

March 13, 2019

Dina Velez
Principal
Newark Educators Community Charter School
9-11 Hill Street
Newark, New Jersey 07102

Re: Case No. 02-16-1220
Newark Educators Community Charter School

Dear Ms. Velez:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Newark Educators Community Charter School (the School). The complainant alleged that the School discriminated against her son (the Student), on the basis of his disability, by removing him from its enrollment process in August 2015.

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 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 School is a recipient of financial assistance from the Department and is a public elementary school. 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. § 104.4(a), states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The regulation implementing Section 504 also states, at 34 C.F.R. § 104.4(b)(1)(i), that a recipient may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service. Finally, pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(vii), a recipient may not otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or

opportunity enjoyed by others receiving an aid, benefit, or service. The ADA contains similar prohibitions at 28 C.F.R. § 35.130.

In its investigation, OCR interviewed the complainant, the School and Newark Public Schools (NPS) staff. OCR also reviewed documentation that the complainant, the School, and NPS submitted. OCR made the following determinations.

OCR determined that for school year 2015-2016, the Student was in first grade and was eligible for special education and related aids and services, under the eligibility category of “other health impairment.” The Student’s Individualized Education Program (IEP) for school year 2015-2016, dated May 28, 2015, stated that his educational placement was general education, with related services of physical therapy and a 1:1 personal aide.

The Student’s school district of residence during all times relevant to this matter was NPS. The complainant participated in NPS’s universal enrollment program (Newark Enrolls) to select a school for the Student to attend during school year 2015-2016. Newark Enrolls allows parents of NPS students to enroll their children at any traditional public school in the NPS, or in one of the Newark charter schools that have agreed to participate in the program. NPS provides parents with information and resources about all participating schools; and, asks that the parents create a list that ranks eight schools that they would like their children to attend, in order of preference. The NPS guidebook for Newark Enrolls states, “All schools will provide students with disabilities the supports and services indicated on their IEPs. Please note that services are individualized and a child’s disability classification does not require them to attend a disability-specific special education program.”¹ Newark Enrolls uses a computer algorithm to generate individual school matches for all NPS students, based on the school rankings parents submit. Parents are then notified of the matches, and are advised to contact the schools to which their children are matched in order to complete the registration process for the upcoming school year. A student must complete a school’s registration process in order to enroll in a school to which the student is matched through Newark Enrolls.

OCR determined that after parents are notified of matches to participating charter schools, NPS does not take on an active role in guiding the parents through the schools’ enrollment processes; rather, it is presumed that parents will enroll their children at matched schools. Any parent whose child is found to be without a match during any point in the Newark Enrolls process is instructed to report to an NPS Family Support Center to receive assistance from NPS staff in having the child matched with a school.

OCR determined that on or about April 21, 2015, NPS notified the complainant that the Student had been matched to the School through Newark Enrolls. The School’s registration policy requires that parents provide proof of residence and complete a school registration packet consisting of the following documents: a student information form; an enrollment acceptance form; a home language survey; technology waivers; a health questionnaire; an emergency health form; a parental permission

¹ The guidebook acknowledges that some students with “low-incidence disabilities such as those with autism, those with auditory impairments, and those who are medically fragile may benefit from a specialized program designed to meet their educational needs.” The guidebook lists such schools, but otherwise encourages parents of disabled students to enroll their children in any school of their choosing.

slip for nurse administration; and, a physical form. A student is not enrolled at the School until the School verifies that all documents are current and that the forms have been filled out completely.

The complainant advised OCR that sometime after she learned of the match, she contacted the School to complete the enrollment process. She stated that in June 2015, around the end of school year 2014-2015, she brought the following documents to the School, at the School's request: a utility bill to prove her residency; a copy of the Student's birth certificate; a report card from the Student's previous school;² and, a copy of the Student's IEP. She stated that during this visit to the School, she also completed emergency forms, and School staff provided her with copies of the School's policies. She stated that School staff advised her that she must also bring in the Student's immunization records and a current physical form (based on an examination conducted within the past 12 months). The complainant stated that she returned to the School in or around early July 2015, and submitted both documents to a staff member at the School's registration desk.

It is undisputed that on August 14, 2015, the complainant met with the School's principal and school XXXXX. OCR determined that the meeting was scheduled at the complainant's request to discuss the Student's IEP, and to ensure that it was "in place for the start of the school year." The complainant stated that she brought a copy of the IEP to the meeting, but did not provide it to the principal and school XXXXX because she observed that they each already had a copy of the Student's IEP, and each referred to it during their discussion. The complainant advised OCR that during the meeting, she noted that the Student's IEP provided him with a personal 1:1 aide. The complainant stated that the principal advised her during the meeting that the School had a shared aide on its staff, rather than a personal aide; and, that the Student would be assigned to the shared aide. The complainant advised OCR that she asserted during the meeting that the School must provide the Student with a personal 1:1 aide, in accordance with his IEP.

The principal advised OCR that during the meeting on August 14, 2015, she told the complainant that she would need to see the Student's IEP in order to provide the Student with appropriate related services, but that the School would provide all services on the Student's IEP. The principal denied having a copy of the Student's IEP at the meeting. The XXXXX corroborated the principal's account of the meeting. The principal denied ever seeing the Student's IEP, and denied that the complainant ever submitted a copy to the School.

The complainant disputed this, asserting that a School staff member contacted her at some time in late July or early August 2015 to request a copy of the IEP, stating that the School could not locate the IEP she had previously submitted. The complainant stated that she submitted a copy of the Student's IEP a day after the School contacted her to request the document. Neither the School nor the complainant had documentation of any of these alleged contacts regarding the IEP.

The School advised OCR that when a disabled student registers at the School after previously attending a traditional NPS public school, the School's standard procedure is to request a copy of the Student's IEP from NPS as soon as a parent advises the School that the student has an IEP. The School then holds a "transfer of IEP" meeting to prepare an appropriate educational program for the student at the School. The School's XXXXXXXXXXXXXXXXXXXX is responsible for obtaining

² The Student was previously enrolled at Speedway Academies, a traditional NPS public school, during school year 2014-2015.

the student's IEP and arranging the transfer of IEP meeting. OCR determined that the School's XXXXXXXX XXXXXXXXXXXXX never requested a copy of the Student's IEP from NPS, or otherwise made any arrangements on behalf of the complainant and the Student to complete the enrollment process.

Documentation that the School provided to OCR confirmed that the complainant submitted the following documents to the School: a student information form; an enrollment acceptance form; a home language survey; technology waivers; a report card from the Student's previous school; a utility bill to prove her residency; and, a copy of the Student's birth certificate.

The School advised OCR that by telephone on or about August 17, 2015, it notified all parents whose children were missing health forms that such forms were overdue and must be submitted to complete registration for their children. The School informed OCR that the complainant was notified by telephone on this date about the Student's alleged incomplete registration. Additionally, the School stated that on August 18, 2015, its XXXXXX XXXXXXXXXXXXX contacted the complainant to inform her that a physical form was still missing from the Student's registration packet. The School asserted that the complainant never provided a physical form; however, the School was unable to provide documentation to substantiate that it notified the complainant of the alleged deficiency in her registration packet at any point during its enrollment process, and/or requested that the complainant submit a physical form.

The complainant alleged that the School discriminated against the Student, on the basis of his disability, by removing him from its enrollment process in August 2015. The School asserted that it removed the Student from the enrollment process because the complainant advised the School that she was not going to enroll the Student in the School. Specifically, the XXXXXX XXXXXXXXXXXXX stated that the complainant told her, in response to a request for the Student's physical form, "I'm going to send him out-of-district." The XXXXXX XXXXXXXXXXXXX advised OCR that she told the School's XXXXXXXXXXXXX XXXXXXXXXXXXX about this conversation, which she interpreted to mean that the complainant was declining to enroll the Student in the School. Subsequently, on August 20, 2015, the XXXXXXXXXXXXX XXXXXXXXXXXXX accessed the Newark Enrolls electronic database and changed the Student's status for school year 2015-2016 to "will not attend" the School.

The complainant denied that the School ever contacted her regarding a missing physical form, or that the XXXXXX XXXXXXXXXXXXX contacted her on or about August 18, 2015. Moreover, the complainant denied ever telling anybody at the School that she did not wish to enroll the Student at the School for school year 2015-2016. Rather, the complainant advised OCR that after the meeting on August 14, 2015, she was determined to send the Student to the School and advocate on the Student's behalf for him to receive a personal 1:1 aide, pursuant to his IEP.

The principal asserted that at the end of that meeting on August 14, 2015, before the principal had an opportunity to arrange for the XXXXXXXX XXXXXXXXXXXXX to contact NPS on the complainant's behalf, the complainant stated that she did not wish to enroll the Student at the School. The complainant denied stating at the meeting on August 14, 2015, that she did not wish to enroll the Student in the School. The school XXXXX corroborated the complainant's assertion, stating that the complainant did not discuss the Student's enrollment status during the meeting.

The School was unable to provide any contemporaneous documentation of its efforts to contact the complainant regarding a missing physical form or an incomplete registration; or of the complainant's alleged statement to the XXXXXX XXXXXXXXXXXX or the principal that she no longer wished for the Student to attend the School. Moreover, there is no indication that the School attempted to confirm its removal of the Student from its enrollment process with the complainant, either orally or in writing, after the XXXXXXXXXXXX XXXXXXXXXXXX updated the Newark Enrolls electronic database on August 20, 2015.

The complainant advised OCR that she was not aware that the Student had been removed from the School's enrollment process until she contacted the School on or about August 31, 2015, to inquire about the Student's assigned teacher and classroom for school year 2015-2016. On that date, she spoke with the XXXXXX XXXXXXXXXXXX, who advised her that the Student's name did not appear on any classroom list. The complainant stated that when she asked why, the XXXXXX XXXXXXXXXXXX did not provide a reason. The XXXXXX XXXXXXXXXXXX advised OCR that she referred the complainant to the School's School Business Administrator (SBA).

OCR determined that the complainant contacted the SBA on August 31, 2015. He advised the complainant that the Student was "not enrolled" at the School, according to the Newark Enrolls electronic database. The SBA asserted to OCR that he offered the complainant the opportunity to re-enroll the Student even though the School was now over its allotted enrollment quota for Newark Enrolls; however, the SBA stated that the complainant did not indicate whether she intended to re-enroll the Student. The SBA advised OCR that he never heard from the complainant again.

The complainant denied that she was offered the opportunity to place the Student back on the School's roster. The complainant informed OCR that the SBA told her that he did not know why the Student was not on the School's roster, but did not offer her a new roster spot. Further, the complainant informed OCR that she would have accepted a spot at the School at that point because it would have saved her the trouble of finding a new school for the Student. The complainant also stated that she contacted NPS a couple of days after speaking to the SBA, and at that time, staff at NPS asked her if she was still seeking to enroll the Student at the School. She stated that she was no longer interested in enrolling the Student at the School after the way they treated her and the Student.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR determined that the preponderance of the evidence did not substantiate the School's assertion that it removed the Student from its enrollment process because the complainant advised School staff that she no longer wished to enroll the Student at the School for school year 2015-2016. Contrary to the School's claim that the complainant orally advised its staff, at the meeting on August 14, 2015, and then again on or about August 18, 2015, that she did not wish to enroll the Student at the School, the complainant's conduct during that time period was consistent with her assertion that she still believed, up until August 31, 2015, that the Student would attend the School during school year 2015-2016. It was not until on or after about August 31, 2015, when the School's XXXXXX XXXXXXXXXXXX and SBA advised the complainant that the Student was not enrolled at the School, that the complainant promptly contacted NPS's Family Support Center to seek a new educational placement for the Student. The School was unable to provide any documentation or

evidence that substantiates its proffered reason for removing the Student from its enrollment process. OCR further determined that the School's broader lack of documentation at key stages of the Student's enrollment process, as well as its lack of notice to the complainant about its perceived deficiencies in the Student's enrollment materials, lends credibility to the complainant's version of events.

On March 12, 2019, the School signed the enclosed resolution agreement to resolve the complaint. OCR will monitor implementation of the resolution agreement. If the School fails to implement the resolution agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the agreement. Before such proceedings, OCR will give the School written notice of the alleged breach and 60 calendar days to cure the alleged breach.

This letter should not be interpreted to address the School'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 School 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 individual may file a 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, please contact Eric Bueide, Senior Attorney, at (646) 428-3851 or eric.bueide@ed.gov; or Ernest King, Compliance Team Attorney, at (646) 428-3777 or ernest.king@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.