



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
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DIRECTOR
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September 28, 2012

Dr. Gloria C. Scott
Superintendent
East Orange School District
715 Park Avenue
East Orange, New Jersey 07017-1004

Re: Case No. 02-11-5002
East Orange School District

Dear Superintendent Scott:

This is to advise you of the resolution of the above-reference compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR) on February 28, 2011. The compliance review assessed whether the East Orange School District (the District) discriminated against qualified students with disabilities by failing to place them in the regular educational environment unless it was demonstrated that the education of the student in the regular environment, even with the use of supplementary aids and services, could not be achieved satisfactorily.

OCR initiated this compliance review under 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 Department; and 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, which prohibit discrimination on the basis of disability by public elementary and secondary school systems. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR had jurisdictional authority to conduct this compliance review under Section 504 and the ADA.

The applicable standards for determining compliance with Section 504 are set forth in the regulation at 34 C.F.R. §§ 104.33, 104.34, 104.35, and 104.36.¹ Section 104.33 provides, in pertinent part, that a recipient is responsible for providing a free and appropriate public education to qualified students with disabilities. Further, the regulation at 34 C.F.R. § 104.35 (a)–(c) sets forth specific procedures designed to ensure appropriate evaluation/classification and placement. Section 104.34 prescribes standards for educating disabled students with non-disabled students to the maximum extent appropriate to the needs of the disabled students. Specifically, the regulation at § 104.34 states that a recipient must place disabled persons in the regular educational environment unless the recipient can demonstrate that the education of the disabled person in the regular environment cannot be achieved satisfactorily even with the use of supplementary aids and services. Examples of supplementary aids and services include modifications to the regular class curriculum; assistance of an itinerant teacher with special education training; special education training for the regular teacher; use of computer-assisted devices; provision of notetakers; and use of a resource room.

In its investigation, OCR reviewed District policies and procedures and other relevant data for school years 2009-2010 and 2010-2011. OCR also interviewed administrators, as well as state education department officials. In addition, OCR reviewed files and conducted an analysis of classification and placement data collected from students' special education records.

OCR reviewed the District's policies with regard to the identification, evaluation, and placement of disabled students for special education services; and determined that as written, these comply with the regulation implementing Section 504.² OCR determined that the District provides intervention and referral services (I&RS) to aid pupils in the general education program. These I&RS services may include providing support and guidance to the student's teachers, planning and providing appropriate interventions, coordinating access to and delivery of school services, and coordinating the services of community members and/or community-based social and health provider agencies. Referrals for special education services may be initiated by a parent or the school. The District's policies provide for building-level Case Study Teams that evaluate whether a student, because of disability, needs special education or related aids and services and recommend the student's placement in a special education program. The District offers a continuum of special education placements ranging from inclusion, complementary support model/in-class support, to self-contained programs. The District's policies state the District will ensure that to the maximum extent possible, students with disabilities are educated in the least restrictive environment in accordance with state regulations. OCR determined that the District's policies provide that disabled students will have an equal opportunity to participate in non-academic and extracurricular services and activities with non-disabled students. OCR also determined that the District affords parents with appropriate notice regarding procedural safeguards as to placement decisions.

The District is a K-12 district with twenty school sites –two early childhood education centers, twelve elementary schools, three middle schools, one middle/high school and two high schools. When OCR initiated the compliance review, the District enrolled approximately 9,939 students;

¹ The applicable Title II regulatory provision is set forth at 28 C.F.R. § 35.130.

² These policies and procedures reference the New Jersey State Regulations governing referral, evaluation, individualized education program (IEP) development, placement and review of students in special education.

9,503 (95%) black, 428 (4%) Hispanic, and a total of 8 (<1%) students who were white, Asian or Native American.

During school year 2009-2010, approximately 9,449 students were enrolled in the District; 14.8% (1,395) of whom received special education and related aids and services. OCR determined that during school year 2009-2010, the District placed 873 (63%) of the 1395 disabled students in self-contained settings. OCR determined that 246 (50%) of the 495 Learning Disabled (LD) students were placed in self-contained settings. Representatives from the New Jersey Department of Education (NJDOE) informed OCR that pursuant to the Individuals with Disabilities Act (IDEA) State Performance Plan Indicators, the District did not meet state targets for “School Age LRE” performance indicators for school year 2009-2010; specifically, NJDOE expected to see at least 43.5% of disabled students spending 80% or more of their time in a regular educational classroom, but only 30.4% of the District’s disabled students spent 80% or more of their time in a regular educational classroom.

During school year 2010-2011, approximately 9,430 students were enrolled in the District; 15.6% (1462) of whom received special education and related aids and services. OCR determined that during school year 2010-2011, the District placed 937 (64%) of the 1462 students with disabilities in self-contained settings. OCR determined that 279 (52%) of the 535 LD students were placed in self-contained settings. Representatives from the NJDOE informed OCR that pursuant to the IDEA State Performance Plan Indicators, the District did not meet state targets for “School Age LRE” performance indicators for school year 2010-2011; specifically, NJDOE expected to see at least 44% of disabled students spending 80% or more of their time in a regular educational classroom, but only 31.3% of the District’s disabled students spent 80% or more of their time in a regular educational classroom.

Using special education rosters for school year 2010-2011, OCR selected a random sampling (74 students or 27% of the 279 LD students in self-contained settings) of the LD students from the entire District who were placed in self-contained settings during school year 2010-2011. OCR reviewed the entire special education history of each of these students in order to determine the student’s initial placements after having been referred for special education services, and whether documentation supported that a group of knowledgeable persons had demonstrated that the education of the student in the regular educational environment with the use of supplementary aids and services could not be achieved satisfactorily.

Of the 74 students in the sample, OCR determined that 17 had transferred into the District already having been classified as LD and placed in self-contained settings by the sending school Districts.³ Of the remaining 57, OCR determined that the District placed 40 (70%) of the 57 students in a self-contained setting as their initial placement after having been classified as LD.

Based on OCR’s review of students’ special education records, OCR determined that the Child Study Teams were properly convened, parents/guardians were involved in and provided input during the IEP process, and that the group of knowledgeable persons considered relevant data as well as outside input when making placement decisions. However, OCR determined that the

³ OCR determined that the District’s Child Study Team concluded that all 17 of these students should remain in self-contained settings.

documentation frequently did not support that the group of knowledgeable persons had demonstrated that the education of the student in the regular educational environment with the use of supplementary aids and services could not be achieved satisfactorily. Specifically, OCR determined that although the IEPs indicated which options were considered and rejected, the District did not demonstrate that the regular education option was rejected because the student could not satisfactorily be educated in the regular educational environment with the use of supplementary aids and services. Many of these IEPs indicated that the student was achieving consistent with or just below grade level in some or most subject areas, but the IEPs did not demonstrate that any specific supplementary aids or services were considered or attempted to determine whether the student could be educated in the regular educational environment. Many decisions on educational setting were based on statements made by teachers, or references to educational testing with no specifics indicating how the testing demonstrated that supplementary aids and services would not allow the student to be satisfactorily educated in the regular educational environment. Some specific examples are provided below:

- The IEP of a fourth grade student stated that placement in the self-contained setting was based on a report from her teacher that the student was performing below grade level; although no grades or testing were reported in the IEP. The IEP stated that curriculum modifications and accommodations were considered, but deemed insufficient to meet the student's needs; the IEP did not provide any reasons for this conclusion and did not demonstrate that any other supplementary aids or services were considered or attempted to determine whether the student could be educated in the regular educational environment.
- The IEP of a first grade student indicated that her placement in the self-contained setting was because her academic skills were "low"; although no test scores were discussed in her IEP. The IEP indicated that the team rejected attempting supplementary aids and services because the student did not have a good knowledge of the alphabet, colors, or numbers. The IEP did not demonstrate that any other supplementary aids or services were considered or attempted to determine whether the student could be educated in the regular educational environment.
- The IEP of a first grade student, who was repeating first grade, indicated his achievement level was in an average range, and that he had difficulty with his reading and writing, and had a short attention span. The IEP stated only that it "appeared" that the student might need a different educational setting because the regular educational setting was "not meeting his needs." The IEP did not demonstrate that any supplementary aids or services were considered or attempted to determine whether the student could be educated in the regular educational environment.
- The IEP of a third grade student, who was repeating third grade, indicated that the student was achieving at the third, fourth and fifth grade level in some subjects, and on the second grade level in others. His IEP indicated that the team considered providing supplemental instruction in math and language, but rejected it because they believed he needed more individualized instruction; although nothing was cited to indicate that the school could not provide individualized instruction in the regular classroom.

OCR reviewed an additional 181 IEPs for students classified as LD, Emotionally Disturbed (ED), Mentally Disabled (MD) and Other Health Impaired (OHI), who were in self-contained settings for school years 2009-2010 and 2010-2011. OCR noted a similar pattern in many of these IEPs; as many IEPs did not demonstrate that the regular education option was rejected because the student could not satisfactorily be educated in the regular educational environment with the use of supplementary aids and services.

Based on the above, OCR's investigation did not reveal information to support that the District's practices were consistent with the regulation implementing Section 504 at 34 C.F.R. § 104.34. Specifically, OCR's file review did not support that the District was consistently placing disabled students in the regular educational environment unless the District could demonstrate that the education of the disabled student in the regular environment could not be achieved satisfactorily even with the use of supplementary aids and services.

Prior to the conclusion of OCR's investigation, the District expressed a willingness to resolve the review utilizing OCR's voluntary resolution process under Section 302 of the Case Processing Manual. On September 27, 2012, the District agreed to implement the enclosed resolution agreement to resolve the issues raised by the compliance review. OCR will monitor the implementation of the resolution agreement.

The resolution agreement requires the District to revise practices and procedures to ensure that a group of knowledgeable persons places disabled students in the regular educational environment, *unless* the group demonstrates, in writing, that education of the disabled student in the regular educational environment cannot be achieved satisfactorily even with the use of supplementary aids and services. The agreement also requires the District to train staff regarding its revised practices and procedures. Further the agreement requires the District to review the placement of all disabled students in self-contained settings, to ensure that these students are in the appropriate educational setting; and utilize its revised practices and procedures for making determinations regarding placement in a self-contained setting. Additionally, the agreement requires the District to ensure that in the future all students initially determined to be in need of special education and/or related aids and services are placed in the regular educational environment unless the district demonstrates, in writing, that education of the disabled student in the regular educational environment cannot be achieved satisfactorily even with the use of supplementary aids and services; OCR will monitor the District for three years to ensure that this occurs. The District has also agreed to ensure that parents/guardians are advised of their right to request a due process hearing if they disagree with a student's placement.

This letter sets forth OCR's determination in an individual OCR compliance review. 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.

It is unlawful to harass or intimidate an individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter 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 constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Jocelyn Frank, Compliance Team Attorney, at (646) 428-3796 or jocelyn.frank@ed.gov; Jeanette Bustos, Compliance Team Attorney, at (646) 428-3777 or jeanette.bustos@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or Nadja.r.allen.gill@ed.gov.

Very truly yours,

/s/

Timothy C. J. Blanchard

Encl.