



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

May 13, 2020

Dr. Peter Cummings  
Superintendent  
By email: [pcummings@nssk12.org](mailto:pcummings@nssk12.org)

Re: Complaint No. 01-20-1118  
Narragansett School System

Dear Dr. Cummings:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Narragansett School System (the District). The Complainant alleged that the District discriminated against her daughter (the Student) on the basis of disability. Specifically, the complaint alleges that during the 2019-2020 school year, the District failed to implement provisions of the Student's Individualized Education Program (IEP) requiring her to receive weekly instruction around self-regulation and self-advocacy strategies and preferential seating in math class. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. Because the District receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

#### Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the Complainant and the District and interviewed the Complainant.

The evidence obtained by OCR to date shows that the Student is currently in her XX year at the District's XX school. During the 2019-2020 academic year, the Student had three IEPs. The first IEP was effective from XX, 2019 through XX, 2019 (First IEP), when it was replaced by an updated IEP (Second IEP). On XX, 2020, after OCR issued its notification letter for Complaint 01-20-1118, the Student's IEP team met again and replaced the Second IEP with a third IEP that

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

is set to be effective through XX, 2020 (Third IEP). All three IEPs provided for the two supports or services at issue in this complaint: preferential seating and instruction around self-regulation and self-advocacy.

### *Preferential Seating in Math Class*

During the first semester of the 2019-2020 academic year, the Student was enrolled in a math class taught by the Student's math teacher (Math Teacher). According to the Complainant, the Student was not provided with preferential seating in this classroom and she struggled academically in the class before eventually switching to XX math class. The Complainant reports that she was told that the highest grade the Student is now eligible to receive in the online math class is a XX%, regardless of whether the Student performs at a higher level.

Both the Student's First and Second IEPs for the 2019-2020 academic year provided for preferential seating for the Student in all her classes.<sup>1</sup> Specifically, the First and Second IEPs list as "supplementary aids and services/program modifications/supports for school personnel" the following: "Preferential seating as determined by teacher and in conference with [the Student]." The First and Second IEPs further state that preferential seating is for "all classes as arranged by [the Student] and teacher."

The District reports that the Math Teacher's practice is not to use seating charts in class but instead to allow students to self-select their seats for each class. The District further informed OCR that the Math Teacher was aware of the Student's IEP provision regarding preferential seating and allowed the Student to self-select her seat throughout the time she was in his class. According to the District, the Student never indicated that she had any concerns with her seating in the classroom.

### *Self-Regulation and Self-Advocacy Instruction*

The Student's three IEPs for the 2019-2020 academic year provide for direct instruction around self-regulation and self-advocacy strategies to be provided by a social worker for 30 minutes once a week. This instruction was provided by a District social worker (Social Worker) until she went out on planned leave in December 2019.<sup>2</sup> Separately, all three IEPs state that the Student "will check in with the student assistance counselor while the social worker is out on leave. Weekly check ins to support self advocacy and social emotional learning." The frequency for this service changed from the First IEP to the Second IEP. From XX, 2019 to XX, 2019, the frequency was listed as "weekly," after which the frequency changed to "as scheduled by student assistance counselor."

The parties agree that the Student did not receive any self-regulation or self-advocacy instruction from a licensed social worker while the Social Worker was out on leave. Instead, the District informed the Complainant that the Student could have voluntary meetings with a District student

---

<sup>1</sup> The Third IEP also provides for preferential seating but was not in place during the first semester of the 2019-2020 academic year.

<sup>2</sup> The District reports that the Social Worker returned to work on XX, 2020.

assistance counselor (Student Assistance Counselor). According to the District, the Student met with the Student Assistance Counselor four times between XX, 2019 through XX, 2020.<sup>3</sup>

On XX, 2020, after OCR notified the District that it was opening Complaint 01-20-1118 for investigation, the District held another IEP meeting for the Student. The meeting minutes reflect that during the meeting, the IEP Team discussed the fact that the Student did not receive services from a licensed social worker while the Social Worker was out on leave and discussed providing compensatory services to the Student to make up for services the Student did not receive during that time. Also on XX, 2020, the District notified the Student that the District would provide the Student with 10 thirty minute sessions with the Social Worker between XX, 2020 and the end of the school year in addition to the services already provided in the Student's Third IEP.<sup>4</sup> As of XX, 2020, the District reported that the Student received one thirty minute compensatory session with the Social Worker, in addition to 15 minutes of a second thirty minute compensatory session with the Social Worker, and that because the State of Rhode Island's schools were put on an emergency vacation by the Governor, the remaining sessions would be provided through either video or telephone.

### Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. An appropriate education is regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that are developed in compliance with Section 504's procedural requirements. Implementation of an Individualized Education Program (IEP) developed in accordance with the Individuals with Disabilities Education Act is one means of meeting this standard. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

### Analysis and Conclusion

Based on the information reviewed to date, OCR is unable to determine whether the District met its obligation to provide the Student with a FAPE. Specifically, OCR has not reached a determination as to whether the District failed to implement the Student's IEPs by failing to provide the Student with preferential seating in math class and/or by failing to provide the Student with direct instruction around self-regulation and self-advocacy strategies to be provided

---

<sup>3</sup> The District reports that the Student and the Student Assistance Counselor met on XX and XX, 2019, XX, 2020 and XX, 2020. As of XX, 2020, the date upon which the District submitted its data response to OCR, another meeting was scheduled for XX, 2020, with the anticipated return date for the Social Worker being XX, 2020. In addition to these formal meetings, the District reports that the Student Assistance Counselor and the Student had brief check-ins that occurred informally during the school day. The District further reports that the Student and the Student Assistance Counselor were scheduled to meet on XX, 2019, XX, XX, XX, and XX, 2020, but that the meeting did not occur on XX, 2019 because of snow, and the other meetings did not occur because of the Student's absences.

<sup>4</sup> These compensatory services are not explicitly included in the Third IEP nor do the XX, 2020 meeting minutes specify the amount of compensatory services to be provided.

by a social worker for 30 minutes a week. Nor has OCR reached a conclusion as to whether failing to implement either provision of the Student’s IEPs constituted a denial of FAPE.

With regard to preferential seating in math class, OCR has not yet interviewed the Math Teacher or the Student regarding the Student’s seating in math class, nor has OCR interviewed the Student’s IEP team to better understand what was intended by “preferential seating.” However, OCR does note that the term “preferential seating” is ambiguous and that disagreements about what constitutes preferential seating could be avoided by specifying what type of seating would satisfy the Student’s needs.

Likewise, OCR has not conducted any interviews regarding self-regulation or self-advocacy instruction provided to the Student, nor has OCR conducted interviews regarding the Student’s check-ins with the Student Assistance Counselor. However, OCR is concerned that the Student did not receive services from a social worker while the Social Worker was out on leave and is also concerned that the Student had only four check-ins with the Student Assistance Counselor between XX, 2019 and XX, 2020. OCR recognizes that since the initiation of OCR’s investigation the District has taken steps to ensure the Student receives appropriate services. Specifically, on XX, 2020, the District held an IEP meeting with the Student and discussed compensatory services with the Student in light of the lack of services provided while the Social Worker was out on leave and that on the same day the District informed the Student that she will be provided with 10 thirty minute sessions with the Social Worker between XX, 2020, and the end of the school year in addition to the services already provided in the Student’s Third IEP. However, the meeting minutes from the XX, 2020 IEP meeting do not make clear whether the IEP team determined the amount of compensatory services to be provided and the IEP does not specifically reference these compensatory services.

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the District’s implementation of the Agreement.

This concludes OCR’s 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 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

Adrienne M. Mundy-Shepard  
Chief Attorney

Enclosure

cc: David Kane, Esq.  
david.kane@sargentcenter.org