

January 6, 2017

Ann Marie Quartironi
Interim Superintendent
Beacon City School District
40 Cooper Folly Road
Atco, New Jersey 08004

Re: Case No. 02-16-1364
Beacon City School District

Dear Ms. Quartironi:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Beacon City School District (the District). The complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, by failing to implement provisions in his Section 504 Plan in his XXXXX and XXXXX classes, taken during the first and second quarters of school year 2015-2016.

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.

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 person with a disability 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 implementation of a Section 504 plan is one means of meeting this standard.

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

During school year 2015-2016, the Student was enrolled in the XXXXX grade at Beacon High School (the school). During the fall 2015 semester, the Student was enrolled in two introductory college-level courses at the school, which were offered through the Dutchess Community College (DCC), College Connection Program. The program enables students to earn college credit for courses taught at participating high schools. The Student was enrolled in XXXXX and XXXXX, both of which were taught by a District XXXXX teacher (the teacher). The courses were taught during the first and second quarter of school year 2015-2016, which began in September 2015 and ended in January 2016.

The complainant alleged that the District discriminated against the Student, on the basis of his disability, by failing to implement two provisions stipulated in the Student's Section 504 Plan in his XXXXX and XXXXX classes during school year 2015-2016: "Team Meeting with Parents" and "Use of Daily Planner." The complainant asserted that the failure to implement these provisions resulted in the Student's poor academic performance in both courses, and his subsequent dismissal from the National Honor Society. OCR determined that the Student's Section 504 Plan included a provision requiring a "Team Meeting with Parents" to be convened at the start of school year 2015-2016; and included, among other related aids and services, the use of a daily planner (including an assignment checklist).¹

The provision requiring a team meeting with parents was enumerated in the "Supports for School Personnel on Behalf of the Student" section of the Student's Section 504 Plan. It stipulated that a team meeting would be convened at the beginning of school year 2015-2016, during which the Student and his parents would "share with his teachers his impairment and how it impacts his learning and academic performance" and that "the details of the [Section 504 Plan] [would] also be reviewed with the team and the parents to ensure all aspects of the [Section 504 Plan] are understood."

The Student informed OCR that at the beginning of the school year 2015-2016, he attended a meeting with his case manager and two of his other teachers to discuss the accommodations in his Section 504 Plan. The Student stated that neither his parents nor the teacher attended this meeting, and he was unaware whether they had been notified that a team meeting had been scheduled. The teacher acknowledged that he had not participated in a team meeting with the Student and the Student's parents at any point during school year 2015-2016. The teacher further acknowledged that he was unaware that such a provision was included in the Student's Section 504 Plan. The District did not provide any documentation to substantiate that such a meeting was held in accordance with the Student's Section 504 Plan.

¹ The Student's Section 504 Plan also included provisions requiring an extra set of books at home; preferential seating; checking for understanding; refocusing and redirection; simplification of language and rephrasing; directions read and explained; copy of class notes; and adapted physical education.

The provision in the Student's Section 504 Plan requiring the use of the daily planner (including assignment checklist) stated that "[t]eachers should discreetly cue student verbally to write down homework and check student's planner on a class-by-class basis to ensure that student has recorded homework assignments for each class period." The teacher informed OCR that on "several" occasions he had observed the Student either record assignments in his daily planner or take a picture of the assignments posted on the blackboard, but acknowledged that he never checked the Student's planner to ensure that the Student recorded homework assignments for the classes.

OCR determined that the final grade for DCC Government was based on a cumulative final exam (20%); weekly quizzes (30%); current event articles (30%); term paper (15%); and class participation (5%). OCR determined that the final grade for DCC Psychology 111 was based on a cumulative final exam (20%); quizzes (40%); reviews of psychology articles (30%); and class participation (10%). Students who passed the classes received three college credits for each course, and were eligible to enroll in XXXXX and XXXXX for the spring 2016 semester.

The Student earned a final grade of XXXXX for XXXXX, and a final grade of XXXXX for XXXXX. OCR determined that in on around February 2016, the school allowed the Student to make-up assignments and retake the final exams in the two classes. OCR determined that the Student scored a XXXXX on the retake of the XXXXX final exam; however, only the Student's first exam score of XXXXX was recorded. The school did not grade three XXXXX assignments that the Student sent to the Principal in an electronic mail message (email) dated March 18, 2016. The school informed OCR that the assignments were not graded because the Student was given a deadline of March 1, 2016, to submit all assignments. The Student asserted that he submitted the assignments on time, but that the school lost the assignments; therefore, he resubmitted the assignments to the school's principal by email on March 18, 2016. OCR determined that the Student did not receive college credit for either course, and was not eligible to enroll in XXXXX and XXXXX for the spring 2016 semester.

Based on the foregoing, OCR determined that the District failed to convene a team meeting with the teacher, the Student and the Student's parents at the start of school year 2015-2016; and, that the teacher failed to check the Student's daily planner to ensure that the Student recorded homework assignments, as required by the Student's 504 Plan. Further, OCR determined that the Student's grades in the two courses ultimately did not qualify for college credit. Accordingly, OCR determined that there was sufficient evidence to substantiate that the District failed to provide the Student with a FAPE, in violation of the regulation implementing Section 504, at 34 C.F.R. § 104.33.

On January 3, 2017, the District agreed to implement the enclosed resolution agreement, which addresses the compliance issues OCR identified in this complaint. OCR will monitor the implementation of the resolution agreement.

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 individual 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 any questions, please contact Amy Randhawa, Compliance Attorney, at (646) 428-3781 or sandeep.randhawa@ed.gov, or Gary Kiang, Senior Attorney, at (646) 428-3761 or gary.kiang@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXX XXXXX, Esq. (via email)
XXXXX XXXXX, Esq. (via email)