

March 17, 2017

Dr. Maryrose Caulfield
Superintendent of Schools
Flemington-Raritan Regional School District
50 Court Street
Flemington, New Jersey 08822

Re: Case No. 02-16-7064
Flemington-Raritan Regional School District

Dear Dr. Caulfield:

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 the Flemington-Raritan Regional School District (the District). The complainants alleged that the District discriminated against their son (the Student), on the basis of his disability, by not permitting his school bus driver to drop him off at home without an adult present, during school year 2016-2017.

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 (the 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. § 104.4, provides that qualified individuals with disabilities shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives federal financial assistance from the Department. The regulation implementing the ADA, at 28 C.F.R. § 35.130, contains similar provisions.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i),(ii),(iv) and (vii), states that a recipient, in providing any aid, benefit or service, may not, on the basis of disability: deny a qualified individual with a disability an opportunity to participate in a benefit or service; provide a different benefit or service; afford a qualified individual with a disability an opportunity to participate in a benefit or service that is not equal to that afforded others; or otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others. The regulation implementing the ADA, at 28 C.F.R. §§ 35.130(a) and (b)(1)(iv), similarly prohibits different treatment on the basis of disability. In addition, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4)(i), provides that a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified persons with disabilities to discrimination on the basis of disability.

Additionally, 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 an Individualized Education Plan (IEP) is one means of meeting this standard. Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.35(c), in making determinations regarding the appropriateness of special education related aids and services, a recipient shall, among other things, draw upon information from a variety of sources and ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

OCR interviewed the Student's father (complainant 1) during the course of the investigation. OCR also reviewed documentation that complainant 1 and the District submitted. OCR made the following determinations.

The complainants alleged that the District discriminated against the Student, on the basis of his disability, by not permitting his school bus driver to drop him off at home without an adult present, during school year 2016-2017. The complainants asserted that during school year 2015-2016, the Student's bus driver dropped him off at home without an adult present; however, at the beginning of school year 2016-2017, the District advised the complainants that the Student could be dropped off at home only if an adult was present. Complainant 1 asserted that he discussed the matter with the director of the District's transportation department (the director), who stated that all students who receive transportation services pursuant to an IEP must be met at the bus by an adult upon being dropped off at home, pursuant to District policy. The complainants stated that non-disabled students are routinely dropped off at home from their school buses without an adult present.

OCR determined that the Student was enrolled in seventh grade during school year 2016-2017, and was attending an XXX-XX-XXXXXXXX XXXXXXXX XXXXXXXX pursuant to an IEP dated

XXX X, XXXX.¹ The Student’s IEP stipulated that the District would provide the Student with transportation services from his home to and from his XXXXXXXX XXXXXXXX placement. The IEP did not state that an adult needed to be home for the school bus to drop off the Student. The District acknowledged that the group that developed the Student’s IEP, the Child Study Team (CST), did not discuss or make any determination regarding whether the Student needed an adult present at home when his school bus dropped him off after school.

OCR determined that the District contracted with one bus company (bus company 1) to provide transportation for the Student during school year 2015-2016, and a different bus company to provide transportation for the Student during school year 2016-2017 (bus company 2). The District’s Transportation Handbook, which applies to all bus companies transporting all District students, contains the District’s policies relating to bus routes/stops; driver qualifications; safety; student expectations; disciplinary measures; bus accidents; courtesy busing; and parent responsibilities. Included in the bus routes/stops section of the handbook is the subsection entitled “Special Needs,” which places certain restrictions upon students who receive transportation services pursuant to an IEP. The handbook in this section states, in pertinent part, that “[a] parent/guardian (age 18 years or older) is required to meet the vehicle at drop-off time. The driver shall wait 2 minutes for parent/guardian at bus stop before returning the student to school . . . **ALL** students who are provided with special education transportation services through an IEP, are required to be met at the bus by a parent/guardian (age 18 years or older) regardless of the student’s age” (emphasis in original).

On or about XXXXXXXXXXXX, 2016, complainant 1 contacted the District’s XXXXXXXXX administrator (the XXXXXXXXX administrator) to request that the Student be permitted to be dropped off at home without an adult present. Complainant 1 informed the XXXXXXXXX administrator that during school year 2015-2016, the Student was dropped off by bus company 1 without an adult present. The XXXXXXXXX administrator advised complainant 1 that, pursuant to the District’s Transportation Handbook, students with IEPs that include transportation services may not be dropped off without an adult present; and, that this policy was in effect during school year 2015-2016, even though bus company 1 had not enforced it.

On XXXXXXXXXXXX, 2016, complainant 1 asked the District’s Superintendent to allow the Student to be dropped off at home without an adult present, and pointed out that the policy failed to “examin[e] each situation based upon the student’s individual needs.” Complainant 1 stated that he believed that the Student was capable of being home alone. The Superintendent denied the request, citing the transportation policy, but informed complainant 1 that he could submit the request to the Joint Transportation Committee (the JTC).² Complainant 1 submitted his request to the JTC on XXXXXXXXXXXX, 2016.

¹ The Student is XXXXXX and XXXXXXXXXXX XXXXXXX, which affects his XXXXXXX XXXXXXX. He is classified as XXXXXXX XXXXXXX XXXXXXXXXXX.

² The JTC is responsible for monitoring a joint transportation agreement between the District and the Hunterdon Central Regional High School District (which receives high school students who reside in the District) and reviewing mutual and individual concerns. The JTC comprises three members from each of the boards of education.

On XXXXXXXXXXXXX, 2016, the District notified complainant 1 that the JTC determined that his request was “contrary to [D]istrict transportation procedures.” To date, the District has not permitted the Student’s bus driver to drop off the Student at home without an adult present.

The District informed OCR that it makes no exceptions to the policy, and that it did not grant any exception to the policy during school years 2015-2016 and 2016-2017. The District acknowledged that non-disabled students are not required to have a parent present at pick up or drop off.

Based on the foregoing, OCR determined that there was sufficient evidence to substantiate that the District discriminated against the Student, on the basis of his disability, by not permitting his bus driver to drop him off at home without an adult present during school year 2016-2017. Specifically, OCR determined that the District subjected the Student to different treatment because of his disability with respect to the manner in which his transportation services were provided, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4(b)(1)(iv). Further, the District did not adhere to the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. § 104.35(c), in making this determination; namely, the decision to require that an adult be present upon drop off, which is not required of non-disabled students, was not made based upon information from a variety of sources and was not made by a group of persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options. Additionally, the District acknowledged that it routinely imposes this policy requirement on disabled students with IEPs that provide for transportation without making individualized determinations about the appropriateness of the requirement pursuant to the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. § 104.35(c), which also violates the regulation implementing Section 504 at 104.4(b)(4). On March 17, 2017, the District entered into the enclosed resolution agreement with OCR to resolve these compliance issues. 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 complainants 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Gary Kiang, Senior Compliance Team Attorney, at (646) 428-3761 or gary.kiang@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXX XX XXXXXXXX, XXX, Esq.