

May 17, 2017

Dr. Jeffrey Feifer
Superintendent
Ringwood School District
121 Carletondale Road
Ringwood, New Jersey 07456

Re: Case No. 02-16-1070
Ringwood School District

Dear Superintendent Feifer:

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 Ringwood School District. The complainants alleged that staff at the Peter Cooper Elementary School (the School) subjected their son (the Student) to harassment, because of his disability, by (a) singling the Student out and not being discreet in implementing his Individualized Education Program (IEP) from September 2015 through November 2015; and (b) stating that the Student “needs two people ‘on him’” before the Student entered the School on or about October 15, 2015 (Allegation 1). The complainants also alleged that the District failed to respond appropriately to the Harassment, Intimidation, and Bullying (HIB) complaint that they filed with the District on October 15, 2015, alleging that the Student was subjected to harassment on the basis of his disability (Allegation 2). The complainants further alleged that the District discriminated against students with disabilities at the School by designating certain classes as special education classes in the School’s Parent Teacher Organization (PTO) Handbook (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 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 Section 504 and the ADA.

In reaching a determination regarding this complaint, OCR interviewed the complainants and District personnel. OCR also reviewed documentation that the complainants and the District submitted.

OCR determined that during school year 2015-2016, the Student was seven years old and enrolled in second grade at the School. The Student is classified as “Other Health Impaired” and is eligible for related aids and services through an IEP.

With respect to Allegation 1(a), the complainants alleged that from September 2015 through November 2015, the Student’s classroom teacher and 1:1 aide subjected the Student to harassment, because of his disability, by singling him out and not being discreet in implementing his IEP. The complainants did not provide any specific examples of the alleged conduct.

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 serious to interfere with or deny a student’s participation in or receipt of benefits, services or opportunities in the recipient’s program. If OCR determines that harassing conduct occurred, OCR will examine additional factors to determine whether a hostile environment existed and whether the recipient took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

OCR determined that at the beginning of school year 2015-2016, the Student was placed in a regular education classroom with a 1:1 aide in accordance with his IEP, dated XXXXXXXXXX XXX XXXX. OCR determined that the Student’s IEP provided that the Student receive the following aids and services in the classroom: (1) break assignment(s) into segments of shorter tasks; (2) reduce the number of concepts presented at one time; (3) provide clear, concise directions and concrete examples for homework/class assignments; (4) cue student by calling his/her name before asking questions; (5) frequently check on progress of independent work; (6) provide clear and well-defined worksheets; (6) seat student in an area free of distractions; (7) use preferential seating; (8) help keep the Student’s work area free of unnecessary materials; (9) provide clear and concise classroom expectations and consequences; (10) consistently enforce school rules; (11) avoid the use of confrontational techniques; (12) provide student with alternatives; (13) assign activities which require some movement; (13) use praise generously; (14) provide choices; (15) use technology as a reward; (16) provide frequent breaks; (17) reduce the amount of writing; and (18) allow to use computer, as needed. The Student also had a XXXX XXX XXXXX in the classroom, which was situated out of sight of the remainder of the class, in order for the Student to take “time-outs” out of the line of sight of other students. In addition, the Student had a special XXXXXXXX XXXX with a XXXXX attached to it, because he would sometimes XXXX a XXXXXXXX XXXX, causing it to move.

The District advised OCR that during the period from September to November 2015, the Student frequently became upset in class and engaged in tantrums. The District advised OCR that on several occasions, these tantrums escalated significantly, so as to cause a risk of harm to the Student or other students, when the Student XXXXX XXXX XXXXXXXXXX, threw objects, or

hit students or staff. The teacher advised OCR that when the Student had a tantrum, she asked the other students to go to the bus duty room¹ while she tried to calm the Student, because she believed the Student would not want other students to see him upset. Accordingly, the Student's related aids and services were visible to other students in the classroom when the Student was having a tantrum.

Based on the above, OCR determined that the teacher and aide had legitimate, non-discriminatory reasons for sometimes singling the Student out and being indiscreet in the manner in which they handled him; specifically, the Student would throw tantrums that drew attention to himself, and the teacher and aide employed techniques to attempt to calm the Student down. OCR determined that the proffered reasons were not a pretext for discrimination, because the Student's tantrums and the resulting techniques used to calm him down were well documented. Therefore, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the teacher and aide subjected the Student to harassment, because of his disability, by singling him out and not being discreet in implementing his IEP from September through November 2015. Accordingly, OCR will take no further action with respect to Allegation 1(a).

With respect to Allegation 1(b), the complainants alleged that on or about October 15, 2015, the School's principal subjected the Student to harassment, because of his disability, by saying that the Student could not enter the School without "two people on him." The principal denied that he ever made this statement. The principal advised OCR that when the Student's bus arrived in the morning, an aide assigned to the playground typically brought the Student to the front of the School building, and then the Student's XXX XXXX walked with the Student to the classroom. The principal advised OCR that on October 15, 2015, the Student's XXX XXXX was not present when the aide attempted to bring the Student to the XXX XXXX; therefore, the principal offered to go and get the XXX XXXX, because the Student was comfortable walking with the XXX XXXX. The principal explained to OCR that he wanted to coordinate the Student's entry and make sure that the Student was "shadowed" by an adult staff member (not two adult staff members). OCR determined that the Student's IEP states that "the school initially allowed [the Student] to enter the classroom without an aide. After a trial of 3 weeks, and still significant problems in communication and socialization a shadow was provided."

The complainants did not provide any evidence or witnesses to support that the principal made the statement as alleged, or required that the Student be accompanied by two adults when entering the School building. OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that the complainants' assertion that the principal said that the Student could not enter the School without "two people on him," was supported by a preponderance of the evidence. Even taking as true that the principal made the statement as alleged, the statement, made on one occasion, was not sufficiently serious as to rise to the level of disability harassment.

¹ The bus duty room is a nearby room where students gather or are grouped together during transitional periods, such as for gathering their belongings before leaving school.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the principal of the School subjected the Student to harassment, because of his disability, by saying that the Student could not enter the School without "two people on him." Accordingly, OCR will take no further action with respect to Allegation 1(b).

With respect to Allegation 2, the complainants alleged that the District failed to respond appropriately to the HIB complaint that they filed with the District on October 15, 2015, alleging that the Student was subjected to harassment on the basis of his disability. OCR determined that on October 15, 2015, the complainants sent an electronic mail message to the School's designated HIB investigator alleging that the Student's classroom teacher had revealed the Student's disability to the class and that subsequently the Student had been teased in class and told he has cerebral palsy by certain students.

OCR determined that on October 16, 2015, the HIB investigator interviewed the Student and four other students in the Student's classroom. The HIB investigator advised OCR that the Student denied that any other students had teased him. In addition, the HIB investigator advised OCR that the four student witnesses also denied that any teasing had occurred in the classroom toward the Student or any other students. The HIB investigator also reviewed a statement prepared by the teacher, dated October 15, 2015, in which she denied revealing to the classroom that the Student had a disability. In an investigative report dated October 26, 2015, the HIB investigator concluded that there was no evidence that the Student had been subjected to disability harassment by the teacher or other students. By letter dated November 18, 2015, the District notified the complainants of the outcome of the investigation.

OCR determined that the District's policy 5131.1, related to the investigation of harassment, intimidation and bullying, provides that complaints of harassment, intimidation or bullying will be investigated thoroughly and responded to within ten school days. OCR determined that upon receiving the complaint, the HIB investigator interviewed relevant witnesses and completed her investigation within the timeframe specified by the District's policy. OCR determined that the District conducted a prompt and thorough investigation of the complaint, and notified the complainants in writing of the outcome of the investigation.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainants' allegation that the District failed to respond appropriately to the HIB complaint that they filed with the District on October 15, 2015, alleging that the Student was subjected to harassment because of his disability. Accordingly, OCR will take no further action with respect to Allegation 2.

With respect to Allegation 3, the complainants alleged that the District discriminated against students with disabilities at the School by designating certain classes as special education classes in the School's PTO Handbook. The complainants provided copies of the PTO Handbook's relevant pages, which included class rosters for the School. The complainants stated that although regular education classrooms are identified only by the name of the teacher, the School's self-contained classrooms for students with disabilities are identified by the name of the teacher as well as by an acronym that is related to the special education services that students in such classrooms receive.

The District did not dispute that the PTO Handbook's class rosters contained references to the acronyms used by the District for special education classes. OCR determined that the acronyms are as follows: the Ringwood Expanding Academic and Lifeskills Milestones (REALM), Early Ringwood Expanding Academic and Lifeskills Milestones (E-REALM), and Pre-school Instruction for the Exceptional (PIE). These programs are self-contained classrooms for students on the autism spectrum from Kindergarten through eighth grade (REALM), pre-school students on the autism spectrum (E-REALM), and pre-school students with disabilities who are not on the autism spectrum (PIE). The District advised OCR that the three self-contained classrooms are identified by acronyms in the rosters because the classes span multiple grade levels, and because the parents of students in these programs have requested that the information be shared in this manner so that they can connect with parents of their student's classmates in the self-contained setting.

The regulation implementing Section 504, at 34 C.F.R. § 104(b)(1)(iv), and the regulation implementing the ADA, at 28 C.F.R. 35.130(b)(iv), provide that a recipient, in providing any aid, benefit, or service, may not provide different or separate aids, benefits, or services to disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aids, benefits, or services that are as effective as those provided to others. OCR interprets the regulations implementing Section 504 and the ADA to provide that notations that are used to identify students as having a disability or identify education programs for students with disabilities, which may be shared with person(s) other than the student or the student's parents, unnecessarily treats these students differently on the basis of their disabilities. Identifying programs as being only for students with disabilities constitutes different treatment on the basis of disability; and such action is not necessary to provide qualified disabled students with aids, benefits, or services that are as effective as those provided to others.

OCR determined that while the acronyms used on the rosters, REALM, E-REALM, and PIE, do not specifically reveal the disability status of the children listed on each roster, it is reasonable to assume that any parent or third party using the PTO Handbook could determine the meaning of the acronyms. For instance, the District's website contains information about the REALM, E-REALM and PIE classes; including for example, that the REALM and E-REALM programs utilize Applied Behavior Analysis in addressing the individual and comprehensive needs of students who have been identified on the Autism Spectrum.²

Based on the foregoing, OCR determined that including such acronyms on the rosters contained in the PTO Handbook, which are shared with parents of students who do not have students in such classrooms, unnecessarily treats the disabled students in those classrooms differently on the basis of their disabilities; and such action is not necessary to provide qualified disabled students with aids, benefits, or services that are as effective as those provided to others. Accordingly, OCR determined that there was sufficient evidence to establish, by a preponderance of the evidence, that the District's additional reference to the acronyms on the rosters violates the regulations implementing Section 504 and the ADA, at 34 C.F.R. § 104(b)(1)(iv), and, 28 C.F.R. 35.130(b)(iv), respectively.

² <http://www.ringwoodschools.org/rsd/Special%20Services/REALM%20Program/>

On May 13, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. 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 complainants 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 complainants 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 questions about OCR's determination, please contact James Moser, Compliance Team Attorney, at (646) 428-3792 or james.moser@ed.gov; or Michele Ginter-Barbara, Compliance Team Investigator, at (646) 428-3816 or michele.ginter-barbara@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: XXXXXXX XXXXXXXXXXXX XXXX