

April 17, 2014

Gerard O'Sullivan
Superintendent of Schools
Norwich City School District
89 Midland Drive
Norwich, New York 13815

Re: Case No. 02-14-1027
Norwich City School District

Dear Superintendent O'Sullivan:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Norwich City School District. The complainant alleged that the District discriminated against his son (the Student), on the basis of his disability, by not providing the complainant with notice of his due process rights on or about August 20, 2013.

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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also 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 both Section 504 and the ADA.

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

OCR determined that on August 20, 2013, the District convened a Section 504 meeting to discuss the Student's placement and related aids and services, at the complainant's request; the complainant participated in the Section 504 meeting. The complainant alleged that the District failed to provide him with notice of his due process rights at or following the meeting.

Specifically, he alleged that the District failed to notify him that he could request an impartial hearing regarding the Section 504 team’s determinations.

The regulation implementing Section 504, at 34 C.F.R. § 104.36, provides that a recipient shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an impartial hearing with opportunity for participation by the person’s parents or guardian and representation by counsel, and a review procedure.¹ OCR determined that District Policy A303.2, entitled “Non-Discrimination Under Section 504 of the Rehabilitation Act of 1973” (Policy 1), informs parents and guardians that the District does not discriminate against persons with disabilities, and of the District’s responsibility to identify, evaluate and provide students with disabilities with appropriate educational services. Policy 1 is available on the District’s website. Pursuant to its Procedures for Hearing and Appeal (Policy 2), the District affords an impartial hearing to parents and guardians of students with disabilities who are eligible to receive special education related aids and services. Policy 2 is not available on the District’s website.

OCR determined that the District provides a copy of the New York State Education Department Procedural Safeguards Notice (the Procedural Safeguards Notice) to parents/guardians of students classified under the IDEA; however, the District does not provide the Procedural Safeguards Notice to the parents/guardians of students who are not classified under the IDEA but are eligible for related aids and services under Section 504. The District acknowledged that it did not inform the complainant of his right to request an impartial hearing at or following the Section 504 meeting on August 20, 2013, or provide him with a copy of Policy 2 or the Procedural Safeguards Notice.

On April 4, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concern identified in this letter.² OCR will monitor the implementation of the resolution agreement. If the District fails to implement the terms of the agreement, OCR will resume its investigation of the complaint.

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

¹ The regulation also states that compliance with the procedural safeguards of the Individuals with Disabilities Education Act (IDEA) is one means of meeting this requirement. The IDEA requires districts to provide, among other things, written notice regarding actions related to the identification, evaluation or educational placement of a student, and an opportunity for a hearing.

² OCR determined that by letter dated March 7, 2014, the District sent the complainant a copy of Policy 2, in response to his request made on March 6, 2014, for information regarding his right to appeal the Section 504 team’s determinations and the applicable process. Nevertheless, OCR obtained a resolution agreement requiring the District to provide training to District staff responsible for organizing and conducting Section 504 meetings, to ensure that the District routinely provides notice of the right to request an impartial hearing to parents and guardians at or following Section 504 meetings.

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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Janet Pfeffer, Compliance Team Investigator, at (646) 428-3833 or janet.pfeffer@ed.gov; or Anna Moretto Cramer, Compliance Team Attorney, at (646) 428-3826 or anna.moretto.cramer@ed.gov.

Sincerely,

Timothy C. J. Blanchard

Cc: XXXXXXXX