

August 1, 2017

Michael J. Vallely, Ph.D.
Superintendent of Schools
Lancaster Central School District
177 Central Avenue
Lancaster, New York 14086

Re: Case No. 02-17-1178
Lancaster Central School District

Dear Dr. Vallely:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the Lancaster Central School District (the District). The complainants alleged that the District discriminated against their son (the Student), on the basis of his disability, by failing to implement provisions of the Student's Section 504 plan for school year 2016-2017, related to (a) XXXXXXXXXXXXXXXX and (b) testing in a separate location/room.

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. § 104.33(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 disabled person 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

The teacher recalled that he first spoke to the complainants about their concerns with him XXXXXXXX the XXXX XXXX at a parent-teacher’s conference in or around November 2016. The teacher stated that he told the complainants that he would be more diligent about XXXXXXXX the XXXX XXXX. The teacher also acknowledged that the principal spoke to him about XXXXXXXX the XXXX XXXX on a consistent basis. The teacher stated that he could not recall exactly when this conversation took place, but in response to the conversation, on XXXX XX, 2017, he drafted detailed notes for a substitute teacher to pick up in the morning in the event that the teacher was absent,² and stated that he planned to XXXX the Student’s XXXX XXXX earlier in the school day, rather than waiting until the end of the day.

OCR reviewed a copy of the Student’s XXXX XXXX and determined that the Student wrote his assignments in this XXXX XXXX on 56 days between September 6 and January 2, 2017; the teacher did not XXXX the XXXX XXXX on 38 of those days. OCR further determined that between January 3 and June 14, 2017,³ the Student wrote his assignments in his XXXX XXXX on 99 days; the teacher or substitute teacher XXXXXXXX the XXXX XXXX on all but seven days.

The complainants’ asserted that when the teacher failed to XXXXXXXX the Student’s XXXX XXXX, the Student was unsure of his assignments; he sometimes completed incorrect assignments; he failed to study for some exams; and his overall grades suffered.

Based on the foregoing, OCR determined that there was sufficient evidence to substantiate the complainant’s allegation that the District discriminated against the Student, on the basis of his disability, by failing to ensure that the Student’s teacher XXXXXXXXXX the Student’s XXXX XXXX as specified in the Student’s plan. Specifically, OCR determined that the teacher and/or a substitute teacher failed to XXXXXXXX the student’s XXXX XXXX on 45 occasions between September 6, 2016, and June 14, 2017. The District’s failure to appropriately implement the Student’s plan violated 34 C.F.R. § 104.33(b)(1)(i).

On August 1, 2017, the District agreed to implement the enclosed resolution agreement, which addresses the compliance issue described above.

With respect to Allegation 1(b), the complainants alleged that the District discriminated against the Student, on the basis of his disability, by failing to implement a provision of the plan related to testing in a separate location/room. Specifically, the complainants asserted that the District failed to place the Student in a separate location/room during exams that lasted 50 minutes or more during the 2016-2017 school year, as required by the plan.

OCR determined that the plan includes a “Testing Accommodations” section, which states that the Student should be placed in a “separate location/room” “for tests longer than 50 minutes.” The plan specifies that this accommodation should be provided in a “room with minimal distractions.”

² OCR determined that the teacher was absent on 24 school days during the school year, and a substitute teacher replaced him in the Student’s classroom on those days.

³ OCR did not include Fridays in its calculation. Additionally, OCR did not have copies of the Student’s XXXX XXXX for the dates March 15 through March 26, 2017.

The complainants asserted that in or around late XXXXXXXX or early XXXXXXXX 2016, the Student told the complainants that he was taking tests “in a XXXX XXXX” or a XXXX, and that he felt ostracized because he was the only student in his class taking tests using this XXXX. The complainants stated that during a parent-teacher conference on XXXXX XX ,2016, they told the teacher that the use of this XXXX XXXX was not a part of the plan, and stated that the Student was finishing his tests quickly because he did not want to be the only student in a XXXX XXXX. The complainants asserted that they also brought up the Student’s testing location during the above-referenced meeting with the principal that took place on XXXX XX, 2016. The complainants asserted that the principal informed them that the teacher would have everyone use a XXXX XXXX so as not to make the Student stand out during exams. The complainants also asserted that the principal offered the library and main office as alternative testing locations, but the principal later stated that these alternatives were not suitable, as the Student needed a staff member available for prompting and to answer questions during exams as per the plan.⁴ The complainants advised OCR that they were not satisfied with having the Student take exams over 50 minutes in the back of the classroom with a XXXX XXXX, but agreed to this arrangement because the school did not offer them other viable alternatives.

The School’s Committee on Special Education Chair (the chair) was a member of the Student’s 504 Committee (the 504 team). The chair stated that the provision in the plan allowing the Student to take tests lasting longer than 50 minutes in a separate location/room was drafted to address the Student’s XXXXXXXX XXXXXXXX XXXXXXXXXX (XXX) XXXXXXXXXX, which stated that the Student has XXXX XXXX XXXX and needed to be given directions during long tests. The Chair stated that the Student also needed to have directions repeated several times during long exams, so the 504 team decided to add the provision regarding testing in a separate location/room. The Chair stated that the 504 team discussed the meaning of this provision, and that this provision could be satisfied by allowing the Student take exams lasting longer than 50 minutes in the back of the room with the teacher nearby to repeat directions and answer the Student’s questions. The chair also informed OCR that after the 504 meeting, neither the school nor the complainants came to her to request clarification regarding the interpretation of any provision in the Student’s Section 504 plan.

The teacher stated that the Student took exams lasting longer than 50 minutes in a XXXX, “XXXX” XXXX XXXX that was XXXX XXXX XXXX XXXX to separate the Student from noise and sight distractions. The teacher also stated that the Student always took exams lasting longer than 50 minutes⁵ in the back of the classroom, and the teacher would stand approximately 4-5 feet away from the Student in case the Student needed clarification or had any questions. For exams lasting less than 50 minutes, the teacher stated that the Student sometimes sat at his desk and other times the teacher required the Student to go to the back of the classroom to take the test with a XXXX XXXX.⁶ The teacher informed OCR that in October 2016, all students in his class

⁴ The plan states that “for all tests,” “teacher will check for understanding and repeat directions another time if student does not demonstrate an understanding of direction.”

⁵ The teacher stated that tests longer than 50 minutes included eight math unit tests, four reading tests, and three science tests; the witness added that the Student would have had a separate location for New York State exams in Language Arts, math, and science; however, the Student XXXX XXXX XXXX.

⁶ The teacher asserted that the Student first used the XXXX XXXX during a math exam in XXXX 2016, and the Student complained to the complainants about the XXXX following this exam. The teacher stated that he does not

began using XXXX XXXX for tests lasting longer than 50 minutes for the remainder of school year 2016-2017. The teacher also stated that the Student could not take tests over 50 minutes in other rooms because the Student needed to have a staff member present to answer questions during exams, and there was no staff member available for this purpose. The teacher asserted that he spoke to the principal, after the parent – teacher’s conference on XXXX XX, 2016, about administering the Student’s exams lasting longer than 50 minutes in the back of the classroom using a XXXX XXXX, and the principal agreed that what he was doing was standard procedure.

The principal informed OCR that she conducted a meeting with the complainants on XXXX XX, 2016, regarding several concerns that they brought to her attention about the implementation of the plan. The principal stated that the complainants sent her a list of their concerns, but testing in a separate location/room was not on the list; nevertheless, the principal discussed this provision of the plan with the complainants. The principal asserted that she explained to the complainants that testing in a separate location/room could mean having the Student take exams lasting longer than 50 minutes in the back of the classroom; that the teacher did not have an aide so the teacher could not accommodate the Student by placing him in a separate classroom; and she suggested the option of allowing the Student to take exams lasting longer than 50 minutes in the library or common area.⁷ The principal stated that the complainants declined these options and agreed that the Student would continue to take exams over 50 minutes in the back of the classroom.

Based on the foregoing, OCR determined that the District allowed the Student to take exams lasting longer than 50 minutes in the back of the classroom, which was consistent with the provision of a separate location as stated in his plan.⁸ Accordingly, OCR determined there was insufficient evidence to substantiate the complainant’s allegation that the District discriminated against the Student, on the basis of his disability by failing to implement a provision of the Student’s Section 504 plan for school year 2016-2017 related to testing in a separate location/room. Accordingly, OCR will take no further action regarding Allegation 1(b).

As stated above, on August 1, 2017, the District agreed to implement the enclosed resolution agreement to resolve the compliance issues OCR identified with respect to Allegation 1(a). 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

recall when the complainants first complained about the Student’s testing location, but he stated that at some point he told the complainants that all students in his classroom used XXXX XXXX. The complainants asserted that the District did not make them aware that all students in the Student’s classroom took exams with XXXX XXXX until the most recent 504 meeting, which took place in XXXX 2017.

⁷ The principal described the common area as being right outside of the Student’s classroom.

⁸ To the extent the complainants disagree with the Student’s special education placement and services, it is OCR’s policy to refrain from assessing the appropriateness of decisions made by a group of knowledgeable persons convened for the purpose of evaluating a student and/or making determinations about a student’s placement, including decisions regarding the manner in which such aids and services will be provided. Any disagreement between the complainants and the District should be addressed through a due process hearing. A due process hearing officer is empowered to review the determinations made by the 504 team.

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 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 Ernest King, Compliance Team Attorney, at (646) 428-3777 or Ernest.King@ed.gov; or Crystal Johnson, Senior Investigator, at (646) 428-3821 or Crystal.Johnson@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard