



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

**TIMOTHY C. J. BLANCHARD**  
DIRECTOR  
NEW YORK OFFICE

March 4, 2016

Oliver W. Stringham  
Superintendent of Schools  
North Arlington School District  
222 Ridge Road  
North Arlington, New Jersey 07031

Re: Case No. 02-15-1230  
North Arlington School District

Dear Dr. Stringham:

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 North Arlington School District (the District). The complainant alleged that his son's (the Student's) XXXXXXXX teacher (Teacher 1) at North Arlington Middle School (the School) in the District discriminated against the Student, on the basis of his disability, by failing to implement a provision in the Student's Individualized Education Program (IEP) for school year 2014-2015, requiring teachers to avoid the use of confrontational techniques when facilitating appropriate behavior (Allegation 1). The complainant also alleged that the Student's XXXX teacher (Teacher 2) discriminated against the Student, on the basis of his disability, by failing to implement a provision in the Student's IEP requiring the provision of clear, concise directions and concrete examples for homework and classwork assignments (Allegation 2).

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 interviewed the complainant and the School’s principal (the Principal). OCR also reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

During school year 2014-2015, the Student was enrolled in eighth grade at the School. The Student was eligible to receive related aids and services pursuant to an IEP dated June 10, 2014.

With respect to Allegation 1, the complainant alleged that Teacher 1 discriminated against the Student, on the basis of his disability, by failing to implement a provision in the Student’s IEP requiring teachers to avoid the use of confrontational techniques when facilitating appropriate behavior. The complainant alleged that this occurred on or about October 24, 2014 (Incident 1) and on or about March 2, 2015 (Incident 2).

OCR determined that the Student’s IEP contains a provision that requires teachers to “[a]void the use of confrontational techniques.” This provision appears in a section entitled, “Facilitating Appropriate Behavior.” The section also includes the following other provisions: “[p]rovide the [S]tudent with alternatives; [u]se praise generously; [i]gnore minor annoying behaviors; [s]peak privately, without the audience of peers, to [S]tudent about inappropriate behavior; [m]inimize situations that the [S]tudent may perceive as embarrassing; [e]ncourage [S]tudent to accept responsibility for behavior.” The IEP does not define what constitutes confrontational techniques; however, the complainant advised OCR that he understood the provision to require that the School discipline the Student away from his peers. The Principal advised OCR that the provision had been added to the IEP at the suggestion of the Student’s general education teachers from school year 2013-2014, who found that the Student responded well to positive reinforcement rather than a direct criticism of his behavior. For example, the Principal stated that rather than saying “stop talking,” the Student’s teachers would develop a discrete signal (e.g., tapping on the corner of the Student’s desk) to notify the Student when he was off task.

With respect to Incident 1, the complainant alleged that on or about October 24, 2014, Teacher 1 stopped classroom instruction and asked the Student whether it was necessary for him to XXXXXXXX. The complainant asserted that this was discriminatory because the Student’s XXXXXXXXXXXXXXXX caused by an increase in his Attention Deficit Hyperactivity Disorder (ADHD) medication. The Principal informed OCR that the complainant expressed concerns about the incident during an IEP meeting held in November 2014. The Principal did not dispute the complainant’s understanding of the factual circumstances underlying the incident, but she stated that she was unaware that the complainant believed the Student’s medication caused his XXXXXXXX. She also stated that the complainant never asked her to take action to address the incident. The complainant did not allege that there were any further such incidents after October 24, 2014.

With respect to Incident 2, the complainant alleged that on or about March 2, 2015, Teacher 1 approached the Student during class and told him that she suspected that he had a cell phone in the front pocket of his pants; and, after the Student denied it, she placed her hands in his pocket to search for the suspected phone. The complainant alleged that the Student responded by saying, “Do not touch me”; and Teacher 1 sent the Student to the main office.

OCR determined that the complainant reported Incident 2 to the Principal by electronic mail message dated March 3, 2015, and alleged that the incident constituted a violation of the District's Harassment, Intimidation and Bullying (HIB) policy. The District's Anti-Bullying Specialist (the Specialist) conducted an internal investigation into the incident. In the course of his investigation, the Specialist interviewed two student witnesses, and also reviewed a North Arlington police report regarding a complaint the complainant filed with the police about the incident. The Specialist concluded that during class on March 2, 2015, Teacher 1 suspected that the Student had a cell phone in the front pocket of his pants, and after the Student denied that he possessed a cell phone, she placed her hands in his pocket to search for the suspected phone. The Student told Teacher 1, "Don't touch me," and Teacher 1 directed him to go to the main office. The Specialist determined that Incident 2 was a classroom management issue that should be addressed further with Teacher 1; but determined that Teacher 1's conduct did not constitute harassment, intimidation or bullying on the basis of the Student's disability or any other protected characteristics. During an interview with OCR staff on September 17, 2015, the Principal stated that she believed Teacher 1 did not avoid the use of confrontational techniques with respect to Incident 2, as required by the Student's IEP. Therefore, OCR determined the parties do not dispute that Teacher 1's conduct with respect to Incident 2 violated the Student's IEP. Thus, based on its review of the District's HIB investigation, and OCR's own investigation, OCR determined that the underlying facts are not in dispute between the parties.

Based on the foregoing, OCR determined that there is sufficient evidence to establish that Teacher 1 failed to implement the Student's IEP with respect to facilitating appropriate behavior. In both incidents, Teacher 1 directly addressed the Student's behavior during class and in the presence of his peers. In contradiction to the aforementioned behavior-related provisions of the Student's IEP, Teacher 1's confrontational approach to addressing Student 1's behavior lacked privacy, was not discreet, and was potentially embarrassing given the audience of his peers. Moreover, the Principal acknowledged that Teacher 1's conduct during Incident 2 violated the Student's IEP and the District's own investigation of the incident determined that Teacher 1's conduct was not appropriate.

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) 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. The regulation, at 34 C.F.R. § 104.33(b)(2), states that the implementation of an IEP is one means of meeting the standard set forth in 34 C.F.R. § 104.33(b)(1)(i). The District's failure to appropriately implement the Student's IEP violated 34 C.F.R. § 104.33(b)(1)(i).

On March 2, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with respect to Allegation 1. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 2, the complainant alleged that Teacher 2 discriminated against the Student, on the basis of his disability, by failing to provide clear and concise directions and concrete examples for homework and classwork assignments in accordance with his IEP. OCR determined that the Student's IEP states that his teachers should "[p]rovide clear, concise directions and concrete examples for homework/class work assignments."

The complainant cited two occasions on which Teacher 2 allegedly failed to provide the Student with clear and concise directions and concrete examples for homework and classwork assignments, in accordance with his IEP. The complainant alleged that on one occasion, Teacher 2 gave the Student an assignment from an online learning resource that the complainant believed was complicated and did not correspond with the District's curriculum. The complainant did not provide OCR with a copy of this assignment. The complainant alleged that on another occasion, the Student was provided with a XXXX document the complainant believed was neither clear nor concise. OCR reviewed a copy of the document that the complainant provided to OCR. OCR determined that the document in question is a copy of page 7-3 from the Student's IEP for school year 2014-2015. The page is part of the IEP that highlights the Student's "Benchmarks or Short Term Objectives" for all academic subjects, including XXXX, and its purpose within the IEP is to list the educational goals the District hoped for the Student to meet during school year 2014-2015. OCR determined that this document was not prepared as an assignment for the Student.

OCR determined that on April 29, 2015, the District convened an annual review IEP meeting for the Student, for the purpose of drafting an IEP for school year 2015-2016; the complainant attended the meeting. The District advised OCR that at no point during the meeting did the complainant express concerns about the implementation of the provision at issue in Allegation 2 during school 2014-2015, or with the inclusion of an identical provision in the Student's proposed IEP for school year 2015-2016. The Student's case manager and Teacher 2 also stated that they were not aware of any concerns regarding the implementation of that provision; and Teacher 2 noted that the Student had done well in her class during school year 2014-2015, achieving an 88 average.

OCR reviewed examples of three types of documents that Teacher 2 provided to the Student in accordance with his IEP during school year 2014-2015; these documents were created specifically for the Student, and were not provided to the Student's non-disabled peers. These documents included a reference sheet listing various XXXXXXXXXXXXXXXXXXXXXXXXXXXX; a grading rubric sheet describing directions for XXXX classwork; and five study guides that each included examples of review questions. Based on its review, OCR determined that the materials in question contained clear, concise directions and concrete examples of assignments. OCR determined that the preponderance of the evidence does not substantiate the complainant's allegation that Teacher 2 failed to provide clear, concise directions and concrete examples for homework and classwork assignments as required by the Student's IEP for school year 2014-2015.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that Teacher 2 discriminated against the Student, on the basis of his disability, by failing to provide clear, concise directions and concrete examples for homework

and classwork assignments as required by the Student's IEP. Accordingly, OCR will take no further action with respect to Allegation 2.

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 questions, please contact Eric Bueide, Compliance Team Attorney, at (646) 428-3851, or [Eric.Bueide@ed.gov](mailto:Eric.Bueide@ed.gov); or Logan Gerrity, Compliance Team Attorney, at (646) 428-3791, or [Logan.Gerrity@ed.gov](mailto:Logan.Gerrity@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.