



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

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NEW JERSEY
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August 8, 2014

John P. Latini
Superintendent of Schools
Minisink Valley Central School District
P.O. Box 217
Slate Hill, New York 10973

Re: Case No. 02-14-1162
Minisink Valley Central School District

Dear Superintendent Latini:

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 Minisink Valley Central School District (the District). The complainant alleged that the District discriminated against his son (the Student) on the basis of his disability when the District failed to respond appropriately to his complaint that the Student's English teacher referred to him as a "wacko" on September 12, 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 (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.

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires that each recipient adopt grievance procedures providing for the prompt and equitable resolution of student, employee, and third party complaints that allege any action that would be prohibited by the regulation. OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether procedures provide for: (a) notice to students and employees of the procedures, including where complaints may be filed; (b) application of the procedures to discrimination by employees, students, and third parties; (c) designated and reasonably prompt timeframes for the major stages of the grievance process; (d) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and other evidence; (e) notice to parties of the outcome; and (f) assurance that the institution will take steps to prevent further harassment and to correct its effects, if appropriate. In addition, the regulation implementing Title II of the ADA, at 28 C.F.R. § 35.107(b), states that a recipient shall adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the ADA.

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

OCR determined that the Student was in the XXth grade at Minisink Valley High School during school year 2013-2014; and was classified as a student with XXXXXX. He received related aids and services pursuant to an Individualized Education Plan, (IEP), in effect from September 4, 2013 through June 26, 2014. During the course of OCR's investigation, the complainant informed OCR that he wished to withdraw his allegation; and did not want OCR to pursue any individual relief on the Student's behalf. Nonetheless, OCR continued its investigation to determine whether the District has adopted and published grievance procedures that provide for the prompt and equitable resolution of student, employee, and third party complaints alleging discrimination prohibited by Section 504 and the ADA.

OCR determined that the District has adopted two grievance procedures to address complaints that allege discrimination or harassment on the basis of disability: "Section 504 Grievance/Complaint Process/Procedures" (the Section 504 Procedures); and procedures designed to comply with New York State's "Dignity for All Students Act", entitled the "Student Harassment and Bullying Prevention and Intervention," Board Policy 7545 (the DASA Procedures).

The Section 504 Procedures are posted on the District's website, and provide for a five-step process to investigate complaints filed by students or parents; however, they do not specify that complaints can be filed against students, employees, or third parties. The first, second and third steps provide that the Principal or the Section 504 Coordinator (Director of Pupil Personnel Services), or the Superintendent, respectively, will provide a written decision within 15 school days or receipt of the request and copies of the written decision will be sent to the grievant; however, they do not state that both parties would have the opportunity to present witnesses and other evidence, or that the written decision will also be provided to the accused. The fourth step provides for an appeal to the Board of Education, which will authorize an impartial hearing officer; however, this step does not include timeframes for the decision or state that both parties would have the opportunity to present witnesses and other evidence at the hearing.

The DASA Procedures, which are published on the District's website but were not found in any other District publications, apply to complaints on behalf of students alleging bullying, discrimination or harassment on the bases of "actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sex, sexual orientation, or gender, including gender identity and expression."¹ The DASA Procedures do not apply to complaints of discrimination by employees or third parties. The DASA Procedures further state that an "equitable and thorough investigation will be carried out by the building principal or the Building DASA Coordinator"; however, there is no timeframe for the completion of the investigation or statement that the parties would have the opportunity to present witnesses and other evidence. The DASA Procedures do not state how the parties will be notified of the findings of the investigation. While the DASA Procedures provide for the appeal of the complaint to the Superintendent and the Board of Education, there are no specified timeframes for the outcome. In addition, the DASA Procedures do not state the method by which the parties will be notified of the determination. Therefore, OCR determined that the DASA Procedures do not provide for a prompt and equitable resolution of complaints of discrimination or harassment on the basis of disability.

On August 7, 2014, the District agreed to implement the enclosed resolution agreement to address the above-referenced compliance concerns with regard to the Section 504 Procedures and the DASA Procedures. OCR

¹ According to the DASA Procedures, where the nature of the bullying or harassment also warrants investigation under another District policy that addresses wrongful discriminatory practices (e.g., Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972), there shall be a coordinated investigation.

will monitor the implementation of the enclosed resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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, 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 Jonathon LeBeau, Compliance Team Investigator, at (646) 428-3790 or jonathon.lebeau@ed.gov; Tracey R. Beers, Senior Compliance Team Attorney, at (646) 428-3804 or tracey.beers@ed.gov; or Felice Bowen, Compliance Team Leader at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,
/S/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXX X. XXXXXXXX, XXX.