

February 5, 2018

Hillary Austin
Superintendent
Elmira City School District
951 Hoffman Street
Elmira, New York

Re: Case No. 02-17-1455
Elmira City School District

Dear Superintendent Austin:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), in the above-referenced complaint filed against Elmira City School District (the District). The complainant alleged that the District discriminated against her daughter (the Student), on the basis of her disability, by failing to timely evaluate her for special education and related aids and services.

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). Additionally, OCR is 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 Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), provides that it is a district's responsibility to conduct an evaluation, in accordance with the requirements of 34 C.F.R. §104.35(b), of any student who needs or is believed to need special education and/or related aids or services because of a disability. In accordance with the regulation implementing Section 504, at 34 C.F.R. § 104.33, a recipient is required to provide a free appropriate public education to qualified disabled students, which includes special education and/or 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. The regulation implementing Section 504 does not

require districts to evaluate all students with suspected or diagnosed medical conditions or at a parent's request. In determining whether a district has an obligation to evaluate a student, OCR considers the indicia of disability that were available to the district suggesting a need for special education and/or related aids and services.

In reaching a determination regarding this complaint, OCR interviewed the complainant and District staff. OCR also reviewed documentation that the complainant and the District submitted.

OCR determined that during school year 2016-2017, the Student was enrolled in the District as a XXXXXX grade student at the Riverside School (the school). The complainant alleged that the District discriminated against the Student, on the basis of her disability, by failing to timely evaluate her for special education and related aids and services. The complainant asserted that during school year 2016-2017, the Student struggled with her schoolwork. The complainant stated that she spoke about this with the Student's teacher (the teacher), the school's principal (the principal) and the school's director of student services (the director); and, provided to them copies of the Student's work. The complainant also stated that she requested extra help for the Student, which the Student did not receive; and ultimately, requested that the Student repeat XXXXXX grade. The complainant asserted that the District promoted the Student to XXXXX grade and did not "check to see if she needed help" or "if she had a disability or was struggling." The complainant did not make a written request for an evaluation of the Student.¹

The District stated that it has not evaluated the Student for special education services and she has not been provided with an Individualized Education Program (IEP) or Section 504 Plan. The District asserted that the complainant did not request an evaluation of the Student and that the District did not observe any signs indicating that the Student required such an evaluation. The District asserted that during school year 2016-2017, the Student had been performing at grade level, testing at grade level, was present in school every day, and seemed as well-adjusted as her peers. The District further asserted that the complainant was aware of the process by which she could make a request for an evaluation, as her XXXXX other children were receiving special education services.

OCR's review of the Student's report card for school year 2016-2017 indicated that the Student partially met New York State and grade level expectations in four subject areas: mathematics, social studies, science, and reading.² The District also informed OCR that the Student had

¹ On January 16, 2018, by email to the complainant, OCR requested that the complainant provide copies of all correspondence to/from the District in regard to her request for an evaluation of the Student and additionally requested to speak with the complainant at a mutually convenient time. The complainant has not responded to OCR's requests, to date.

² Each of the subject areas on the Student's report card (math, social studies, science, reading and writing) is broken down into different sub-categories. For example, Mathematics consists of the following: Operations and Algebraic Thinking; Number Sense & Operations in Base Ten; Measurement & Data; Geometry; Mathematical Reasoning. Each of the sub-categories is broken down into different elements on which the students' progress in the element is rated on a scale of 1 to 4; 1 (Does not meet NYS & grade level expectations), 2 (Partially meets NYS & grade level expectations), 3 (Meets current NYS & grade level expectations), and 4 (Exceeds current NYS & grade level expectations). During school year 2016-2017, in mathematics, the Student's report card indicated that she received ratings of 1, 2, and 3 in math elements over the year. In social studies and science, she received grades of 2 and 3; in

previously received academic intervention services in mathematics during the XXXX grade in school year 2015-2016, but the services had been discontinued for the XXXXXX grade. The Student's XXXXXX grade teacher reported to OCR that the Student had difficulty and was not fully independent in areas of the mathematics curriculum taught during the fourth quarter; and, he believed that she needed "a little bit of coaching," but he did not characterize her overall performance during the year as "struggling." He noted that at the end of the school year, the Student's scores on the District's standardized tests (NWEA) in reading and mathematics indicated that the Student was at grade level and meeting New York State standards.³ The teacher could not recollect whether the Student had received any individualized coaching outside of the classroom during the school year, nor did he recall the Student's scores for the fall and winter administrations of the NWEA. The teacher did not recollect the complainant's expressing general concerns about the Student "struggling" in school, but recalled one occasion on which the complainant expressed concern about the Student grasping certain mathematics concepts.⁴ The teacher informed OCR that he was not aware that the complainant had asked to have the Student repeat the XXXXXX grade; and, did not participate in a discussion with the complainant or any administrators, nor had he been consulted by administrative staff in that regard.

According to a letter from the director to the complainant dated August 18, 2017, regarding the complainant's request to retain the Student in the XXXXXX grade for school year 2017-2018, the complainant met with the director and the principal in June 2017 to discuss the Student's progress and academic and social readiness for the third grade. According to the letter, the director informed the complainant that the Student's report card indicated that the Student was meeting or exceeding NYS grade level expectations in all but three areas; for two of these areas, she partially met grade level expectations, and in one did not meet grade level expectations during the 4th marking period. The letter further stated that the Student's scores indicated that she exceeded the District average as well as her targeted performance score and the typical performance score on the spring 2017 NWEA. The director, after consulting with the principal, informed the complainant that he determined that the Student should advance to XXXX grade.

On January 31, 2018, the District agreed to implement the enclosed resolution agreement to voluntarily resolve the complaint without further investigation by OCR. 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 the complaint.

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

reading grades of 3, with the exception of grades of 2 in one element (acquires and uses grade appropriate vocabulary); and, grades of 2 and 3 in writing.

³ OCR's review of the Student's NWEA scores for spring 2016-2017 indicated that the Student scored in the 53rd "Norms Percentile" in reading with a score of 193 (range of 190-196), and in the 48th "Norms Percentile" in Mathematics with a score of 188 (range of 185-191). The Student's teacher informed OCR that these scores did not indicate that the Student should be referred for an evaluation.

⁴ The teacher acknowledged that the complainant expressed her concern at the beginning of the school year that the Student was having difficulty with addition and subtraction, and he told her that there were multiple strategies that students could use and the Student had not yet found "her strategy."

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 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 Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3763 or jane.momo@ed.gov; or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Enc.

cc: XXXXXX XXXXX, Esq.