

May 21, 2015

Susan K. Allen
Superintendent of Schools
East Irondequoit Central School District
600 Pardee Road
Rochester, New York 14609

Re: Case No. 02-15-1087
East Irondequoit Central School District

Dear Superintendent Allen:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the East Irondequoit Central School District. The complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, by making a significant change in his placement without convening a meeting of the Committee on Special Education (CSE).

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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also 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 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 both Section 504 and the ADA.

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

During school year 2014-2015, the Student was enrolled in the XXXX grade at the District's Helendale Elementary School (the School). The Student was classified as XXXX, and received special education and related aids and services pursuant to an Individualized Education Plan (IEP). The Student's IEP, dated April 22, 2014, and in effect at the beginning of school year

2014-2015, provided for the Student's placement in an XXXX special class setting with related aids and services.

The complainant alleged that the District discriminated against the Student, on the basis of his disability, by making a significant change in his placement without convening a meeting of the CSE. Specifically, the complainant alleged that during school year 2014-2015, the District placed the Student in a regular education class for three hours per day, without obtaining the complainant's input or convening the CSE. The complainant stated that although the Student's IEP provided for the Student's integration into the general education population during the school year, the District was required to discuss such integration opportunities with her; however, the complainant alleged that School staff did not notify or discuss the Student's placement in the general education class for three hours per day with her. The complainant stated that the Student's placement in the general education setting resulted in his exhibiting inappropriate behaviors.

According to notes from the CSE meeting on April 22, 2014, as memorialized in the Student's IEP, the CSE determined that the Student's teacher would discuss possible integration opportunities for the Student with a general education teacher. CSE notes also indicated that the team would work toward integrating the Student into the cafeteria for lunch. The Student's IEP further provided that the Student would participate in the general education setting for school-wide assemblies, and that "opportunities for integration into other general education settings would be explored by the educational team and discussed with the Student's family as [the Student] demonstrates progress in his current program." The IEP did not specifically delineate the manner in which the Student would be integrated or the number of hours of integration; however, the IEP delineated that further integration opportunities would be discussed with the Student's family.

District staff stated that in accordance with the provisions in the Student's IEP, in or around the second week of September 2014, the Student and his 1:1 aide (the Aide), as well as his teacher (the Teacher) and the other students in his XXXX class transitioned into a general education class (Class 2) in the mornings for approximately an hour.¹ The Student and his classmates would hang up their coats and backpacks, take out folders, and generally participate in the morning activities and communicate with the students in Class 2 in order to provide socialization opportunities for the Student as required by his IEP. At approximately 10:00 a.m., the Teacher would take the Student and his classmates back to the special education classroom for small group educational instruction. The Student and his classmates also attended special classes, such as art and music, with Class 2. In the afternoons, the Student and his classmates spent some snack times with Class 2. The Teacher informed the complainant that she would integrate the Student in the general education class, and stated that she gave the complainant a tour of the classroom and the complainant was pleased with the setting.² The complainant confirmed that the Teacher informed her she was integrating the Student into a general education class. However, the complainant disagreed with the Student's integration into the general education

¹ The complainant stated that in early September 2014, the Teacher informed her that the Student would be visiting a mainstream classroom for eventual integration. The complainant stated that the Student had been similarly integrated in the prior school year for approximately 15 minutes, several times per week.

² The Teacher stated that the complainant did not raise any concerns regarding the Student's integration into Class 2.

classroom for what she believed was three hours in the afternoon. The complainant stated that in November 2014, she learned that the Student had been placed in the general education classroom for three hours in the afternoons from the Student's father. In November 2014, when she raised her concerns with the District about the Student's placement, District staff informed her that the Student was not placed in the general education setting for three hours in the afternoon.

The Teacher explained that after the first two to three weeks of the school year, the Student's time in Class 2 was decreased to less than half an hour due to behavior issues. In or around the week of October 6, 2014, the Student no longer attended Class 2 because of increasing behavioral issues.

On October 9, 2014, the School principal and the Director of Pupil Personnel Services met with the complainant to discuss the Student's behavior. At the meeting, a District administrator, not a group of knowledgeable persons like the CSE, made the decision to reduce the Student's attendance at School to half a day, with an increase in attendance by 15 minute increments as the Student's inappropriate behaviors decreased. From October 14, 2014, to November 5, 2014, the Student attended the School on a half day schedule, until the complainant removed him from School on or about November 6, 2014. The Student was placed on home instruction at the complainant's request, on November 12, 2014. On February 9, 2015, the CSE met and placed the Student in a Board of Cooperative Education Services 6:1:1 educational program, with related aids and services, effective February 23, 2015.

The regulation implementing Section 504, at 34 C.F.R § 104.35(a), requires that a recipient conduct an evaluation in accordance with the requirements of 34 C.F.R § 104.35(b), of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to...any subsequent significant change in placement. The regulation implementing Section 504, at 34 C.F.R § 104.35(c), requires that a recipient, in interpreting evaluation data and in making placement decisions, ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Based on the above, OCR determined that integrating the Student into the regular education classroom in the mornings for approximately an hour, for specials, and occasional snack times, was not inconsistent with his IEP, and did not constitute a significant change in his placement; however, OCR determined that the District significantly changed the Student's placement from a full day XXXX setting to a half day schedule in October 2014. OCR determined that this change in the Student's placement was made by a District administrator, not a group of knowledgeable persons. Further, OCR determined that the District did not conduct an evaluation of the Student prior to this significant change in placement. Moreover, the Student's IEP was not modified to reflect the change in his placement on or about October 14, 2014.

On May 20, 2015, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with respect to this complaint. 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 have the right to 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 Diane Castro, Compliance Team Investigator, at (646) 428-3808 or Diane.Castro@ed.gov; or Anna Moretto Cramer, Compliance Team Attorney, at (646) 428-3826 or Anna.Moretto.Cramer@ed.gov.

Sincerely,

Timothy C. J. Blanchard

Encl.

cc: XXXX