

May 13, 2016

Paymon Rouhanifard
Superintendent
Camden City School District
201 North Front Street
Camden, New Jersey 08102

Re: Case No. 02-16-1077
Camden City School District

Dear Superintendent Rouhanifard:

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 Camden City School District (the District). The complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, during school year 2015-2016, by failing to provide him with special education and related aids and services to address his behavioral difficulties, as required by his individualized education program (IEP) and behavior intervention plan (BIP) (Allegation 1). The complainant further alleged that District staff subjected the Student to harassment because of his disability, or in the alternative retaliated for her disability-related advocacy on behalf of the Student, as follows: (a) on or about November 17, 2015, the Student's math/science teacher (Teacher 2) stated, "if it was up to me, you would never be in any sports; (b) on XXXXXXXX XX, 2015, the School nurse issued a "hygiene letter" to the complainant; and, (c) on or about December 15, 2015, Teacher 2 "got in the Student's face" and spit on him when speaking to him (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 Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which provides that:

No recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing held in connection with a complaint.

The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In its investigation, OCR reviewed documentation that the complainant and the District submitted. OCR also interviewed the complainant.

OCR determined that during school year 2015-2016, the Student was enrolled in the sixth grade at the XXXXXXXXXXXXXXXX XXXXXXXXXXX XXXXXX XXXXXX (the School). The Student's Child Study Team (CST) determined that the Student was eligible for special education and related aids and services with the classification of "Other Health Impaired" (Attention Deficit Hyperactivity Disorder). The Student's IEP for school year 2015-2016 provides for various special education services including "in class support" in the general education classroom during language arts literacy, mathematics, science, and social studies; and, counseling services once per week for twenty (20) minutes. The Student also has a BIP targeting specific behaviors of the Student.

Allegation 1:

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student, on the basis of his disability, during school year 2015-2016, by failing to provide the Student with special education and related aids and services to address his behavioral difficulties, as required by his IEP and BIP. The complainant asserted that the consequences the Student's teachers issued for his behavior, including removals from class, banning him from participating in athletic activities, and detentions, were all indications that the District was not implementing the provisions in the Student's IEP or BIP to address his behavior.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), requires recipients to provide a free appropriate public education to each qualified individual with a disability in the recipient's jurisdiction. In accordance with the regulation implementing Section 504, at 34 C.F.R. § 104.33(b), an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of the disabled student as adequately as the needs of non-disabled students are met; and, are based upon adherence to the evaluation and placement procedures set forth in the regulation. Implementation of an IEP is one means of meeting this requirement.

OCR determined that the Student's BIP for school year 2015-2016 requires that the Student receive nonverbal or verbal positive attention or a task list or plan for the class period to target

four specific behaviors: (1) staying on task; (2) decreasing disruptive behaviors; (3) decreasing physical contact with classmates; and, (4) increasing completion of homework. Based upon OCR's review of District records, including copies of a daily behavior chart completed by the Student and his teachers, and a behavior log tracking on-target behaviors, the District did not begin implementation of the Student's BIP until November 23, 2015.

Additionally, as stated above, the Student's IEP required that the District provide the Student with counseling services once per week for twenty (20) minutes. According to the counseling/social work service log for school year 2015-2016 and counseling session notes from various dates, OCR determined that the District only provided the Student with 10 counseling sessions between September 2015 and January 2016, which was less frequent than the weekly sessions his IEP required.¹ As of March 25, 2016, OCR further determined that the District had not provided the Student with any counseling sessions since January 29, 2016.

The complainant asserted that as a consequence of failing to implement the Student's IEP and BIP, the Student's literacy teacher (Teacher 1) removed him from class on a daily basis between September 2015 and November 2015.² Specifically, the complainant asserted that when the Student exhibited disruptive behaviors targeted by his BIP including, "talking back" and not listening to instruction, Teacher 1 removed the Student from class instead of implementing the supports and interventions set forth in his BIP. The complainant further asserted that as a result of the frequent removals from class, the Student missed instruction and consequently received a D or F for the class. The District provided documentation to OCR confirming that between September 2015 and November 2015, Teacher 1 reported that the Student committed eight infractions³ of the District's Student Code of Conduct (Code); and for three of those infractions, Teacher 1 removed the Student from class.⁴ Similarly, OCR determined that another teacher

¹ According to District records, the Student received the following counseling services: 25 minutes in September 2015; 75 minutes in October 2015; 65 minutes in November 2015; 20 minutes in December 2015; and 35 minutes in January 2016.

² The complainant asserted that when she informed the School Principal, in or around November 2015, that Teacher 1 had frequently removed the Student from class, he ended this practice.

³ Teacher 1 reported that the Student committed the following infractions of the Code: (1) September 7, 2015: "talking out of turn in class," "failure to respond to staff directions, questions, concerns"; (2) October 6, 2015: "speaking to a school community member or guest with disrespect," "talking out of turn in class," "failure to respond to staff directions, questions, concerns"; (3) October 7, 2015: "speaking to a school community member or guest with disrespect," "talking out of turn in class"; (4) October 13, 2015: "failure to respond to staff directions, questions, concerns," "skipping class"; (5) October 15, 2016: "speaking to a school community member or guest with disrespect," "failure to respond to staff directions, questions, concerns", habitual repetitions of Tier 1 behaviors (3 or more); (6) October 20, 2015: "missing class materials," "tardy to class," "failure to respond to staff directions, questions, concerns"; (7) October 21, 2015: "talking out of turn in class," failure to respond to staff directions, questions, or concerns," "habitual repetitions of Tier 1 behaviors (3 or more)"; (8) November 9, 2015: "talking out of turn in class," "failure respond to staff directions, questions, concerns," "habitual repetitions of Tier 1 behaviors (3 or more)."

⁴ According to District records, Teacher 1 removed the Student from class on the following three occasions: on October 15, 2015, Teacher 1 requested that the Student stand in the classroom doorway after he shoved a female student in class and argued with Teacher 1 and another teacher in the classroom; on October 21, 2016, Teacher 1 and another teacher requested that the School's security escort the Student from the classroom when he became argumentative with other students in the classroom and defiant towards the teachers; and on November 9, 2015, Teacher 1 gave the Student a "time out" for ten minutes and then asked him to stand in the doorway of the classroom.

(Teacher 2) removed the Student from the classroom on three occasions for behavioral infractions.⁵

The complainant also asserted that as a consequence of failing to implement the Student's IEP and BIP, during the first week of September 2015, all of the Student's teachers began prohibiting the Student from participating in all School sports and athletic activities occurring during the school day at lunch or recess, such as flag football, and afterschool activities such as basketball. The complainant asserted that the Student's basketball coach confirmed via text message on or about October 15, 2015, that the Student's teachers had informed him that the Student could not play any sports, including basketball, until his behavior improved.⁶ The District denied that the Student's teachers banned him from participating in athletic activities at the School. Specifically, the Principal asserted that teachers are not permitted to ban students from participating in athletic activities without his permission, and that he has never authorized banning a student from participating in such activities. The District acknowledged that the Student's teachers issued a number of afterschool detentions to him during school year 2015-2016; and that as a result, the Student missed basketball practice. OCR determined that on October 21, 2015, the Principal sent an electronic mail message (email) to various District staff as a reminder that students should not be prevented from participating in afterschool sports. In a subsequent email dated October 21, 2015, the Principal reiterated that teachers should document any behavioral incidents, and should attempt to address the incident by using other disciplinary consequences such as detentions and parent conferences.⁷ On November 18, 2015, the Principal sent another email stating that the Student's teachers should issue no more than one after-school detention to the Student each week so as not to interfere with his ability to attend basketball practice. OCR determined that thereafter, between December 4, 2015, and December 22, 2015, Teacher 2 issued six afterschool detentions to the Student, and another teacher (Teacher 3) issued one afterschool detention to the Student.⁸

Based on the foregoing, OCR determined that the District failed to provide the Student with related aids and services to address his behavioral difficulties, as required by his IEP and BIP,

⁵ According to District records, the Student was removed from Teacher 2's class on the following occasions: on January 13, 2016, the School's security officer removed the Student from Teacher 2's classroom after he was involved in a fight with two other students; on January 20, 2016, Teacher 2 removed the Student from her classroom and brought him to the Principal's office after he was being disruptive in class and in the hallway; and, on January 21, 2016, Teacher 2 sent the Student to the Principal's office for refusing to follow her directions.

⁶ The complainant stated that after she contacted the Principal on or about October 16, 2015, to discuss her concerns regarding the Student's ability to participate in School athletic activities, the Principal notified the Student's teachers that the Student could not be barred from participating in the School's athletic activities.

⁷ This email was in part a response to an email from Teacher 1 in which she expressed concerns regarding students continuing to participate in athletic activities despite exhibiting poor behavior. The Principal also suggested that with respect to the Student, Teacher 1 should seek assistance from School staff to develop a plan of redirection and to clarify any questions regarding implementation of the Student's IEP.

⁸ OCR determined that the Student received the following detentions: (1) December 4, 2015: Teacher 2 issued a detention to the Student for failing to follow her direction to put a pen away; (2) December 4, 2015: Teacher 3 issued a detention to the Student after he called out "maggot" in class; (3) December 7, 2015: Teacher 2 issued a detention to the Student for walking out of class; (4) December 8, 2015: Teacher 2 issued a detention to the Student for walking out of his previous detention; (5) December 18, 2015: Teacher 2 issued a lunch detention to the Student for being disruptive; (6) December 21, 2015: Teacher 2 issued a lunch detention to the Student for speaking out of turn and making inappropriate comments; (7) December 22, 2015: Teacher 2 issued a detention to the Student for being "openly defiant," talking back, and refusing to follow directions.

during school year 2015-2016, in violation of the regulation implementing Section 504, at 34 C.F.R. § 104.33. On May 13, 2016, the District agreed to implement the enclosed resolution agreement to address this compliance issue. 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 of this complaint.

Allegation 2:

With respect to Allegation 2, the complainant alleged that District staff subjected the Student to harassment because of his disability, or in the alternative retaliated for her disability-related advocacy on behalf of the Student, as follows: (a) on or about November 17, 2015, Teacher 2 stated, “if it was up to me, you would never be in any sports; (b) on November 20, 2015, the School nurse issued a “hygiene letter” to the complainant; and, (c) on or about December 15, 2015, Teacher 2 “got in the Student’s face” and spit on him when speaking to him.

Disability harassment is a form of discrimination prohibited by Section 504, Title II and their implementing regulations. Harassing conduct by an employee, by another student, or by a third party can include verbal, written, graphic, physical or other conduct; or conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student’s participation in or receipt of benefits, services or opportunities in the institution’s program. If OCR determines that harassing conduct occurred, OCR will examine additional factors to determine whether a hostile environment existed and whether the school took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence and, as appropriate, remedy its effects.

In analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant’s protected activity; (3) whether the complainant/alleged injured party was subjected to an adverse action contemporaneous with, or subsequent to, the recipient’s learning of the complainant’s involvement in the protected activity; and, (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activities during school years 2014-2015 and 2015-2016 when she advocated on behalf of the Student at several CST meetings; and, when she submitted correspondence, dated XXXXXXXX XX, 2015, to the District Superintendent expressing concerns regarding protection of the Student’s civil rights and the District’s implementation of his IEP. OCR determined that the District was aware of these protected activities.

With respect to Allegation 2(a), the complainant alleged that Teacher 2 subjected the Student to harassment because of his disability, or in the alternative retaliated for the complainant’s disability-related advocacy, by stating, on November 17, 2015, “if it was up to me, you would

never be in any sports.” The complainant asserted that Teacher 2 made the comment the day after the complainant sent a letter to the District Superintendent on XXXXXXXX XX, 2015.

Teacher 2 denied making the alleged comment. According to a statement from Teacher 2, on or about November 17, 2015, during math class, the Student spoke disrespectfully to her, and as a result, disrupted the class, and then walked out of class. Teacher 2 stated that she told the Student that it was not time to be dismissed but the Student still left.

With respect to Allegation 2(b), the complainant alleged that the School nurse subjected the Student to harassment because of his disability, or in the alternative retaliated for her disability-related advocacy, by issuing a “hygiene letter” to the complainant on XXXXXXXX XX, 2015. The complainant asserted that the District sent her the hygiene letter only a few days after she sent a letter to the District Superintendent on XXXXXXXX XX, 2015. The complainant asserted that the hygiene letter falsely stated that the Student had come to school with “dirty and wrinkled clothes,” a “dirty face,” and “body odor.”

The District explained that it is the School’s practice to allow staff members to report issues with student hygiene to the Nurse, who speaks to the student and/or parent. Further, if the Nurse is unable to reach a student’s parent, or wants to reinforce the discussion with the student and/or parent, the Nurse can send Form HS-135 describing the nature of the hygiene issue to a student’s parent. The District acknowledged that the Nurse sent a hygiene referral, Form HS-135, to the complainant on or about XXXXXXXX XX, 2015, requesting that the complainant address the Student’s body odor and dirty clothes. The District stated that the Nurse did so based upon a report from one of the Student’s teachers. In documentation provided to OCR, the Nurse stated that when the Student came to her office for water, she also personally observed that the Student’s shirts were stained and his hair was not always brushed. OCR determined that the hygiene letter the Nurse sent to the complainant was the only hygiene letter issued to parents at the School during school year 2015-2016.

With respect to Allegation 2(c), the complainant alleged that Teacher 2 subjected the Student to harassment because of his disability, or in the alternative retaliated for her disability-related advocacy, by “getting in the Student’s face” and spitting on him when speaking to him on or about December 15, 2015. The complainant asserted that on or about December 15, 2015, the Student informed Teacher 2 that she had spit on him when she was speaking to him, and Teacher 2 denied spitting on him and further refused to “back up.”

The District provided to OCR a statement from Teacher 2, in which she denied spitting on the Student on or about December 15, 2015. Teacher 2 reported “when [the Student] accused me of spitting, I explained to [the Student] that I am talking. When I address the class, I am louder and more vocal so that the whole class can hear.” Teacher 2 also reported that on or about December 15, 2015, the Student had been openly defiant, disrespectful, had failed to listen to any directives, and was talking back during class; and as a result, she issued the Student a detention.

On May 13, 2016, the District agreed to implement the enclosed resolution agreement to resolve the compliance issue identified in Allegation 1, and to voluntarily resolve Allegation 2 without further investigation. OCR will monitor the implementation of the resolution agreement.

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, 5 U.S.C. § 552, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we 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 Joy M. Purcell, Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXX XXXXXXXX, Esq.