



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

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December 27, 2013

Annette Speach
Interim Superintendent
North Syracuse Central School District
5355 W Taft Road
North Syracuse, New York 13212

Re: Case No. 02-13-1231
North Syracuse Central School District

Dear Interim Superintendent Speach:

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 North Syracuse Central School District (the District). The complainant alleged that a District math teacher discriminated against her son (the Student), on the basis of his disability, by failing to provide the following related aids and services as set forth the Student's Section 504 plan: (a) "skeletal notes" from September 2012 through May 2013; (b) an alternate location for tests and quizzes, and time and a half for tests and quizzes given on December 5, 17, and 20, 2012, and January 11, 2013; (c) parent and teacher electronic mail (email) communication regarding the Student's progress and any issues when necessary, from November 21, 2012, through May 2013; and, (d) use of an alternate mode of response for class assignments when the Student's writing is illegible, from November 21, 2012, through May 2013 (Allegation 1). The complainant also alleged that the math teacher subjected the Student to harassment because of his disability, by making derogatory comments to and about the Student in December 2012 and in May 2013 (Allegation 2); and intentionally providing the skeletal notes in the same size text in response to the Student's requests to enlarge the text, from November 21, 2012, through May 2013 (Allegation 3).

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 the Student's math teacher. OCR also reviewed documentation that the District submitted. OCR made the following determinations.

OCR determined that during school year 2012-2013, the Student was in the XXXXX grade. The Student had a Section 504 Plan, dated October 17, 2012, based on his diagnoses of XXXXXXXXXX XXXXXXXXXX, XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX, and XXXXXXXXXX. The Student's Section 504 Plan was amended on March 1, 2013, to include an additional diagnosis of XXXXXXXXXX.

With respect to Allegation 1(a), the complainant alleged that the math teacher discriminated against the Student, on the basis of his disability, by failing to provide him with "skeletal notes" from September 2012 through May 2013. According to the Student's Section 504 Plan, he was entitled to receive a copy of class notes as a related aid.

The math teacher informed OCR that she provided to the Student printouts of what she wrote on the classroom's Smartboard, in addition to the "skeletal notes" for each unit that were included in each student's workbook. The math teacher stated that after every class, she left the notes for the Student, and the other students who required notes, in a basket by the front door of the classroom. The math teacher stated that she was not given specific instructions as to how to provide the Student with his notes, but she told the Student where his notes were placed. The math teacher stated that the Student often did not pick up his notes at the end of the school day.¹ The math teacher stated that if the Student did not pick up his notes on a particular day, she would hand them to him in the next class; however, she acknowledged that the Student may have needed those same notes to complete a homework assignment that was due. The math teacher further stated that after the complainant complained in February 2013 to District personnel that the math teacher was not giving the Student his notes, the math teacher started tracking when the Student did not pick up his notes; and in May 2013, she began handing the Student a copy of the notes.

During the course of OCR's investigation, the District's attorney informed OCR that the District wished to resolve Allegation 1(a) without further investigation, in accordance with Section 302 of OCR's Case Processing Manual.

With respect to Allegation 1(b), the complainant alleged that the math teacher discriminated against the Student, on the basis of his disability, by failing to provide the Student with an alternate location, and time and a half, for tests and quizzes given on December 5, 17, and 20, 2012, and January 11, 2013. OCR determined that the Student's Section 504 Plan provided that

¹ The math teacher stated that pursuant to the Student's Section 504 Plan, he always left her class about 10 to 15 minutes early XX XXX XXX XXXXX; therefore, he would pick up the notes in the basket after he XXX the XXXXX or at the end of day.

he should take tests and quizzes lasting more than 30 minutes in an alternate location; and, he was to receive extended time of 1.5 for all assessments.

The math teacher stated that the Student was allowed extra time for tests and quizzes if he needed it; however, the Student never asked her for extra time. The math teacher stated that there were no quizzes or tests administered on December 5, 2012. She stated that there was a quiz given on December 4, 2012, that was not longer than 30 minutes; therefore, the Student took it in the classroom. The math teacher further stated that a test was given on December 17, 2012, but she could not recall the duration of the test or where the Student took the test; however, she asserted that the Student completed it before the allotted time. The math teacher stated that the Student took a quiz on December 20, 2012, in the classroom because it was less than a half hour. Regarding testing on January 11, 2013, the math teacher noted that she was on leave, but was aware that a quiz that was less than a half hour was administered on that date.

During the course of OCR's investigation, the District's attorney informed OCR that the District wished to resolve Allegation 1(b) without further investigation, in accordance with Section 302 of OCR's Case Processing Manual.

With respect to Allegation 1(c), the complainant alleged that the math teacher discriminated against the Student, on the basis of his disability, by failing to maintain email communication with his parent regarding the Student's progress and any issues when necessary, from November 21, 2012, through May 2013. OCR confirmed that the Student's Section 504 Plan provided that "home/school communications" were to be provided; but, the Section 504 Plan did not specify any frequency or provide further description.

The math teacher stated that she provided progress reports at regular intervals throughout the school year, and that she would respond as needed to any inquiries about the Student. The math teacher asserted that the complainant never contacted her regarding any concerns, and she communicated with the Student's father in response to concerns that he had.² The math teacher stated that she subsequently learned that the complainant complained about her lack of communication with her from District administrators in January 2013.

During the course of OCR's investigation, the District's attorney informed OCR that the District wished to resolve Allegation 1(c) without further investigation, in accordance with Section 302 of OCR's Case Processing Manual.

With respect to Allegation 1(d), the complainant alleged that the math teacher discriminated against the Student, on the basis of his disability, by failing to provide the Student with the use of an alternate mode of response for class assignments when the Student's writing was illegible, from November 21, 2012, through May 2013. The complainant asserted that the Student was given a zero on assignments because his handwriting was illegible, and the math teacher failed to offer him the opportunity to use a word processor and/or an alternate mode to express his writing responses to obtain credit for his work. The complainant also provided an example of the

² OCR determined that the math teacher responded to an email that the Student's father sent to her on December 16, 2012, with concerns regarding the Student's grade of 65%, and asked for her opinion about why he received this grade.

Student's work wherein the math teacher had deducted credit on a quiz taken on November 9, 2012, when she could not read the Student's response.

OCR determined that the Student's Section 504 Plan was amended on March 1, 2013, to include "response mode altered" for all assignments and the New York State Regents exams. The Student's Section 504 Plan also stated that "Response mode altered" was described as "NOT A SCRIBE, but when his writing becomes illegible due to his XXXXXXXXXX [the Student] will be afforded modes to express his responses to obtain credit for his work." OCR determined that the previous version of the Student's Section 504 Plan did not contain any such provision. The math teacher stated that other than the quiz given on November 9, 2012, she did not generally find that the Student's work was illegible even after the Student's Section 504 Plan was amended.

During the course of OCR's investigation, the District's attorney informed OCR that the District wished to resolve Allegation 1(d) without further investigation, in accordance with Section 302 of OCR's Case Processing Manual.

With respect to Allegation 2, the complainant alleged that the Student's math teacher subjected him to harassment because of his disability, by making derogatory comments to and about the Student in December 2012 and in May 2013. Specifically, the complainant alleged that the Student informed her that the math teacher told him during class in December 2012, "I'll let you XX XX XXX XXXXX, you never do anything in this class." The complainant further alleged that during a Section 504 Committee meeting in May 2013, the math teacher stated in an observation report that the Student "is not interested in the class" and that "he uses his disability as a crutch."

Disability harassment is a form of discrimination prohibited by Section 504, the ADA and their implementing regulations. Harassing conduct by an employee, a student, or a third party can include verbal, written, graphic, physical or other conduct; or conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently severe, persistent, or pervasive to limit an individual's ability to participate in or receive benefits, services, or opportunities in the institution's program. If OCR determines that harassing conduct occurred and that the District had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the District took prompt and effective action to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

The math teacher denied making both statements the complainant alleged. She stated that in December 2012, while all of the students were working on an assignment in class, she said to the Student "You're not doing your work. Why aren't you doing any work?" The math teacher further stated that she did not make this statement in reference to the Student's request XX XX XX XXX XXXXXX XXXXX; the Student was entitled to XX XX XXX XXXXXX XXXXX and did not need her permission to do so. The math teacher further stated that the Student's desk was located away from the other students, and that she went over to speak to him directly as opposed to within earshot of the other students in the class. The complainant did not provide, and OCR did not find any evidence to contradict the math teacher's version of events.

With respect to the remark allegedly made during May 2013 Section 504 meeting, the District provided an audio recording. OCR determined that the Chair read the remark from the report made by the XXXXXXXXXX XXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXX Geometry teacher, who stated, in relevant part, “that the Student is capable of doing the work; however, he uses his disability as a crutch to get out of the work.” OCR did not find this remark, in the context of an assessment made for purposes of developing the Student’s Section 504 Plan, to constitute disability-based harassment.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the math teacher made the alleged statements. In addition, OCR determined that the remark made during a Section 504 Committee meeting in May 2013, in the context in which it was made, did not constitute disability-based harassment. Accordingly, OCR will take no further action regarding Allegation 2.

With respect to Allegation 3, the complainant alleged that the math teacher subjected the Student to harassment because of his disability, by intentionally providing the skeletal notes in the same size text in response to the Student’s requests to enlarge the text, from November 21, 2012, through May 2013.

OCR determined that the Student sent an email to the math teacher on April 25, 2013, requesting that she enlarge his notes because his tutor and he could not read a few pages. OCR determined that the Student’s Section 504 Plan did not specify that he was to receive notes in enlarged text. The math teacher stated that the text was the default printing size that had been provided to the Student and other students throughout the school year; and that the Student had not previously indicated any issues regarding the size of the text. Contrary to the complainant’s allegation, OCR did not find that the Student made a request for enlarged notes prior to April 25, 2013. The math teacher stated that the Student’s Section 504 Plan did not indicate that the Student had a visual impairment that required the notes to be provided to him in enlarged print; and, she wanted to follow the Student’s Section 504 Plan. OCR determined that the Student then sought assistance from the District’s guidance counselor. In response, the guidance counselor permitted the Student to make an enlarged copy of the notes in question, and advised him that he could make copies whenever needed. OCR determined that there were no further issues raised by the Student regarding text size of notes for the remainder of the school year.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the math teacher subjected the Student to harassment because of his disability by intentionally providing the skeletal notes in the same size text in response to the Student’s requests to enlarge the text from November 21, 2012, through May 2013. Specifically, OCR did not find that the complainant or the Student requested enlarged notes prior to April 25, 2013. Additionally, the Student’s Section 504 Plan did not require enlarged notes, and the math teacher continued to provide the notes in the same format as she had throughout the school year in order to comply with the Student’s Section 504 Plan. Further, OCR determined that the guidance counselor provided enlarged notes to the Student as requested, and there were no further issues raised by the Student regarding the size of his notes. Accordingly, OCR will take no further action regarding Allegation 3.

As stated above, the attached resolution agreement addresses OCR's concerns regarding Allegation 1(a) through 1(d). 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.

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, we 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 Michele Ginter-Barbara, Compliance Team Investigator, at (646) 428-3816 or michele.ginter-barbara@ed.gov; Tracey Beers, Compliance Team Attorney, at (646) 428-3804 or tracey.beers@ed.gov; Felice Bowen, Compliance Team Leader at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

Timothy C.J. Blanchard

Encl.

cc: XXXX XXXX XXXXX