



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

January 14, 2014

Dr. David J. Glover
Superintendent
Morristown Central School District
408 Gouverneur Street
P.O. Box 217
Morristown, New York 13664

Re: Case No. 02-13-1286
Morristown Central School District

Dear Dr. Glover:

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 Morristown Central School District. Specifically, the complainant alleged that the District discriminated against her son (the Student), on the basis of his disabilities, by failing to provide the Student with home instruction (Allegation 1), counseling (Allegation 2), and class notes (Allegation 3), from April 29 to June 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 or activities receiving financial assistance from the U.S. Department of Education (the Department). In addition, OCR 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 educational institution. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

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

OCR determined that the Student was in the tenth grade at Board of Cooperative Educational Services (BOCES) Heuvelton High School during school year 2012-2013. The Student was classified as eligible for special education and related services under the eligibility category of “emotional disturbance.”

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student, on the basis of his disabilities, by failing to provide the Student with home instruction from April 29 to June 12, 2013. OCR determined that the Student’s Individualized Education Program (IEP), dated March 4, 2013, did not require home instruction.

OCR determined that the Student had approximately 90 unexcused absences between the beginning of the school year and the end of April 2013. OCR determined that on or about April 29, 2013, the complainant submitted a note from the Student’s doctor recommending “tutoring in the community” for the Student for the remainder of the school year. OCR determined that in response, the District commenced the process of securing someone to provide instruction to the Student at home or somewhere near the Student’s home. OCR determined that the Student ceased attending BOCES in order to receive his educational services in the alternate setting; however, OCR determined that the District did not reconvene the Committee on Special Education (CSE) to change the student’s placement from BOCES. The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires a recipient to conduct an evaluation before making any significant change in a disabled student’s placement. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.35(c), mandates that placement decisions be made by a group of persons knowledgeable about the disabled student, the meaning of evaluation data, and placement options; such as the CSE.

Based on a review of the District’s logs, OCR determined that the Student was provided with approximately 24 hours of educational instruction and services between April 29 and June 12, 2013. The District informed OCR that New York State Law requires that secondary students who are of compulsory school age are entitled to at least 10 hours of instruction weekly, with the tutoring happening two (2) hours daily, when possible. Accordingly, OCR determined that the Student should have received at least 75 hours of instruction between April 29 and June 12, 2013. The District stated that it worked to provide educational instruction and services to the Student to the best of its ability given staffing, teacher schedules, and the ability of the student to meet with service providers.

With respect to Allegation 2, the complainant alleged that the District discriminated against the Student, on the basis of his disabilities, by failing to provide the Student with counseling as a related service between April 29 and June 12, 2013. OCR determined that the Student's IEP required 30 minutes of counseling, twice per week. The District acknowledged that the Student did not receive counseling services between April 29 and June 12, 2013. The District informed OCR that the CSE Chairperson, who was new to the District, had mistakenly missed the requirement to continue providing the Student with counseling services once he was placed on home instruction. The District further asserted that the counseling component of the Student's IEP was "barely used, if at all, in his education placement during [school year 2012-2013] due to [the Student's] high absenteeism," and that this contributed to the oversight.

With respect to Allegation 3, the complainant alleged that the District discriminated against the Student, on the basis of his disabilities, by failing to provide the Student with class notes as a related aid, between April 29 and June 12, 2013. OCR determined that the Student's IEP required the provision of class notes to the Student. The District informed OCR that the requirement to provide class notes in the Student's IEP was dependent upon the type of instruction for each class. Due to the Student's excessive absences throughout the school year, his home instruction was focused on basic content and was individualized to the Student, as opposed to a classroom setting where class notes would be more common and appropriate. Therefore, the District did not believe that the requirement to provide class notes was applicable for the Student in a home instruction context; however, OCR determined that the CSE did not convene for the purposes of determining the appropriate related aids and services for the Student once his placement was changed.

The regulation implementing Section 504, at 34 C. F. R. § 104.33, requires a recipient to provide a free, appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction. The provision of a FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met. The regulation states that implementation of an IEP is one means of meeting this requirement.

OCR determined that the CSE did not consider and/or determine whether compensatory or remedial services were necessary for the Student due to the District's failure to provide the appropriate amount of educational instruction and the above related aids and services to the Student from April 29 to June 12, 2013.

On January 10, 2014, the District voluntarily entered into the attached resolution agreement in order to resolve this complaint, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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 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 Richard Anderson, Compliance Team Investigator, at (646) 428-3781 or richard.anderson@ed.gov; or Ryan Milligan, Compliance Team Attorney, at (617) 289-0189 or ryan.milligan@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.