



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

32 OLD SLIP, 26th FLOOR  
NEW YORK, NY 10005-2500

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October 31, 2014

Dr. Leonard Fitts  
Interim Superintendent  
Pleasantville School District  
Administration Building  
801 Mill Road  
Pleasantville, New Jersey 08232

Re: Case No. 02-14-1329  
Pleasantville School District

Dear Dr. Fitts:

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 Pleasantville School District. The complainant alleged that the District discriminated against his son (the Student), on the basis of his disability, by failing to supervise the Student in accordance with his individualized education program (IEP), on or about XXXXXXXXXXXX.

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 (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. 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.

The regulation implementing Section 504, at 34 C.F.R § 104.33(a), requires that a recipient that operates a public elementary or secondary education program or activity 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), 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 nondisabled persons are met. The implementation of an IEP is one means of meeting this standard.

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

The complainant alleged that the Student's aide failed to supervise the Student in accordance with his IEP, on XXXXXXXXXX. The complainant alleged that on XXXXXXXXXX, when the Student's mother went to the XXXXXXXXXXXX School (the School) to pick up the Student, another parent informed her that she had observed the Student by himself, wandering in the School yard. The parent stated that the Student had been there for approximately two to three minutes before the Student's mother's arrival.

The District classified the Student as XXXXXXXXXX, and the Student's IEP for the period from XXXXXXXXXX to XXXXXXXXXX, required the District to provide the Student with the services of a one-to-one aide, on a daily basis, for a six-hour school day.

On XXXXXXXXXX, the complainant complained to the School's XXXXXXXXXX that on the prior day, at the Student's dismissal time, the Student's aide (Aide 1), who was responsible for escorting the Student throughout the school day, failed to deliver him to his mother in the School yard. The complainant stated that she found the Student wandering around in the School yard, and Aide 1's conduct during the incident constituted, "child abandonment." The XXXXXXXXXX initiated an investigation on or about XXXXXXXXXX; and immediately assigned the Student a different aide (Aide 2) who had previous experience working with the Student.

During her investigation, the XXXXXXXXXX interviewed Aide 1 and examined a surveillance video. The District informed OCR that Aide 1 denied that she left the Student unattended, stating instead that at dismissal time, the Student saw his mother and ran ahead towards her. According to District staff, Aide 1 stated that once she saw the Student with his mother, she attempted to wave at the Student's mother, but the mother and the Student were out of the gate in the School yard before Aide 1 could reach them, and therefore, they did not see Aide 1 waving. The complainant denied that the Aide 1 ever saw the Student's mother or attempted to signal to her before the Student and his mother left the School premises.

On XXXXXXXXXX, the XXXXXXXXXX concluded her investigation, determining that Aide 1 had left the Student unattended for approximately five minutes on XXXXXXXXXX. The District informed OCR that the XXXXXXXXXX investigation revealed that at dismissal time, Aide 1 could not locate the Student for approximately five minutes, and rather than enlist the assistance of security or any other District staff, Aide 1 attempted to locate the Student on her own. The XXXXXXXXXX summarized the incident in a letter, dated XXXXXXXXXX, which she placed in Aide 1's XXXXXXXXXX XXXX. In the letter, the XXXXXXXXXX stated that Aide 1 had exhibited poor judgment when she failed to "know where the Student was at all times" and when she failed to enlist assistance in locating the Student.

By letter dated XXXXXXXXXX, the District's XXXXXXXXXX informed Aide 1 that her contract with the District was discontinued, based in part, on her role in the incident on XXXXXXXXXX involving the Student. Subsequently, at a XXXXXXXXXXXXXXXXXXXXXXX held on XXXXXXXXXX, the XXXX elected to reinstate Aide 1, but transferred her to a pre-school in the District, effective XXXXXXXXXX. By letter dated XXXXXXXXXX, the XXXXXXXXXX informed Aide 1 that consistent with the superintendent's recommendation, the XXXXX determined that Aide 1 would not receive the increase in salary that she otherwise would have received for school year 2014-2015, based on the incident on XXXXXXXXXX, during which she "failed to adequately supervise a special education student." The evidence the District provided, however, did not indicate that Aide 1 and/or other District staff received training regarding the appropriate implementation of the Student's IEP and/or other students' IEPs with respect to the responsibilities of one-to-one aides.

Based on the foregoing, OCR determined that there was sufficient evidence to establish that the District failed to implement the Student's IEP when the aide failed to adequately supervise the Student on April 16, 2014. On October 30, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the

compliance concerns identified in this letter. OCR will monitor the 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 that, 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, Jeanette Tejada Bustos, Compliance Team Attorney, at (646) 428-3777 or [jeanette.tejadabustos@ed.gov](mailto:jeanette.tejadabustos@ed.gov); or Genara Necos, Compliance Team Attorney, at (646) 428-3828 or [genara.necos@ed.gov](mailto:genara.necos@ed.gov).

Very truly yours,

Timothy C.J. Blanchard

Encl.