



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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February 3, 2014

Bernard P. Pierorazio
Superintendent
Yonkers Public Schools
One Larkin Center
Yonkers, New York 10701

Re: Case No. 02-13-1318
Yonkers Public Schools

Dear Superintendent Pierorazio:

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 Yonkers Public Schools (the District). The complainant alleged that throughout school year 2012-2013, the District discriminated against students with disabilities attending xxxxx xxxxx xxxxxxxxxxxx xxxxxx (the School) by failing to provide them with speech therapy on dates when statewide testing was being administered.

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). OCR is also 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 education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR reviewed documentation that the complainant submitted. In addition, OCR considered information that the complainant and the District provided during OCR's investigation of the complainant's previous complaint filed with OCR; Case Number 02-13-1124. OCR made the following determinations.

The complainant alleged that throughout school year 2012-2013, the District discriminated against students with disabilities attending the School by failing to provide them with speech therapy on dates when statewide testing was being administered. Specifically, the complainant alleged that on February 12, 14, and 26, 2013; and April 23, 24, 25, and 26, 2013, the School's two speech therapists were directed to assist with the administration of

statewide testing, and were therefore unavailable to provide speech therapy services required by Section 504 plans or individual education programs (IEPs) to multiple disabled students at the School.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education (FAPE) to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation, at 34 C.F.R. § 104.33(b)(1)(i) and 34 C.F.R. § 104.33(b)(2), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. Implementation of a Section 504 plan or an IEP is one method of meeting this requirement.

OCR determined that during school year 2012-2013, xxx speech therapists were assigned to provide speech therapy services to students at the School. OCR determined that for school year 2012-2013, each speech therapist was assigned a caseload of students that included regular education students, as well as students who attended the School's program for autistic students. The School's Principal acknowledged that the School's practice was to have speech therapists assist with the proctoring of statewide testing on multiple dates throughout school year 2012-2013. xxxx speech therapists acknowledged that multiple students did not receive mandated speech therapy services as a result of their proctoring the statewide testing; and, those students were not provided with any make-up services.

During the course of OCR's investigation, the District's attorney informed OCR that the District wished to resolve the allegation without further investigation, in accordance with Section 302 of OCR's Case Processing Manual. OCR will monitor the implementation of the enclosed resolution agreement, which the District signed in order to resolve the complainant's allegation. 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.

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 Ronald L. Scott, Compliance Team Attorney, at (646) 428-3820 or ronald.scott@ed.gov; Tracey R. Beers, Senior Compliance Team Attorney, at (646) 428-3804 or tracey.beers@ed.gov; or Felice Bowen, Compliance Team Leader at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

cc: xxx xxxxxxxxx xxx