



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

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November 4, 2016

Dr. Edwin M. Quezada  
Superintendent of Schools  
Yonkers Public Schools  
One Larkin Center  
Yonkers, New York 10701

Re: Case No. 02-15-5001  
Yonkers Public Schools

Dear Dr. Quezada:

This letter is to inform you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced compliance review. The compliance review examined whether the Yonkers Public Schools (the District) discriminated against qualified students with disabilities by failing to place them in the regular educational environment unless it was demonstrated that the education of the student in the regular education environment, even with the use of supplementary aids and services, could not be achieved satisfactorily.

OCR initiated this compliance review under 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 (Department); and 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 had jurisdictional authority to conduct this compliance review under Section 504 and the ADA.

### **Legal Overview**

The applicable standards for determining compliance with Section 504 are set forth in the regulation at 34 C.F.R. §§ 104.33, 104.34, 104.35, and 104.36.<sup>1</sup> Section 104.33 provides, in pertinent part, that a recipient is responsible for providing a free and appropriate public education

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<sup>1</sup> The applicable Title II regulatory provision is set forth at 28 C.F.R. § 35.130.

to qualified students with disabilities. Further, the regulation, at 34 C.F.R. § 104.35 (a)–(c), sets forth specific procedures designed to ensure appropriate evaluation, classification and placement. Section 104.34 prescribes standards for determining the appropriate setting for providing educational and related aids and services to students with disabilities. Recipients are required to educate students with disabilities in the regular educational environment, along with students without disabilities, to the maximum extent appropriate to the needs of the students with disabilities. Specifically, the regulation, at § 104.34, states that a recipient must place students with disabilities in the regular educational environment unless the recipient can demonstrate that the education of the student with a disability in the regular educational environment cannot be achieved satisfactorily even with the use of supplementary aids and services.

### **Background Information**

The District is located immediately north of New York City, and is the fourth largest public school district in New York State. The District has 39 school sites, including 9 pre-K to sixth grade elementary schools<sup>2</sup>; 21 pre-K to eighth grade elementary schools<sup>3</sup>; 2 seventh to twelfth grade middle-high schools<sup>4</sup>; 5 high schools<sup>5</sup>; and 1 pre-K to twelfth grade school.<sup>6</sup>

In its investigation, OCR reviewed District policies, procedures and practices, and other relevant data for school years 2013-2014 and 2014-2015, including data maintained by the New York State Education Department (NYSED). OCR reviewed District special education memoranda and materials; descriptions of District educational settings and classrooms; notices to parents of placement options available to students; enrollment data; lists of each student with a disability in each school indicating the student's specific disability, educational setting, and percent of time spent outside of the regular education environment; and, descriptions of the self-contained classrooms in which students with disabilities are educated. OCR also reviewed copies of the Individualized Education Plans (IEPs) and Section 504 Plans for students with disabilities placed in self-contained settings. In addition, OCR interviewed District administrators and staff members, including the Superintendent; Deputy Superintendent; Assistant Superintendent for Elementary Instruction; Assistant Superintendent for Special Education; Director of Special Education; six chairpersons of the District's Committees on Special Education (CSE Chairs); and the District's senior psychologist. OCR also reviewed students' special education files, and conducted an analysis of classification and placement data provided by the District.

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<sup>2</sup> Schools 9, 17, 21, 22, Montessori School 27, Montessori School 31, Museum School 25, Paideia School 24, and Rosemarie Ann Siragusa School.

<sup>3</sup> Schools 5, 13, 16, 23, 30, Cedar Place School, Thomas Cornell Academy, Cross Hill Academy, Eugenio Maria de Hostos Microsociety School, Patricia A. DiChiaro School, Robert C. Dodson School, Family School 32, Enrico Fermi School(s), Boyce Thompson School (formerly Foxfire), Kahlil Gibran School, Martin Luther King, Jr. Academy, Paideia School 15, PEARLS Hawthorne School, Casimir Pulaski School, Scholastic Academy for Academic Excellence, and Westchester Hills School 29.

<sup>4</sup> Palisades Preparatory School and Yonkers Middle/High School.

<sup>5</sup> Gorton High School, Lincoln High School, Riverside High School, Roosevelt High School Early College Studies, and Saunders Trades and Technical High School.

<sup>6</sup> Yonkers Montessori Academy

### **District Policies, Procedures and Practices**

The District has policies in place with regard to the identification, evaluation, and placement of students with disabilities for special education services.<sup>7</sup> The District was in the process of revising its policies at the time this compliance review was initiated; and the revised policies, modeled on the New York State School Boards Association model policies, were approved by the District’s Board of Education in December 2015, during OCR’s investigation. Relevant for this compliance review, the former and revised policies state that the District will ensure that to the maximum extent possible, students with disabilities are educated in the least restrictive environment in accordance with state regulations. The policies also provide that students with disabilities will have the same opportunity to participate in non-academic and extracurricular services and activities as non-disabled students. In addition, the District provides notice to parents regarding procedural safeguards as to placement decisions.

The District’s former and revised policies provide for a “Pupil Support Team” (PST) in each school. The PST identifies students in need of academic assistance, and plans appropriate intervention and referral services. These PST services may include providing support and guidance to the student’s teachers, planning and providing appropriate interventions, coordinating access to and delivery of school services, and coordinating the services of community members and/or community-based social and health provider agencies.

Referrals for special education services may be initiated by a parent or the school. The District’s former and revised policies specify a modality to identify students with disabilities (or determine if no disabilities exist), determine eligibility for special education and related services, and recommend a special education program. The District offers a continuum of special education placements, including providing related services in a regular classroom setting or a resource room; integrated co-teaching<sup>8</sup>; and, self-contained classroom(s) placement.

OCR conducted interviews with the District’s CSE chairpersons.<sup>9</sup> The CSE chairpersons informed OCR that prior to the time a student is referred to the CSE for evaluation and placement, the student’s school collects a packet of information about the student, which is then sent to the CSE along with the student’s referral. The CSE chairpersons stated that this is typically a “Pupil Support Team Packet” (PSTP), prepared by the school’s PST. The CSE Chairpersons explained that PSTPs are created at the school-level, and detail the interventions that the school attempted with students prior to their referral to the CSE. The CSE chairpersons

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<sup>7</sup> Specifically: Policy 4321, entitled “Programs for Students with Disabilities Under IDEA and Article 89;” Policy 5020.3, entitled “Students with Disabilities Pursuant to Section 504;” District Policy 1925, entitled “Interpreters for Hearing-Impaired Parents;” a document entitled, “District Information on Home and Hospital Instruction;” and a document entitled, “Meeting Agendas: Integrated Co-Teaching Services/Differentiated Instruction/Grading Policy”.

<sup>8</sup> Integrated Co-Teaching (ICT) is provided at a 12:1 ratio in elementary school settings and 15:1 ratio in middle school settings.

<sup>9</sup> The District advised OCR that it has four CSE chairs and one staff member assigned to serve on the Committee(s) on Preschool Special Education (CPSE). There is also one staff member responsible for special education in each District building, either a “liaison” in elementary school buildings or a “department representative” in secondary buildings. There were, therefore, forty “building-level” department representatives or liaisons. The District’s special education structure is centralized for referrals, evaluations, and initial eligibility determinations, but devolved and de-centralized for annual reviews or program reviews.

stated that interventions are typically attempted for three to six months, and may include such strategies as one-on-one instruction with a classroom teacher, assistive computer instruction, preferred seating, extended time for assignments, and/or modified assignments.

The District's PSTP process, as set forth in the District's former and revised policies, provided that a referral of a student for evaluation by the CSE required that the District staff on the PST complete the PSTP prior to the CSE referral.<sup>10</sup> The PST at each school typically consists of an administrator, classroom teacher, guidance counselor, nurse, school psychologist, social worker, and parent.<sup>11</sup> The overall function of the PST is to ensure that resources are implemented to provide prevention, intervention, and follow-up services to students and their families. The PST meets and develops a plan of action for any student who has been identified as needing academic, social and/or behavioral interventions. Specifically, the PST identifies the reasons for referral, creates a proposed intervention plan, maintains a detailed explanation of the results of the interventions, and provides additional interventions for unresolved issues. The PSTP provides a list of 17 suggested "support and remediation services."<sup>12</sup>

OCR interviewed District staff members regarding the practice in the District with respect to the requirement that the PSTP be completed prior to a CSE referral; several staff members informed OCR that the completion of the PSTP was aspirational and not uniformly or widely enforced during school year 2014-2015. The District's Director of Special Education stated that the documentation related to the PSTP should be completed prior to a CSE referral, but was not always completed as required. OCR determined that District administrators were aware of the policy requirement, but conceded that it was not uniformly enforced.

OCR also reviewed the District's "Referral to the Committee on Special Education" packet (referral packet). The referral packet specifies a list of information that must be provided before a CSE referral will be considered.<sup>13</sup> Included in the list of information that must be provided are

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<sup>10</sup> Specifically, the former and revised policies provided that "[t]his packet [the PSTP] and all attached pages are mandatory and must be fully completed prior to any CSE referral. The PST should meet and develop a plan of action for any student that has been identified as needing academic, social, and /or behavioral interventions. They should meet on a weekly basis to discuss progress in each area. When the CSE referral has not been generated from the school, the Special Education Department will notify the school with the student's name. At that time, the PST should meet immediately."

<sup>11</sup> Other optional members may include a reading teacher, English as a Second Language teacher, special educator, or the student.

<sup>12</sup> Suggested support and remediation services include: curriculum modification, modification of classroom materials, modification of classroom space, modification of testing, tangible/intangible rewards or classroom privileges, program modification, functional behavioral assessment/behavioral intervention plan, observation/documentation of class behaviors by support staff, implementation of varied teaching strategies, modification of classroom space, individual student contract, peer tutoring, daily homework/behavior sheet, remedial reading/math/writing, extended time, targeted instruction, and Educationally Related Support Services (ERSS) counseling.

<sup>13</sup> Information that must be provided includes: student information, parental contact, principal's signature and date, narrative, classroom observation report, teacher reports plus work samples, standardized test scores, copy of test record card, current report card/progress reports, copy of most recent physical exam, copy of cumulative record card, elementary attendance report, and English Language Learner form (if applicable). In addition, the referral packet contains a second list of information that must be provided based on individual student's needs, including Functional Behavior Assessment, Behavior Intervention Plan, Anecdotal Records, Suspension Report(s), Record of

sections entitled “Support and Remediation Services” and “Pre-referral Intervention Plan – Pupil Support Team minutes and follow-up.”<sup>14</sup> The Support and Remediation Services section of the referral packet requests a detailed description of the dates, frequency, and outcome of the different types of support and remediation services attempted prior to referral to the CSE. The Pre-referral Intervention Plan section of the referral packet contains two documents. First, the referral packet contains a PST Intervention Plan, which includes space for the PST to summarize the concerns and create a proposed intervention plan for the student. Second, the referral packet contains a PST Intervention Plan Follow-Up Form, which includes space for the PST to state the results of prior intervention plans; indicate whether further action is needed; and if further action is needed, determine additional interventions.<sup>15</sup>

### **Students in Self-Contained Settings**

During school year 2013-2014, 26,265 students were enrolled in the District. Approximately 15.61% (4,099) of these students received special education and related aids and services. The District provided OCR with “Time Outside of Regular Classroom” (TORC) data for the 3,241 (79.07%) of the 4,099 students with disabilities for school year 2013-2014 who spent time outside of the regular classroom (2013-2014 TORC students).<sup>16</sup> The TORC percentage indicates the amount of time a student spends outside of the regular education classroom each school day. OCR determined that the median TORC value across all 2013-2014 TORC students was 67.50%, and the average TORC value was 50.06%. OCR further determined that more than half, 1,712 (52.82%) of the 2013-2014 TORC students were outside of the regular education classroom for at least half of each school day; and, 1,593 (49.15%) of the 2013-2014 TORC students were outside of the regular education classroom for 75% or more of each school day.

Of the 3,241 2013-2014 TORC students, 1,404 (43.32%) were classified as Learning Disabled (LD). Of these 1,404 LD students, the average TORC value was 45.77%. Nearly half, 680 (48.43%) were outside of the regular education classroom for at least half of each school day; and, 590 (42.02%) were outside of the regular education classroom for 75% or more of each school day.

During school year 2014-2015, 26,488 students were enrolled in the District. Approximately 16.23% (4,298) of these students received special education and related aids and services. The District provided OCR with TORC data for the 3,503 (81.50%) of the 4,298 students with disabilities for school year 2014-2015 who spent time outside of the regular classroom (2014-2015 TORC students).<sup>17</sup> The median TORC value across all 2014-2015 TORC students was

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Superintendent’s Hearing(s), copies of “Release of Information” forms, copy of student’s Title I folder, and Section 504 Accommodation Plan.

<sup>14</sup> The District has created more than one version of the referral packet. OCR notes that some versions of the referral packet do not state that the “Support and Remediation Services” or “Pre-referral Intervention Plan – Pupil Support Team minutes and follow-up” must be provided.

<sup>15</sup> The District created a similar “Referral to the Committee on Preschool Education Committee on Special Education” packet. Similar to the referral packet, this “Preschool/Kindergarten Packet” includes “Support and Remediation Services” and “Pre-referral Intervention Plan – Pupil Support Team minutes and Follow-up” in the list of information that must be provided.

<sup>16</sup> There were 858 students with disabilities who did not spend any time outside of the regular classroom.

<sup>17</sup> There were 795 students with disabilities who did not spend any time outside of the regular classroom.

75.90%, and the average TORC value was 51.47%. More than half, 1,890 (53.95%) were outside of the regular education classroom for at least half of each school day; and, 1,766 (50.41%) were outside of the regular education classroom for 75% or more of each school day.

Of the 3,503 2014-2015 TORC students, 1,521 (43.45%) were classified as LD. Of these 1,521 LD students, the average TORC value was 48.27%. More than half, 768 (50.49%) were outside of the regular-education classroom for at least half of each school day; and, 671 (44.12%) were outside of the regular-education classroom for 75% or more of each school day.

OCR also reviewed the “Special Education School District Data Profile” for the District for school years 2005-2006 through 2014-2015, which were created in accordance with the Individuals with Disabilities Education Act (IDEA).<sup>18</sup> The District data profiles measured the District’s yearly performance with respect to a series of “Indicators.” OCR’s review focused on Indicator 5, “School-age Least Restrictive Environment,” and Indicator 6, “Preschool Least Restrictive Environment.”<sup>19</sup>

With respect to Indicator 5, the District data profiles reported the percentage of students with disabilities who were in the general education program for less than 40% of the day or 80% or more of the day. The District did not meet the state target goals during any year. The data contained in the District data profiles for Indicator 5 is consistent with the 2014-2015 TORC data that the District provided to OCR. Of the 3,503 2014-2015 TORC students who were identified as being enrolled between kindergarten and twelfth grade, 1,874 (53.50%) were in the regular education classroom for less than 40% of the day (TORC value of more than 60).

With respect to Indicator 6, the District data profiles for school years 2011-2012 through 2014-2015 reported the percentage of students with disabilities between ages 3-5 who were in a “[r]egular early childhood program and receiv[ed] the majority of special education and related services in the regular early childhood program” or a “[s]eparate special education class, separate school or residential facility”. The District did not meet the state target goals during school years 2012-2013, 2013-2014 or 2014-2015.

## **File Reviews**

Using the TORC data that the District provided to OCR for school year 2014-2015, OCR selected a random sampling of 164 students from the 1,521 students who were classified as LD for a file review. OCR selected students classified as LD, because more than half, 768 (50.49%), of the LD students were placed outside of the regular education classroom for at least half of each school day; and, 671 (44.12%) of the LD students were placed outside of the regular-education classroom for 75% or more of each school day. Furthermore, students classified as LD represented the largest component of the District’s student population classified as students with disabilities. During its file review, OCR reviewed the students’ placements and assessed whether documentation in the files demonstrated that the education of the students in the regular educational environment could not be achieved satisfactorily with the use of supplementary aids

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<sup>18</sup> District data profiles are available on the New York State Education Department’s website, at <http://data.nysed.gov/profile.php?instid=800000034777>. (OCR last visited this website on October 31, 2016).

<sup>19</sup> Data for Indicator 6 is only available for school years 2005-2006 and 2011-2012 through 2014-2015.

and services; and, for students with disabilities placed outside of the regular education classroom, whether documentation provided an explanation as to why the length/percentage of time placed outside of the regular education classroom was appropriate or necessary.

Of the 164 students in the sample, 38 had transferred into the District already having been classified as LD and placed in self-contained settings by the sending school districts.<sup>20</sup> Of the remaining 126 students, the District placed 63 (50.00%) of the students in a self-contained setting as their initial placement after having been classified as LD.

During its file review, OCR found no evidence to suggest that CSEs were improperly convened, parents or guardians were not involved in or unable to provide input during the special education process, or that groups of knowledgeable persons failed to consider relevant data or outside input when making placement decisions. OCR determined, however, that for a majority of the files, the documentation contained within the files did not support that the groups of knowledgeable persons had demonstrated that the education of the students in the regular educational environment could not be achieved satisfactorily with the use of supplementary aids and services; or, had provided an explanation as to why the length/percentage of time placed outside of the regular education classroom was appropriate or necessary. In addition, a majority of files lacked PSTPs or any other documentation detailing interventions attempted in the regular education environment.

Of the 164 files that OCR reviewed, only 56 (34.15%) contained a PSTP or referral packet that documented interventions attempted in the regular education classroom. Apart from these 56 files, 4 (2.44%) other files contained evidence of interventions attempted in the regular education classroom. Taken together, OCR found that only 60 (36.59%) of the files reviewed contained documentation purporting to demonstrate that the District attempted to provide educational services in the regular educational environment with the use of supplementary aids and services.

The District provided IEPs for 162 of the 164 students in the sample. OCR identified a related trend when reviewing the language the CSE used in these IEPs when completing the “Participation with Students without Disabilities” section of the sample students’ IEPs for school year 2014-2015. This section of the IEP specified that “removal from the general education environment occurs only when the nature or severity of the disability is such that, even with the use of supplementary aids and services, education cannot be satisfactorily achieved,” and the CSE was required to “explain the extent, if any, to which the student will not participate in regular class, extracurricular and other nonacademic activities.” OCR determined that 81 (50.00%) of the sample IEPs included nearly identical versions of the same boilerplate explanation for why students were removed from the regular education environment; namely, the student “requires special instruction in ... [an] environment with a smaller student-to-teacher ratio and minimal distractions in order to progress in achieving the learning standards.”<sup>21</sup> An additional 47 (29.01%) of the IEPs identified when the students would not participate in the general education environment, but provided no reasoning for the removal; and, 27 (16.67%) of the IEPs stated “Not Applicable”. Only 7 (4.32%) IEPs contained individualized reasoning for

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<sup>20</sup> The District’s CSEs convened and determined that all of these students should remain in self-contained settings.

<sup>21</sup> OCR determined that 79 IEPs contained this language, and two additional IEPs contained similar language with minor variations.

why the students were removed from the regular education environment for portions of the day, but did not demonstrate why the student could not be educated in the regular educational environment even with the use of supplementary aids or services or why the length/percentage of time placed outside of the regular classroom was appropriate or necessary.<sup>22</sup>

Consistent with the general lack of PSTPs contained within the sample files and the boilerplate language contained within the IEPs, OCR was generally unable to locate individualized evidence that demonstrated that the education of the sample students could not be achieved satisfactorily in the regular educational environment with the use of supplementary aids and services, or an explanation as to why the length/percentage of time placed outside of the regular education classroom was appropriate or necessary. Specific examples highlighting OCR's overall analysis are provided below:

- A sixth-grade student was placed in a self-contained educational setting for more than 60% of his school day after an initial determination of eligibility as LD. Testing indicated that his math calculation skills were on grade level, but his teacher reported that he had some difficulty with reading comprehension, although his scores on the sub-components for reading, writing and spelling were all within the average range. There was no evidence that any interventions were attempted in the regular education environment, and his IEP contained standard language regarding least restrictive environment; nothing was cited to support the belief for the need for more individualized instruction. The IEP provided no specifics to demonstrate that the student could not be educated in the regular educational environment even with the use of supplementary aids and services, or an explanation as to why the length/percentage of time placed outside of the regular education classroom was appropriate or necessary. The IEP did not demonstrate that any other supplementary aids or services were considered or attempted.
- A fifth-grade student was placed in a self-contained educational setting for more than 60% of his school day after an initial determination of eligibility as LD. Testing reported low average scores on reading and math, and some concerns about defiant behavior; notwithstanding his classification as LD. There was no evidence that any interventions were attempted in the regular education environment; nothing was cited to support the belief for the need for more individualized instruction, and behavioral interventions in the regular education classroom were not documented.
- A fifth-grade student was placed in a self-contained educational setting for more than 60% of her school day after an initial determination of eligibility as LD. There was no evidence that any interventions were attempted in the regular education environment. The IEP noted that the student received English as a Second Language (ESL) services and needed glasses, and indicated that the student benefitted from

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<sup>22</sup> For example, the IEP for one student stated: “[the student] will not participate in general education programs for 60% of the school day but requires special instruction in a special class and progress in achieving the learning standards due to below grade level reading and comprehension skills, short term recall difficulties and poor writing skills.” The IEP did not indicate why the student could not be educated in the regular education environment even with the use of supplementary aids and services.



prompts and verbal cues, and was a diligent student, but there was no discussion of classroom modifications that had been tried before placing the student in a self-contained setting.

- A fifth-grade student was placed in a self-contained educational setting for more than 60% of his school day after an initial determination of eligibility as LD. Teachers reported that he was functioning one-half year behind grade level (4.5) in math, but near grade level in reading. The student's IEP stated that he was functioning at grade level in reading comprehension, vocabulary and that he "excels" at grammar. The student was placed in a self-contained classroom and there was no evidence that any interventions were attempted in the regular education environment; nothing was cited to support the belief for the need for a more restrictive environment, and academic interventions in the regular education classroom were not documented.
- An eleventh-grade student was placed in a self-contained educational setting for more than 60% of his school day. The IEP noted that the student had good word recognition/decoding skills, his reading comprehension skills were good, and his writing skills were "grade level appropriate." His grade on the Regent's Comprehensive English exam satisfied Regent's diploma required English credit. There was no evidence that classroom interventions were attempted or documented before placing the student in a self-contained setting, or that placement in a self-contained classroom was necessary despite the student's skills and academic achievement.
- A fourth-grade student was referred to the CSE for behavioral concerns. The CSE placed the student in a 12:1 self-contained classroom for more than 60% of her school day. The student's evaluation results were all in the 90<sup>th</sup> percentile. The IEP noted that she was working at grade level in reading comprehension, decoding, sight word vocabulary and math computational skills, and was bright and creative. Regarding the behavioral concerns, the IEP noted that there had not been any aggression, but she had difficulty following class and school rules. There was no evidence that a behavior plan was implemented or other interventions were tried before she was placed in a self-contained educational setting.
- An eleventh-grade student was placed in a self-contained classroom for more than 60% of his school day. The student's evaluations indicated a functional reading level of 11.0 (grade level), and noted that he was verbally expressive and exhibited an ability to make connections and draw conclusions in literature. The IEP noted that the student "disrespects deadlines for projects," and "is aware of his moods." There was no evidence of regular education interventions or a behavior improvement plan attempted or documented before placing the student in a self-contained educational setting, and there was no behavior plan currently in place for him.
- A fifth-grade student was classified speech language impaired, when his CSE met and determined that the student "has made many academic improvements," and his speech and language therapy were no longer needed. The student's evaluations

indicated that he was functioning at grade level, enjoyed reading independently and reading historical fiction and non-fiction, and possessed a strong sight word vocabulary and decoding skills. The CSE determined to change his classification to LD and placed him in a self-contained classroom for over 60% of his school day, without evidence that returning him to a regular education setting with modifications could be appropriate.

- A fifth-grade student transferred from another school district, where he was in a 12:1 self-contained setting, and had received counseling one time per week as a related service. The District classified the student as LD and placed him in a 15:1:1 self-contained class for more than 60% of his school day. The student was reading on grade level and a teacher reported that he was one of the top students in the class. There was no evidence of interventions being attempted or a less restrictive educational setting being considered and rejected by the CSE team; instead the CSE recommended that he be placed in a more restrictive educational setting without an explanation as to why placing him in a regular education setting was not appropriate or why the length/percentage of time placed outside of the regular education classroom was appropriate or necessary.
- A fifth-grade student transferred from another school district in October 2014. The student was placed in an interim placement, a self-contained special education class, for ten months without the CSE convening to determine if the restrictive setting was appropriate for him. There was no documentation in the file that any other setting was considered, and there were no evaluations or test results to support that the setting was appropriate, or that other settings were considered.
- A tenth-grade student was placed in a self-contained classroom for more than 60% of the school day. The IEP noted that the student demonstrated grade level reading and comprehension, and demonstrated average skills in algebra and geometry and was preparing to take the algebra Regents exam. The IEP also noted that the student was easily distracted but also easily refocused. There was no evidence of modifications or interventions in the regular education setting, or a description of why a less restrictive setting was not considered or determined to be appropriate.
- A ninth-grade student was placed in a self-contained classroom for more than 60% of the school day. The IEP noted that the student was a great and responsible student who took advantage of extra help sessions, and was motivated and worked hard to achieve success. The evaluations revealed that he was slightly below grade level in language arts, but on grade level in math and science. There was no evidence of interventions being attempted in the regular education setting, or a statement or description of why a less restrictive setting was not considered.

Based on the foregoing, OCR's investigation did not reveal information to support that the District's practices were consistent with the regulation implementing Section 504 at 34 C.F.R. § 104.34. Specifically, OCR's file review did not support that the District was consistently placing students with disabilities in the regular educational environment unless the District could

demonstrate that the education of the student with a disability in the regular environment could not be achieved satisfactorily even with the use of supplementary aids and services, or providing an explanation as to why the length/percentage of time placed outside of the regular education classroom was appropriate or necessary.

On October 20, 2016, the District agreed to implement the enclosed resolution agreement to resolve the issues raised by the compliance review. OCR will monitor the implementation of the resolution agreement.

### **Summary of Resolution Agreement**

In accordance with the resolution agreement, the District agrees to:

- Send a memorandum to all administrators, teachers and other staff who are members of the PST at each District school, reminding them of the District's policies and procedures regarding the PST process; and, ensure that PSTs at each District school complete and submit the PSTP when referring students to the CSE for an evaluation, including the Pre-referral Intervention Plan and Pupil Support Team minutes and follow-up.
- Send a memorandum to all administrators, teachers and other staff authorized to make placement decisions for disabled students, reminding them of the District's policies and procedures for the identification, evaluation and placement of disabled students for special education services; and, ensure that the CSE places students in the regular educational environment, unless it is demonstrated that education in the regular educational environment cannot be achieved satisfactorily even with the use of supplementary aids and services.
- Ensure that the CSE documents decisions made about the educational setting for disabled students, including by documenting that the PST provided the PSTP; a description of the interventions attempted in the regular educational environment and why these were chosen for the individual student; a description of how interventions were implemented and the amount of time these were implemented; and, a statement regarding why and how these interventions did not result in satisfactorily achieving the education of the student in the regular educational environment.
- Provide training to all administrators, teachers and other staff who are members of the PST regarding the District's policies and procedures with respect to the PST process.
- Provide training to all administrators, teachers and other staff authorized to make placement decisions for students with disabilities, regarding the District's policies and procedures with respect to the identification, evaluation and placement of disabled students for special education services, including the requirement that students with disabilities are to be placed in the regular educational environment unless it is demonstrated that the education of the student in the regular educational environment cannot be achieved satisfactorily even with the use of supplementary aids and services.

- Review the placement of all students with disabilities in self-contained settings, to ensure that these students are classified appropriately and are in the appropriate educational setting. If it is determined that a student is not in the appropriate educational setting, the District will immediately conduct a reevaluation and place the student appropriately; and, consider whether remedial or compensatory services should be provided to the student.
- Provide data to OCR to demonstrate compliance with the regulation implementing Section 504, regarding educational setting, for future school years.

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.

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 case resolution process. If this happens, the individual may file a separate 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 Crystal Johnson, Senior Compliance Team Investigator, at (646) 428-3821 or [crystal.johnson@ed.gov](mailto:crystal.johnson@ed.gov); James Moser, Compliance Team Attorney, at (646) 428-3792 or [james.moser@ed.gov](mailto:james.moser@ed.gov); or Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or [logan.gerrity@ed.gov](mailto:logan.gerrity@ed.gov).

Very truly yours,

/s/

Timothy C.J. Blanchard  
Regional Director

Encl.