled student, unless the disabled

¹ Although the Student asserted that Student 2 hit him, the Principal found no information to substantiate the Student's claim. The Principal determined that Student 3 was not involved in the physical altercation between the Student and Student 2. OCR determined that Student 3 refused to describe to the Principal what occurred inside the bathroom; however, the Principal imposed detention on Student 3 for using inappropriate language with the teacher.

student's IEP, Section 504 plan, Behavioral Intervention Plan (BIP), or other individualized education program developed by a group of knowledgeable persons specifies differently. In accordance with OCR policy, the expulsion or suspension of a student with a disability for more than 10 school days constitutes a "significant change in placement." Before implementing an exclusion that constitutes a significant change in placement, a recipient must first determine whether the student's conduct was a manifestation of the student's disability. If it is determined that the student's misconduct is a manifestation of the student's disability, a group of knowledgeable persons must evaluate whether the student's current educational placement is appropriate, following the evaluation and placement requirements of Section 504, at 34 C.F.R. §104.35 and 104.36. If it is determined that the student's misconduct is not a manifestation of the student's disability, there is no obligation to conduct an evaluation, and the student may be suspended or excluded from school in the same manner as other students without disabilities.

OCR determined that the Student's IEP did not indicate that the Student was exempt from or otherwise not be subject to the District's discipline code; and, the Student did not have a BIP. OCR determined that the CSE convened a manifestation determination review on December 19, 2012, and concluded that there was no nexus between the Student's disability and his misconduct. Accordingly, the District could remove the Student from his educational placement for more than 10 days through a disciplinary sanction.

OCR determined that a Superintendent's Hearing was conducted in two parts on December 19, 2012. During the first part of the hearing, the hearing officer found that the Student hit Student 2; therefore, he engaged in conduct that was violent and endangered the health, safety, morals or welfare of himself and/or others in violation of the Code. The hearing officer reconvened the Superintendent's Hearing later the same day; and determined that as a penalty for the misconduct, the Student would be suspended for an additional 37 days through February 8, 2013, for a total suspension of 42 days.

OCR determined that the District generally employs a policy of "progressive discipline," as described in its Code. For the misconduct at issue, namely, engaging in conduct that was violent and endangering the health, safety, morals or welfare of a student, a student could receive a minimum of two days suspension as a penalty, and the Superintendent has the authority to modify the length of the suspension. In reaching his determination regarding the length of the Student's suspension, the hearing officer considered the seriousness of the charges and the Student's disciplinary record, which included six prior suspensions during school year 2012-2013²; and a previous superintendent's hearing for similar misconduct in February 2012, for which the Student received a total out-of-school suspension of 39 days.

OCR also reviewed incident reports from non-black and non-disabled students, who engaged in similar misconduct such as physically assaulting another student or otherwise engaging in conduct that was violent and endangering the health, safety, morals and welfare of that student. OCR determined that the reports indicated that the School initially suspended those students for

² OCR determined that the District suspended the Student, as follows: for three days on September 9, 2012, for a physical altercation with another student; for three days on October 2, 2012, for a physical altercation with another student; for one day on October 12, 2012, for threatening another student; for one day on October 17, 2012, for insubordination; and, for three days on November 13, 2012, for a physical altercation with another student.

five days pending a Superintendent's Hearing; and, that those students received total long-term out-of-school suspensions for 42 days or more.

Based on the foregoing, OCR determined that the District provided a legitimate, nondiscriminatory reason for disciplining the Student with a 42-day out-of-school suspension for the incident; namely, the Student was found to have engaged in misconduct by hitting Student 2 in violation of the Code, and the suspension imposed was determined based on the nature of the offense and the Student's disciplinary record. OCR determined that the District's proffered reason was not a pretext for discrimination, as the duration of suspension was in accordance with the guidelines set forth in the Code; and, during school year 2012-2013, the District suspended non-black and non-disabled students for the same duration and longer for similar misconduct.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that administrators at the School the Student differently, because of his disability and race, by disciplining him with a 45-day out-of-school suspension in December 2012. Accordingly, OCR will take no further action regarding Allegation 1.

Regarding Allegation 2, the complainant alleged that School staff treated the Student differently, on the basis of his disability, by separating him from other students during his scheduled lunch period, in or around February 2013. The Student alleged that when he returned to school after the suspension referred to in Allegation 1, the Principal informed him that he was required to eat in the main office in the presence of School staff instead of the cafeteria, but did not explain why. The complainant stated that in late February 2013, when she complained to the Principal about this matter, the Principal informed her that she separated the Student during lunch because of behavior related to the Student's disability.

The Principal denied separating the Student from other students during lunch, and asserted that the Student voluntarily chose to eat lunch in the main office with other students who ate lunch in the main office under the supervision of the XXXXXXXXXXXX. The Principal also denied telling the complainant that the Student needed to be separated because of behavior related to his disability; rather, she stated that she informed the complainant that the Student chose to eat in the main office.

The District stated that it does not have a formal procedure regarding students eating lunch in the office instead of the cafeteria; students only have to ask the permission of the XXXXXXXXXXXX upon entering the main office. The District identified to OCR both disabled and non-disabled students who chose to eat lunch in the main office. The complainant initially alleged to OCR that each day the Student either ate lunch alone or with a few other students, however, the Student asserted that he was the only student subjected to this treatment, and he identified two School XXXXXXXXXXXX who witnessed him eating lunch alone. OCR interviewed the two XXXXXXXXXXXX whom the Student identified; both XXXXXXXXXXXX informed OCR that they witnessed the Student eating lunch with other students in the main office on various occasions, and did not witness the Student eating lunch alone. The XXXXXXXXXXXX also stated that neither the Student nor the Principal indicated that the Principal required the Student to eat lunch in the main office; and stated that the Student did not eat lunch in the main office every day. The complainant did not provide, and OCR did not find

evidence that the District separated the Student from other students during his scheduled lunch period.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that School staff treated the Student differently, on the basis of his disability, by separating him from other students during his scheduled lunch period, in or around February 2013. Accordingly, OCR will take no further action regarding Allegation 2.

With respect to Allegations 3 and 4, 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 or alleged injured party was subjected to 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 when she advocated on behalf of the Student during school year 2012-2013, with respect to various issues relating to the Student's disability; including meeting with the Principal on an unspecified date in February 2013, to complain that the Student was being isolated during his lunch period because of behavior related to his disability. OCR determined that the District was aware of the complainant's protected activity.

Regarding Allegation 3, the complainant alleged that in retaliation for her complaint regarding the separation of the Student from other students during his lunch period, the Assistant Superintendent removed the Student from the School and required that he receive two hours daily of tutoring at an alternative instruction location, from February 2013 through the remainder of school year 2012-2013.

As stated above, OCR determined that the complainant met with the Principal at some time in February 2013, to complain that she believed that the Principal was requiring the Student to eat in the office because of his disability. The complainant asserted that she filed a written complaint with the District's Administration Office regarding the same. The complainant provided a letter to OCR, which was dated March 7, 2012 (not 2013), in which she generally complained about the District's unfair treatment of the Student based upon his disability, but not about the separation of the Student during lunch; the letter was stamped by the District as being received on March 7, 2013.

OCR determined that by letter, dated March 13, 2013, the Assistant Superintendent notified the complainant that instead of attending school, the Student would receive tutoring until he could be enrolled in an appropriate special education program; and in the interim, she was scheduling an emergency CSE meeting regarding the Student. The Assistant Superintendent denied that she assigned the Student to tutoring in response to any complaint that the complainant may have

filed. She asserted that she did so after becoming aware of the complainant's continued failure to cooperate with the District's efforts to find an appropriate placement for the Student³ and the numerous behavior issues the Student was routinely experiencing. OCR determined that the Director of Special Education (SPED Director) had briefed the Assistant Superintendent in early March 2013, about the District's stalled efforts to find an appropriate program for the Student; prior to the complainant's letter to the District on March 13, 2013.

Based on all of the above, OCR determined that the Assistant Superintendent's decision to remove the Student from the School was not in retaliation for the complainant's advocacy; rather, it was based upon the SPED Director's briefing regarding the complainant's unwillingness to participate in the program intake process for the Student and the Student's continued behavioral issues. OCR determined that the proffered reasons were not a pretext for retaliation, because the District's reasons were well-documented, and the District has required other students, whose parents have not engaged in protected activity, to receive tutoring/home instruction pending an appropriate placement. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that in retaliation for her complaint regarding the separation of the Student from other students during his lunch period, the Assistant Superintendent removed the Student from the School.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), however, requires a recipient to conduct a reevaluation of a disabled student prior to making any significant change in the student's placement. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.35(c)(3), provides that in making placement decisions for a student with a disability, a recipient shall ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. OCR determined that the Assistant Superintendent's unilateral removal of the Student from the School and assignment to tutoring at an alternative instruction location constituted a significant change in the Student's placement; and it was done without a reevaluation, and without convening the CSE or other group of knowledgeable persons, as required by Section 504.

The District agreed to implement the enclosed resolution agreement to resolve OCR's concerns with respect to Allegation 3. 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.

With respect to Allegation 4, the complainant alleged that in retaliation for her advocacy on behalf of the Student, the District filed a report of educational neglect with CPS regarding the Student, on April 24, 2013. The District asserted that it filed the report in accordance with District policy and practice, as well as New York State Education and Social Services Law.⁴

³ OCR determined that the complainant and/or her advocate failed to respond to one of the prospective program's requests to schedule an intake for the Student on seven occasions, from November 20, 2012, through January 14, 2013; and, at the time that the letter dated March 13, 2013, was sent, the complainant had failed to participate in any program screening visits, which were required in order to place the Student in another program.

⁴ OCR determined that District Policy Number 5460: Child Abuse Reporting (the Policy), and its corresponding regulation, govern the obligation of District personnel to report instances of suspected child abuse and maltreatment,

The District explained that it filed the Report because the Student was not enrolled in an appropriate educational program and was not receiving the required special education and related aids and services due to the complainant's unwillingness to participate in the program intake process for the Student, as referred to in Allegation 3. OCR determined that after the Assistant Superintendent removed the Student from the School on March 13, 2013, the District scheduled CSE meetings on March 25, April 12, and April 22, 2013; however, the complainant cancelled the first meeting and failed to attend the other two meetings. This was in addition to the complainant's previous failures to respond to a prospective program's requests to schedule an intake for the Student on seven occasions between November 2012 and January 14, 2013. OCR determined that during school year 2012-2013, the District filed reports of educational neglect with CPS regarding other students whose parents had not engaged in protected activity, including if a student was not receiving the appropriate educational services as a result of a parent's failure to cooperate with the District.

Based on the foregoing, OCR determined that the District proffered a legitimate, non-retaliatory reason for filing the Report regarding the Student; namely, it believed that the Student was possibly suffering from educational neglect as he was not enrolled in an appropriate educational program and was not receiving required special education and related aids and services due to the complainant's continued unwillingness to participate in the program intake process for the Student. OCR further determined that these reasons were not pretextual, as the District's reasons were well-documented; the District's filing of the report was consistent with the District's policy and practice; and, the District filed reports of educational neglect with CPS for similarly situated students whose parents had not engaged in protected activity. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that in retaliation for her advocacy on behalf of the Student, the District filed a report of educational neglect with CPS regarding the Student, on April 24, 2013. Accordingly, OCR will take no further action with respect to Allegation 4.

As stated above, the attached resolution agreement addresses Allegation 3. OCR will monitor implementation of the 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.

including neglect, of students in a domestic setting to the New York State Central Register for Child Abuse and Maltreatment, which is maintained by CPS. OCR determined that the applicable provision of the New York State Education and Social Services Law, including the Child Protective Services Act of 1973, places a mandatory duty on school personnel to report to CPS when District personnel suspect abuse or neglect by the student's parent or guardian. According to the applicable District regulation, "a neglected or maltreated child includes a child whose physical, mental, or emotional condition has been impaired or is in danger of becoming impaired as a result of the failure of his/her parents or other person legally responsible for his/her care to exercise a minimum degree of care in supplying the child with adequate food, clothing, shelter, or education..."

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 regarding OCR's determination, please contact Letisha Morgan, Senior Compliance Team Investigator, at (646) 428-3827 or letisha.morgan@ed.gov; Ronald L. Scott, Compliance Team Attorney, at (646) 428-3820 or ronald.scott@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