

September 27, 2016

Greer Rychcik, Ed.D.
Superintendent of Schools
Hyde Park Central School District
P.O. Box 2033
Hyde Park, New York 12538

Re: Case No. 02-16-1273
Hyde Park Central School District

Dear Dr. Rychcik:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Hyde Park Central School District. The complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, by XXXX with the Student's teachers on XXXX, 2016, despite a provision in the Student's Section 504 plan providing for her communication with teachers (Allegation 1); and failing to re-evaluate him prior to imposing disciplinary sanctions that resulted in a significant change in the Student's placement during school year 2015-2016 (Allegation 2). The complainant also alleged that the District failed to respond appropriately to a complaint she made on or about XXXX, 2016 that students harassed the Student based on his race (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 is also 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. OCR is also 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 Department. 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, the ADA and Title VI.

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

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student, on the basis of his disability, by XXXXX with the Student's teachers on XXXX, 2016 despite a provision in the Student's Section 504 plan providing for her communication with teachers. Specifically, the complainant alleged that the Student's 504 Plan stipulated that she would have direct "open communication" with the Student's teachers about "anything and everything" pertaining him. The complainant alleged that despite this provision, the Assistant Superintendent for Pupil Services (the assistant superintendent) XXXXX by letter dated XXXX, 2016.

OCR determined that the Student was in the XXXX grade at the District's XXXX (the school) during school year 2015-2016. OCR determined that the Student's Section 504 plan for school year 2015-2016, dated XXXX, 2015 provided for a "communication log between parent/teachers" with the following description: "[p]arent will check student's planner for homework assignments. Parent has homework website and teachers' e-mails to check for homework and its completion." Section 504 team members informed OCR that the communication log contemplated in the Section 504 plan was the homework planner assigned to all middle school students to record assignments. They further stated that the communication log provision in the Student's Section 504 plan was not intended to require the Student's teachers to communicate directly with the complainant about anything and everything pertaining to the Student, and did not require the Student's teachers to respond to all electronic mail messages (emails) from the complainant.

OCR determined that by letter dated XXXX, 2016, the assistant superintendent informed the complainant that going forward, the school principal would serve as the complainant's "point person at the school XXXXX." The assistant superintendent informed OCR that she assigned the principal to serve as a point person XXXXX because staff members had raised concerns about the XXXXX of the complainant's communications with them;¹ and because the complainant often XXXXX, which resulted in confusion about who should respond. The assistant superintendent explained that she therefore assigned the principal to serve as a point person so that upon receipt of a communication from the complainant, the principal could direct the message to one staff member capable of providing a response. OCR determined that despite the XXXXX, 2016 directive, the complainant continued to communicate directly with the Student's teachers XXXXX regarding various matters, including homework. The principal stated that these communications were civil, so he allowed the complainant to communicate directly with the teachers, despite the XXXXX, 2016 directive. Additionally, when the

¹ For example, staff members stated that the complainant would often XXXXX when communicating with them XXXXX; and staff members informed the principal that they felt XXXXX by the complainant. The complainant denied that any of her interactions or correspondence with staff was XXXXX. The District did not maintain records regarding in person and verbal communications between staff members and the complainant. However, OCR reviewed email correspondence between the complainant and staff members, and determined that she often XXXXX and sometimes XXXXX in her email correspondence.

complainant emailed questions or concerns regarding homework to the principal, the principal forwarded the questions/concerns to the appropriate teacher and then copied the teacher's response into his response to the complainant.² On XXXXX, 2016 the District revised the Student's Section 504 plan to remove the communication log provision.³ OCR found no evidence that the District failed to respond promptly to any questions or concerns the complainant raised with District staff between XXXX and XXXX, 2016.

Based on the foregoing, OCR determined that the Student's Section 504 plan did not stipulate that the complainant would have direct "open communication" with the Student's teachers about "anything and everything" pertaining him, as alleged.⁴ Rather, the Section 504 plan provided that the complainant would check the Student's planner, and could check the District's website or email the Student's teachers, if she had questions about the Student's homework. OCR determined that the District's act of assigning the principal to serve as a "point person" XXXXX, did not foreclose the complainant from addressing concerns about the Student's homework with the Student's teachers via email. Additionally, OCR determined that the complainant continued to communicate directly with the Student's teachers by email following the XXXXX, 2016 directive. Therefore, OCR found insufficient evidence to substantiate that the District discriminated against the Student on the basis of his disability, by XXXXX with the Student's teachers on XXXX, 2016, despite a provision in the Section 504 plan providing for her communication with teachers. Accordingly, OCR will take no further action with respect to Allegation 1.

With respect to Allegation 2, the complainant alleged that the District discriminated against the Student on the basis of his disability, by failing to re-evaluate him prior to imposing disciplinary sanctions that resulted in a significant change in the Student's placement during school year 2015-2016. In support of her allegation, the complainant alleged that between XXXX and XXXX, 2016, the Student was suspended more than XX times; however, the District did not re-evaluate him or determine whether his misconduct was a manifestation of his disability until XXXX, 2016, after she requested that the District do so.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires a recipient to conduct an evaluation of any student who needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student or

² The complainant acknowledged that the principal responded to her questions/concerns about the Student's homework, but asserted that the responses were not sufficient because they were addressed to the Student's "family" rather than to her, personally; and did not always list all of the relevant homework assignments. However, OCR reviewed a sampling of the principal's responses and found that the principal responded adequately.

³ The Section 504 team added XXXXX to the Student's Section 504 plan instead. The XXXXX is a document created by the student XXXXX, and is XXXXX by the teachers. The complainant did not raise any concerns regarding communications with the Student's teachers pursuant to the XXXXX.

⁴ To the extent the complainant disagrees with the contents of the Student's Section 504 plan, or believes the plan should include a provision requiring certain communication with teachers, it is OCR's policy to refrain from assessing the appropriateness of decisions made by a group of knowledgeable persons convened for the purpose of evaluating a student and/or making determinations about a student's placement, including decisions regarding whether a student is eligible for certain placements and/or related aids and services. Any disagreement between the complainant and the group should be addressed through a due process hearing. A due process hearing officer is empowered to review the determinations made by the group of knowledgeable persons. The complainant may exercise her right to due process by contacting the District in writing.

any subsequent significant change in placement. OCR has previously determined that if the proposed exclusion of a disabled person is permanent (expulsion) or for an indefinite period, or for more than ten (10) consecutive school days, the exclusion constitutes a significant change in placement under the regulation implementing Section 504, at 34 C.F.R. § 104.35(a). If a series of suspensions that are each of ten (10) days or fewer in duration creates a pattern of exclusions that constitutes a significant change in placement, the requirements of 34 C.F.R. § 104.35(a) would also apply. In order to implement an exclusion that constitutes a significant change in placement, a recipient must first conduct a reevaluation of the student, in accordance with 34 C.F.R. § 104.35. As a first step in this reevaluation, the recipient must determine, using appropriate evaluation procedures that conform to the regulation implementing Section 504, whether the misconduct is caused by the student's disability. If it is determined that the disabled student's misconduct is caused by the student's disability, the recipient must determine whether the student's current educational placement is appropriate. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situated non-disabled students are excluded.

OCR determined that during school year 2015-2016, the Student was issued the following suspensions: (1) a X day ISS on XXXX, 2015; (2) a X day ISS on XXXX, 2015; (3) a X day ISS on XXXX, 2016; (4) a X day out-of-school suspension (OSS) on XXXX, 2016; (5) a X day OSS on XXXX, 2016; (6) a X day ISS on XXXX, 2016; (7) a X day ISS on XXXX, 2016; (8) a X day ISS on XXXX, 2016; (9) a X day OSS on XXXX, 2016; (10) a X day ISS on XXXX, 2016; (11) a X day ISS on XXXX, 2016; (12) a X day OSS on XXXX, 2016; (13) a X day ISS on XXXX, 2016; (14) a X day OSS on XXXX, 2016; (15) a X day ISS on XXXX, 2016; (16) a X day OSS on XXXX, 2016; (17) a X day ISS on XXXX, 2016; and (18) a X day ISS on XXXX, 2016. Accordingly, between XXXX, 2015 and XXXX, 2016, the Student was subjected to XX days of ISS and XX days of OSS. The District informed OCR that during each ISS, the Student completed classwork in a separate ISS room staffed by a teacher and teaching assistant; the Student was not provided with any direct instruction as he would have been had he been in his regular classroom. As such, OCR determined that the Student was not provided with comparable academic instructional services while on ISS.

Based on the proximity of the suspensions to one another and the total amount of time the Student was excluded from school, OCR determined that as of XXXX, 2016, the Student was subjected to a series of suspensions that created a pattern of exclusions that constituted a significant change in placement. However, the District did not re-evaluate the Student in accordance with 34 C.F.R. § 104.35 prior to imposing the XXXX, 2016 suspension.⁵ On September 26, 2016, the District agreed to implement the enclosed resolution agreement to address this compliance concern. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 3, the complainant alleged that the District failed to respond appropriately to a complaint she made on or about XXXX, 2016, that students harassed the Student based on his race. Specifically, the complainant alleged that by email dated XXXX, 2016, she informed the principal that the Student was being subjected to racial harassment. The

⁵ The District conducted such re-evaluation on XXXX, 2016, at which time the District determined that the Student's misconduct was not a manifestation of his disability.

complainant alleged that in support of this assertion, she told District staff members that students called the Student a “XXXXX” and made other racial slurs; and the Student alleged that he reported that students called him a “XXXXX.” The complainant alleged that the District did not respond to the reports.⁶

Racial harassment is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party; as well as conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently serious so as 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 and that the recipient had actual or constructive notice of the harassment, 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 by email to the principal, dated XXXXX, 2016, the complainant wrote that the Student “is being XXXXX and nothing is being done for that. . . .I am requesting that my son get home schooled the rest of this year. . . .” The principal forwarded the complainant’s email to the assistant superintendent and the assistant principal. The principal, assistant superintendent and assistant principal all informed OCR that they did not interpret the complainant’s comment that the Student was “being XXXXX” to be a complaint that students were racially harassing the Student, because the complainant had a pattern of making vague and general accusations of racism and general harassment that were unsubstantiated;⁷ and here the complainant did not provide any specific information regarding her general assertion or any information indicating that she was referring to a particular incident of alleged racial harassment.⁸ District staff denied

⁶ The Student informed OCR that the principal and assistant principal “might have” spoken to him about his report, but he could not be sure because “it was so long ago.”

⁷ OCR reviewed correspondence from the complainant to District staff and confirmed that on several occasions the complainant accused staff members of hating or generally harassing the Student. Additionally, District staff reported that the complainant would complain that staff members were racist if she disagreed with an action taken by staff regarding the Student. For example, staff reported that after District staff directed a school resource officer, who was of XXXXX decent, to escort the Student to the main office after he was involved in a physical altercation, the complainant accused staff of being racist; on another occasion when a teacher refused to accept a late assignment, the complainant accused the teacher of being racist; and on another occasion, when staff refused to rescind discipline that had been imposed on the Student, the complainant generally accused staff of being racist. The principal informed OCR that he spoke to the Student about the complainant’s accusations on several occasions during school year 2015-2016, and the Student often apologized for the complainant’s behavior, said she was “blowing it out of proportion,” and never provided any information indicating that he was or believed he was subjected to racial harassment.

⁸ The District noted that in contrast, the complainant provided specific information regarding a prior complaint of harassment of the Student she made to District staff. Specifically, by email dated XXXX, XXXX, the complainant reported to the principal and assistant principal that another student [Student 1] “is starting with [the Student] in school. . . .right before 8th period. . . .I am informed to contact the local police and press charges for harassment. . . .I wrote this email so you can address [Student 1] being now [Student 1’s] bullying him AGAIN! While he was talking to one of his friends, [Student 1] said, ‘shut up XXXX’ (emphasis in the original). The complainant did not allege that Student 1 harassed the Student based on the Student’s race. The assistant principal investigated the complaint by interviewing the Student and Student 1 separately. The Student told the assistant principal that no one else heard the comment and that he did not feel offended or harassed by the comment. Student 1 denied making the comment.

that the Student, complainant or anyone else reported that students called the Student a “XXXX” or “XXXX,” or made other racial slurs towards the Student. District staff also denied that they were aware of any information indicating that students harassed the Student on the basis of his race during school year 2015-2016, or that the complainant or the Student believed any such racial harassment by any other student occurred.⁹ Therefore, the principal responded to the complainant’s inquiry about home schooling in her email of XXXX, 2016, but did not address the complainant’s statement that the Student was “being racially abused by words.” Neither the complainant nor the Student provided any information or evidence to OCR to substantiate that any student made any racial slurs toward the Student, including the identities of the students who allegedly made the comments, the names of any witnesses to the alleged comments, the dates such comments were allegedly made, or any detail regarding the circumstances under which the alleged comments were made.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of evidence supports the allegation. Here, OCR did not find that the complainant’s assertion that she or the Student complained to District staff that students called the Student a “XXXX” and a “XXXX,” or made other racial slurs, was supported by a preponderance of the evidence. However, OCR determined that the complainant did assert in her email of XXXX, 2016 that the Student was “being XXXXX,” and the District did not respond to this assertion. OCR therefore analyzed whether there was sufficient evidence to substantiate that the alleged harassing conduct occurred; namely, that other students called the Student a “XXXX” and a “XXXX,” and made other racial slurs towards the Student. As set forth above, the complainant and the Student provided no specific information to OCR to substantiate that the alleged harassment occurred, and OCR found no evidence that any students harassed the Student based on his race during school year 2015-2016. As further set forth above, the assistant principal informed OCR that he spoke to the Student almost every day and the Student never reported that other students were using racial slurs or gave any indication that he was otherwise being subjected to racial harassment. Therefore, OCR determined that there was insufficient evidence to substantiate that the District failed to respond appropriately to the existence of a racially hostile environment for the Student. Accordingly, OCR will take no further action with respect to Allegation 3.

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 have the right to file a private suit in federal court whether or not OCR finds a violation.

The assistant principal nevertheless instructed Student 1 to stay away from the Student to avoid any further incidents.

⁹ The assistant principal informed OCR that he had a good relationship with the Student and spoke to him almost every school day, and that the Student never said anything to him to indicate that other students were racially harassing the Student.

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, OCR 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 regarding OCR's determinations, please contact Eboné Woods, Compliance Team Attorney, at (646) 428-3898 or Ebone.Woods@ed.gov; or Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or Lisa.Khandhar@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX