

June 14, 2018

Dr. Edwin M. Quezada  
Superintendent  
Yonkers Public Schools  
One Larkin Center  
Yonkers, New York 10701

Re: Case No. 02-18-1014  
Yonkers Public Schools

Dear Dr. Quezada:

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 Yonkers Public Schools (the District). The complainant alleged that in September 2017, the District discriminated against her daughter (the Student), on the basis of her disability, by failing to take into account the Student's needs in order for the Student to participate in the District's pre-kindergarten program.

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 also 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 both Section 504 and the ADA.

In reaching a determination, OCR reviewed documents that the complainant and the District submitted. OCR also interviewed the complainant, the District's xxxxxxxxx (physician 1), and the principal of xxxxxxxxx (the School). OCR made the following determinations.

The complainant alleged that in September 2017, the District discriminated against the Student, on the basis of her disability, by failing to take into account the Student's needs in order for the Student to participate in the District's pre-kindergarten program. The regulation implementing

Section 504, at 34 C.F.R. § 104.38, states that a recipient that provides preschool education may not, on the basis of disability, exclude qualified individuals with disabilities and shall take into account the needs of such persons in determining the aid, benefits or services to be provided.

OCR determined that in December 2016, the complainant registered the Student for the District's pre-kindergarten program, beginning in school year 2017-2018. The Student, who was four years old at the beginning of school year 2017-2018, is diagnosed with xxxxxxxxx. In or around August 2017, the District assigned the Student to a pre-kindergarten program at the School.

Physician 1 informed OCR that on or about August 28, 2017, a xxxxxxxxx (nurse 1) xxxxxxxxx met with the Student's family to provide them with a xxxxxxxxx for the Student's pediatrician (physician 2) to complete and submit to the District; and, a list of xxxxxxxxx treatment-related equipment that also needed to be provided to the School. Physician 1 stated that, typically, a xxxxxxxxx is developed by a student's physician, reviewed by the School nurse, and added to a student's school records, along with any medication log. On or about that same day, the Student's family visited the School, and met with the principal and the School nurse (nurse 2),<sup>1</sup> as well as the principal's clerk. The principal advised OCR that the complainant stated that the Student xxxxxxxxx. The principal stated that the group then visited the Student's possible classroom, and decided that the Student should be placed in a different class that was closer to the nurse's office.

According to the principal, nurse 2 asked for medical orders<sup>2</sup> for the Student and orders for medication; and, both nurse 2 and the principal emphasized that the complainant would need to provide these in order for the Student to start school. Orders would include xxxxxxxxx, and what medicine needed to be administered. According to the principal, the complainant stated that she could provide the necessary orders.

The principal stated that the complainant was adamant that she wanted to remain with the Student all day to assist in managing her xxxxxxxxx condition. The principal advised OCR that she told the complainant that, like all parents, she could stay during the Student's transition, which meant however long it would take for the child to transition successfully to pre-kindergarten. The principal also stated that she made it clear that District staff would coordinate with the complainant to ensure that she, nurse 2, and the Student, all felt comfortable with the Student's transition; however, the principal stated that she would have to consult with physician 1 with respect to the complainant's request to stay all day, every day. The principal advised OCR that the complainant became upset and left with the Student.

The principal informed OCR that after meeting with the complainant, she contacted physician 1, who advised that they should wait to receive the medical orders for the Student. The principal stated that neither she nor nurse 2 ever received medical orders from the complainant.

On September 11, 2017, the first day of the school year for the Student, nurse 2 and the principal met with the complainant for the second time. The District asserted that the complainant again

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<sup>1</sup> Nurse 2 is no longer employed by the District; therefore, she was unavailable for an interview.

<sup>2</sup> Physician 1 explained that medical orders should include xxxxxxxxx. The medical orders can be provided as a narrative, or on a District's or physician's form.

stated to the principal that she wished to remain with the Student for the entire school day to assist in managing the Student's xxxxxxxxx. The complainant also submitted an undated letter from physician 2, in which physician 2 recommended that the complainant be allowed to accompany the Student at school (from 9:00 am to 1:00 pm), at least until the Student's xxxxxxxxx condition was stable and until School staff was comfortable managing it. Physician 2 also recommended that the Student be assigned an aide in school to assist with her xxxxxxxxx. The principal referred the complainant to physician 1 to further discuss the matter.<sup>3</sup>

OCR determined that on September 14, 2017, the complainant and the Student's grandmother met in person with physician 1 to discuss the Student's xxxxxxxxx developed by physician 2. Physician 2 participated in the meeting by telephone. The complainant stated that she requested a Section 504 plan for the Student, and submitted a model from xxxxxxxxx that physician 2 had completed. The complainant stated that physician 1 refused to read or consider any documentation relating to the Student's medical condition, including the letter from physician 2; the proposed xxxxxxxxx; and the draft Section 504 plan.<sup>4</sup> Physician 1 denied that he refused to read or consider documentation from physician 2. Physician 1 stated that he reviewed the xxxxxxxxx and other information that physician 2 had developed for the Student.

The complainant also stated that she and physician 2 requested that the complainant be permitted to accompany the Student in school for the entire day, and that School medical staff (i.e., a nurse) xxxxxxxxx. The complainant stated that physician 1 told her that the School, and any other District school, could only xxxxxxxxx. Physician 1 denied that he told the complainant that the Student's xxxxxxxxx. Physician 1 stated that physician 2 and the complainant wanted the nurse to xxxxxxxxx. Physician 1 stated that he rejected this proposed plan, stating that if such xxxxxxxxx were necessary, he did not believe that the Student was medically stable to attend a District program. He stated that typically xxxxxxxxx and "xxxxxxx." Additionally, physician 1 informed OCR that the complainant wanted to accompany the Student in school for the entire school day, because the complainant believed she was able to recognize non-verbal signs of the Student's xxxxxxxxx; and, the complainant expressed concern that the nurse would not be able to recognize such signs. Physician 1 stated that his medical opinion was that if the Student needed that level of monitoring, her level of instability was too high for a school setting. Physician 1 also stated that based on his understanding of School/District policy, parents are not allowed to remain with their child for the entire school day.

The complainant further stated that she inquired as to whether home instruction could be an option for the Student, and physician 1 stated that it was not. Physician 1 stated that there was no discussion of home instruction during the meeting; however, physician 1 stated that in cases where there is demonstrated medical instability, the District can offer a "home and hospital" program, which would provide tutoring services until stability is achieved.

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<sup>3</sup> The principal advised OCR that later on September 11, 2017, she contacted the complainant to ask about the doctor's orders, but did not reach the complainant. The principal stated that she left another message for the complainant on September 12, 2017, and ultimately spoke with the Student's father and the complainant on that date; and, gave the complainant the telephone number of physician 1 and urged the complainant to call him.

<sup>4</sup> The complainant stated that physician 1 acted belligerently during the meeting and threw the Student's medical paperwork at her and called it "garbage."

OCR determined that physician 1 did not thereafter request additional medical information or propose an alternate plan for addressing the Student's needs so that she could participate in the District's pre-kindergarten program. The complainant subsequently enrolled the Student in a non-public pre-kindergarten program for school year 2017-2018.

Based on the foregoing, OCR determined that the District failed to take into account the Student's needs as a student with xxxxxxxxx and propose aid, benefits or services that would allow the Student to participate in the pre-kindergarten program. Specifically, OCR determined that the complainant provided to the District medical orders that the District requested, which included physician 2's recommendations; however, physician 1 rejected physician 2's recommendations and neither physician 1 nor any other District staff member requested further information or proposed an alternative plan for meeting the Student's needs to enable her to participate in the program.<sup>5</sup>

On June 12, 2018, the District signed the enclosed resolution agreement that resolves the complainant's allegation. OCR will monitor the implementation of the agreement. Upon the District's satisfaction of the commitments made under the agreement, OCR will close the case.

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.

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 regarding OCR's determination, please contact Andy Artz, Compliance Team Attorney, at (646) 428-3901 or [alexander.artz@ed.gov](mailto:alexander.artz@ed.gov); or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or [anna.moretto.cramer@ed.gov](mailto:anna.moretto.cramer@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

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<sup>5</sup> After OCR notified the District of its investigation of this complaint, the District invited the complainant to provide updated medical orders that the District could use to develop a plan for the Student to attend the program. The District stated to OCR that, to date, the complainant has not provided updated medical orders.

Encl.

cc:     xxxxxxxx, Esq.  
       xxxxxxxx, Esq.