

October 3, 2014

Joyce Mangialino
President, Board of Trustees
West Babylon Public Library
211 Route 1209
West Babylon, New York 11704

Re: Case No. 02-14-4028
West Babylon Public Library

Dear Ms. Mangialino:

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 West Babylon Public Library (the Library). The complainant alleged that the Library discriminated against her son (the Child) on the basis of his disability, by denying him access to the Library's XXXX XXXX XXXXXXXX XXX XX XXXXXXXX program XXXX XXX XXXX on XXXXX XX XXXX.

OCR is 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 public elementary and secondary education systems and institutions, public institutions of higher education and vocational education, and public libraries. The Library is a public library. Therefore, OCR has jurisdictional authority to investigate this complaint under the ADA.

The regulation implementing Title II of the ADA, at 28 C.F.R. § 35.130(a), provides that no qualified individual shall, on the basis of disability, be excluded from participating in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any public entity. Additionally, pursuant to 28 C.F.R. § 35.130(b)(1)(i), a public entity, in providing any aid, benefit or service, may not, directly or through contractual arrangements, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service. The regulation further provides, at 28 C.F.R. § 35.130(b)(7), that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.

During its investigation, OCR interviewed the complainant, the XXXXX of XXX XXX XXX, and Library staff. OCR also reviewed documentation the complainant and the Library submitted. OCR made the following determinations.

The complainant alleged that the Library discriminated against the Child on the basis of his disability, by denying him access to XXX XXX XXX on XXXXX XX XXXX. Specifically, the complainant alleged that on XXXXX XX XXXX, the Library's XXXX XX XXXXX XXXXXXXXXXXX XXXX XXXXXXXXXXXX informed her that the Child, who is XXX years old, could not participate in XXX XXX XXX activity the following day, due to his "behavioral issues." The complainant further alleged that XXX XXXXXXXXXXXX offered to let the Child play on XXX XXX XXX alone at noon for half an hour, after the last session with other children ended; however, when she arrived at noon on XXXXX XX XXXX, XXX XXX staff members told her that Library staff had not informed them of this arrangement, and that they could not provide the Child access because XXX XXX had to leave to attend another event.

The Library asserted that it did not allow the Child to participate in XXX XXX XXX event on XXXXX XX XXXX, as the program was not appropriate for the Child. The Library stated that the complainant would not have been able to remain with him on XXX XXX, pursuant to XXX XXX policy; and the complainant had previously agreed to XXXXXXXXXXXX the Child XX XXX XXXXXXXXXXXX XXXXXXXXXXXX, in order to address the Child's XXXXXXXXXXXX XXXXXXX.

OCR determined that the Child participated in several "independent" Library programs beginning in early 2013. For these programs, children were left alone in the program, while a parent remained nearby. XXX XXXXXXXXXXXX that ran these programs XXX XXXXXXXXXXXX informed OCR that initially the Child was XXXXX and XXXXXXXXXXXXXXX, and "X XXXXXXX XXXXXXXXXXXX with the other kids." She also stated that the Child XXXXXXX her when she tried to XXXXXXX him. XXX XXXXXXXXXXXX stated that the Child's XXXXXXXXXXX XXXXXXXXXXXXXXX over the next several months, but the Child was not precluded from participating in Library programs.¹ XXX XXXXXXXXXXXX informed OCR that on September 11, 2013, after the Child XXXXXXX XXXXXXX XXXXX during a XXXX program, she brought concerns about the Child's XXXXXXXXXXXX XXXXXXXXXXXX to XXX XXXXXXXXXXXX's attention. XXX XXXXXXXXXXXX informed OCR that she had received similar complaints about the Child from other librarians, and had herself witnessed the Child's XXXXXXXXXXX XXXXXXXXXXX. By electronic mail message (email) to the Library's Director dated September 12, 2013, XXX XXXXXXXXXXXX summarized the concerns about the Child's XXXXXXXXXXX.² By email dated September 13, 2013, the Director advised XXX XXXXXXXXXXXX that the Child "may have a disability" and the complainant "may need to attend [Library programs] with him going forward"; the Director also asked XXX XXXXXXXXXXXX to contact the complainant to discuss the Library's concerns about the Child's XXXXXXXXXXX.

OCR determined that on or about October 2, 2013, XXX XXXXXXXXXXXX relayed concerns regarding the Child's XXXXXXXXXXX to the complainant; during the conversation, the complainant informed XXX XXXXXXXXXXXX that the Child has XXXXXXXXXXX XXXXXXX

¹ X---paragraph redacted---X.

² X---paragraph redacted---X.

XXXXXXXXXXXXXXXX XXXXXXXX XXXXXX. XXX XXXXXXXXXXXX relayed this information to the Director, and stated that the complainant agreed to the Library's request that XXX XXXXXX XX XXXXX XXXXXXXXXXXX to the Child during his participation in all Library programs.³

OCR determined that the Library contracted with XXX XXX XXX for services at the Library from 11:00 a.m. until noon on XXXXXXXXXXX XXXXX XX XXXX.⁴ OCR determined that during the activity, two XXX XXX staff members would be on the bus with up to 15 children at a time; additionally, two adults could stand at the front of the bus to watch their children play; however, no adults would be allowed in the play area.

XXX XXXXXXXXXXXX, who organized XXX XXX XXX activity, informed OCR that she did not realize that the Child was registered to participate in the activity until XXXXX XX XXXX. OCR determined that XXX XXXXXXXXXXXX immediately contacted the complainant and explained that the program was not appropriate for the Child because XXX XXX policy prohibits XXXXXXXX XXXX XXXXX XXXXXXXXXXX XX XXX XXX; therefore, the complainant could not XXXXXXX XXXX the Child during his participation in the activity, pursuant to the agreement previously reached by the complainant and the Library. XXX XXXXXXXXXXXX stated that the complainant became upset, stated that the Child has XXXX but is not violent, and requested to speak with the Director. The Director informed OCR that she spoke with the complainant on the morning of XXXX XX XXXX, and reiterated that the Child could not participate in XXX XXX XXX activity with other children; however, the Director suggested that the complainant bring the Child to the Library at XXXX, after the activity ended, so that the Child could XX XX XX XXX XXX by himself to see what the experience is like. The Director denied informing the complainant that the Child would be able to XXXXX XXX XXX XXX for an entire XXXXXXXXXXXX session. OCR determined that the complainant arrived at the Library with the Child at XXXX on XXXXX XX XXXX, expecting a XXXXXXXXXXXX session for the Child; however, although one of the two XXX XXX attendants on site believed the Child could XXXXX XXX XXX for XXXX minutes, the other attendant advised the Library and the complainant that the Child could not XXXXX XXX XXX for any length of time, because they needed to depart for another scheduled event.

XXX XXXXXXXXXXXX, XXX XXXXXXXXXXXX, and the Director all acknowledged, and the XXXXXXX of XXX XXX XXX XXXX XXXXXXX confirmed, that the Library had not contacted XXX XXX XXX before its arrival to the Library on XXXXX XX XXXX, to advise XXX XXX staff that a child required XXX XXXXXXXXXXX XXXXXXXXXXX XX XXX XXX as an accommodation to participate in the activity. Additionally, the Library did not ask whether the complainant could XX XXXXXXXXXXX XX XXX XXX XXXX the Child, or whether, as an alternative, the Child could XXXXX XXX XXX on his own for any length of time at XXXX, following the final scheduled session. The XXXXXXX informed OCR that all children with disabilities are permitted to participate on XXX XXX XXX, and XXX XXX staff members are

³ By email dated October 2, 2013, XXX XXXXXXXXXXXX advised all of the Library's librarians that the Child must be XXXXXXXXXXXX XX XX XXXXXXXXXXXX during all programs. XXX XXXXXXXXXXXX stated that once the complainant started XXXXXXXXXXX XXXXXXXXXXX with the Child, XXX XXXXXXXXXXXX did not receive any additional reports of the Child's XXXXXXXXXXX XXXXXXXXXXX.

⁴ X---paragraph redacted---X.

trained to work with children with disabilities; she further stated that if the Library had contacted her about the Child's needs in advance, she could have explored ways to accommodate the Child in order to allow him access to the activity.

Based on the foregoing, OCR determined that the Library denied the Child access to XXX XXX XXX on XXXXX XX XXXX, because of XXXXXXXXXXXX concerns that Library staff acknowledged might be related to his disability. OCR further determined that the Library failed to work with XXX XXX staff to determine whether reasonable modifications to XXX XXX standard practice could be made to allow the Child the opportunity to access XXX XXX XXX on XXXXX XX XXXX.

On September 22, 2014, the Library entered into the attached resolution agreement to resolve the above-referenced compliance concern. OCR will monitor implementation of the resolution agreement. If the Library fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

This letter should not be interpreted to address the Library'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 Library 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 Ryan Milligan, at (617) 289-0189 or ryan.milligan@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.