



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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TIMOTHY C. J. BLANCHARD
DIRECTOR
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October 11, 2019

Lou Muenker
Superintendent
South Hunterdon Regional School District
301 Mt. Airy-Harbourton Road
Lambertville, New Jersey 08530

Re: Case No. 02-19-1285
South Hunterdon Regional School District

Dear Superintendent Muenker:

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 South Hunterdon Regional School District (the District). The complainant alleged that the District discriminated against her son (the Student) on the basis of his disability, on or about XXXXX XX, 2019, when the principal of the Lambertville Public School (the School): (a) excluded the Student from school prior to dismissal due to behavioral difficulties that were related to his disability; and, (b) the principal stated that in the future, the complainant would be required to pick up the Student from school prior to dismissal whenever he exhibited behavioral difficulties related to his disability, unless the complainant agreed to withdraw the Student from the District immediately (Allegation 1); and when the District Superintendent and School Board President failed to respond to complaints she made to them, on April 16, 2019, that: (a) between December 2018 and April 2019, staff at the School repeatedly removed the Student from the classroom and sent him to the principal's office due to behavioral difficulties that were related to his disability; and, (b) that the principal had required the complainant to pick up the Student from school prior to dismissal on XXXXX XX, 2019, as described in Allegation 1 (Allegation 2).

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 (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 educational system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i) and (vii), a recipient may not, on the basis of a person’s disability, deny that person the opportunity to participate in or benefit from any aid, benefit, or service; or, otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. Additionally, the regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(1)(i) and (vii), states that a public entity may not, on the basis of disability, deny a qualified individual with a disability the opportunity to participate in or benefit from any aid, benefit, or service; or, otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

OCR reviewed information that the complainant and the District submitted to OCR. OCR also interviewed the complainant and District staff. OCR made the following determinations.

During school year 2018-2019, the Student was enrolled in the XXXXX grade at the School. On February 25, 2019, the complainant sent an email to the Superintendent, stating that she would be XXXXXX to another XXXXXX XXXXXXXXX as of XXX X, 2019, and requesting permission for the Student to XXXXXXXXX XXXXXXXXXX XXXXXX XX XXX XXXXXXXXXX for the XXXXXXXXXX of XXXXXX XXXX 2018-2019. The Superintendent replied by email the same day, February 25, 2019, granting permission for the Student to XXXXXXXXXX XXXXXXXXXX the School as an XXXXXXXXXXXXXXXXXXXX student through the XXX of XXXXXX XXXX XXXXXXXXXX.¹ The Student attended the School until XXXXX XX, 2019, when the complainant withdrew the Student from the District.

On March 26, 2019, the District created a Section 504 Plan for the Student, based on his diagnoses of XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXX, XXXXXXXXXXXXXXXXXXXX XXXXXXXXXX, and XXXXXXXXXXXXXX. Pursuant to the Section 504 Plan, the Student was placed in a general education classroom with related aids and services with respect to physical arrangement of the room, lesson presentation, modification of assignments and worksheets, and test modifications. The Section 504 Plan also included a section titled “Behavior/Discipline Alternatives,” which states: “Establish a “go-to” person for [the Student] to talk to should he become overwhelmed, stressed, or anxious. Sensory toys, as needed. Quiet space, when needed. Behavior plan, as needed.” OCR determined that the Student did not have a separate Behavioral Intervention Plan (BIP).

¹ In his email to the complainant on February 25, 2019, the Superintendent stated that the Student could XXXXXXXX XX the District because there were XXXX XX XXXX XX XXXXXXX XXXXXXXXXX that school year. The Superintendent further stated that the complainant would be responsible for XXXXXXXXXXXXXXXX the Student XX and XXXX XXXXXXX.

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student on the basis of his disability, on or about XXXXX XX, 2019, when the principal of the School: (a) excluded the Student from school prior to dismissal due to behavioral difficulties that were related to his disability; and, (b) stated that, in the future, the complainant would be required to pick up the Student from school prior to dismissal whenever he exhibited behavioral difficulties related to his disability, unless the complainant agreed to withdraw the Student from the District immediately. In support of Allegation 1, the complainant asserted that the principal sent her an email, dated XXXXX X, 2019, in which she suggested that the complainant pick up the Student prior to dismissal when he was not “XXXXXXXXXX his XXXXXXXXX” due to behavioral difficulties; and, the next day the principal told her that the District did not have the resources necessary to help the Student. The complainant further asserted that on XXXXX XX, 2019, the principal called her and stated that she would have to pick up the Student prior to dismissal because he was not sharing school supplies with his classmates. The complainant stated that during this conversation, she informed the principal that she would have to change the Student’s school because she could not repeatedly leave work early to pick up the Student prior to dismissal, and the principal stated, “ok, fine.” The complainant further asserted that the principal stated that she would be required to pick up the Student any time he exhibited similar behavioral difficulties in the future.

With respect to Allegation 1(a), the District confirmed that the principal contacted the complainant on XXXXX XX, 2019, to request that she pick up the Student prior to dismissal. The principal stated that she did so because on that date, the Student was engaging in behavior that endangered himself and others. The principal stated that she removed the Student from the classroom at approximately XXXX p.m. on XXXXX XX, 2019, following an incident in which the Student had become very upset and began XXXXXXXXX XXXXX around the classroom (the incident). According to an incident report that the Student’s teacher completed, the Student was XXXXXXXX around the classroom XXXXXXXX XXXXXXXXXX XXXXXXX during math instruction at approximately XXXX p.m. on XXXXX XX, 2019;² did not respond to verbal redirection and began “bumping into desks and chairs and XXXXXXX XXXX the floor,” and then ran towards a XXXXXXX XXXX in the classroom and began XXXXXXXXXX XXXXX XXXX, XXXXXXXX, XXXXX, XXXXXXXXXX, and XXXXX from the closet into the classroom. The Student’s teacher contacted School administrators for support and the principal responded by XXXXXXXXXX the classroom and XXXXXXXXXX the Student.

The principal stated that after XXXXXXXXXX the Student from his classroom, she brought him to her office to provide him with a “quiet space” in accordance with his Section 504 Plan; however, the Student was unable to de-escalate and continued to XXXXXXX in XXXXXXX and XXXXXXXXXX behaviors in her office, including XXXXXXXXXX XXXXXXXXXX XXXX on the ground, making XXXXXXXXXX XXXXXXX and XXXXXXXXXX himself into XXXXX. The principal stated that she and the School’s guidance counselor contacted the complainant at approximately XXXX p.m., to request that she pick up the Student because he had not XXXXXXX XXXX and was XXXXXXXXXX for XXXXXXXXXX.X The principal asserted that the Student was not suspended from school; rather, she requested that the complainant pick up the Student

² The incident report is dated XXXXX XX, 2019; however, the principal and guidance counselor confirmed that the incident occurred on XXXXX XX, 2019.

because he was XXXXXXXX in XXXXXX behavior.³ The principal stated that the complainant arrived at the School to pick up the Student at approximately XXXX p.m., on XXXXX XX, 2019, XX minutes prior to the regular dismissal time of XXXX pm.

OCR has previously determined that a school may discipline a disabled student in the same manner as it would discipline a non-disabled student, unless an Individualized Education Plan, Section 504 plan, or BIP for the disabled student specifies differently; or unless the discipline creates a significant change in the placement of the disabled student. If the proposed exclusion of a disabled student is permanent (expulsion) or for an indefinite period, or for more than 10 consecutive school days, the exclusion constitutes a significant change in placement. If a series of suspensions that are each of 10 days or fewer in duration creates a pattern of exclusions that constitutes a significant change in placement, the requirements of the regulation implementing Section 504, at 34 C.F.R. § 104.35(a) would also apply.⁴

The District asserted that the principal's requesting that the complainant pick up the Student prior to dismissal on XXXXX XX, 2019, did not constitute discipline, as the Student was not formally suspended from school. OCR determined that, notwithstanding the District's assertion, the principal's requiring the complainant to pick up the Student prior to dismissal constituted an exclusion of the Student from participation in the District's programs and activities that afternoon. However, OCR determined that nothing in the Student's Section 504 Plan exempted the Student from discipline.⁵ Furthermore, OCR determined that the complainant was required to pick up the Student prior to dismissal only once during school year 2018-2019, on XXXXX XX, 2019. OCR determined that the Student's removal prior to dismissal on that one occasion did not constitute a significant change in placement.

The District provided information to OCR regarding a non-disabled student (student A) who was sent home prior to dismissal during school year 2018-2019, for engaging in conduct that was a XXXXXXX to XXXXXXX or XXXXXXX; the School also issued a day and a half suspension to student A for his conduct.

Based on the foregoing, OCR determined that the principal had a legitimate, non-discriminatory reason for requiring the complainant to pick up the Student from school prior to dismissal on

³ The principal stated that her request for the complainant to pick up the Student prior to dismissal was not pursuant to any written policy; rather, her practice is to request that parents pick up their children prior dismissal if they are XXXXXXXX in XXXXXXX behavior.

⁴ In order to implement an exclusion that constitutes a significant change in placement, a recipient must first conduct a reevaluation of the student, in accordance with Section 504, at 34 C.F.R. § 104.35. As a first step in this reevaluation, the recipient must determine, using appropriate evaluation procedures that conform to the regulation implementing Section 504, whether the misconduct is caused by the student's disability. If it is determined that the disabled student's misconduct is caused by the student's disability, the recipient must determine whether the student's current educational placement is appropriate. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded from school in the same manner as similarly situated non-disabled students are excluded. When a placement of a disabled student is changed for disciplinary reasons, the student and his or her parent or guardian are entitled to the procedural protections required by the regulation implementing Section 504, at 34 C.F.R. § 104.36.

⁵ As stated above, the Student's Section 504 Plan, dated March 26, 2019, required the District to provide the Student with a "go-to" person for [the Student] to talk to should he become overwhelmed, stressed or anxious" and a "quiet space, when needed"; the plan did not specify what action the District should take if the Student did not respond to the interventions.

XXXXX XX, 2019; namely, the Student engaged in XXXXXX behaviors during the incident. OCR determined that the proffered reason was not a pretext for discrimination, because the Student's conduct was well-documented; and the principal's actions were consistent with her treatment of a non-disabled student who also engaged in behavior that was a XXXXXX to XXXXXXXX or XXXXXXXX. Additionally, OCR determined that the Student's Section 504 Plan did not exempt the Student from discipline; and the single exclusion of the Student from school on XXXXX XX, 2019, did not constitute a significant change in placement. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated against the Student on the basis of disability, when the principal excluded the Student from school prior to dismissal due to behavioral difficulties that were related to his disability, on XXXXX XX, 2019. Accordingly, OCR will take no further action with respect to Allegation 1(a).

With respect to Allegation 1(b), the principal denied stating that the complainant would be required to pick up the Student from school prior to dismissal whenever he exhibited behavioral difficulties related to his disability in the future, unless the complainant agreed to withdraw the Student from the District immediately. The principal stated that during the telephone conversation on XXXXX XX, 2019, she and the guidance counselor described the incident to the complainant and initiated a discussion with the complainant regarding what the School could do to support the Student. The principal stated that the complainant brought up the fact that the Student would be XXXXXX to a XXX XXXXXXXXXX and "it organically came up that maybe the best XXXXXXXXXXXX would be for [the Student] XX XXXXXXXXXXXX in the spring." The principal stated that the complainant may have asked her whether she would be required to pick up the Student prior to dismissal if he engaged in similar behaviors in the future, and the principal confirmed that she would have stated that the complainant would be expected to pick up the Student if he engaged in XXXXXX behaviors again.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of evidence supports the allegation. Here, OCR did not find that the preponderance of the evidence substantiated the complainant's allegation that on or about XXXXX XX, 2019, the principal stated that the complainant would be required to pick up the Student from school prior to dismissal whenever he exhibited behavioral difficulties related to his disability, unless the complainant agreed to withdraw the Student from the District immediately. Although the principal acknowledged that she requested that the complainant pick up the Student prior to dismissal on XXXXX XX, 2019, the principal denied stating that the complainant would be required to do so in the future unless the complainant withdrew the Student. The guidance counselor corroborated the principal's account. Moreover, as discussed above in connection with Allegation 1(a), OCR determined that during school year 2018-2019, the complainant was not required to pick up the Student prior to dismissal on any day other than XXXXX XX, 2019. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the principal stated that the complainant would be required to pick up the Student prior to dismissal if he exhibited similar behavior difficulties in the future unless he withdrew from the District. Accordingly, OCR will take no further action with respect to Allegation 1(b).

With respect to Allegation 2, the complainant alleged that the District discriminated against the Student on the basis of his disability when the District Superintendent and School Board President failed to respond to complaints she made to them on April 16, 2019 that: (a) between December 2018 and April 2019, staff at the School repeatedly removed the Student from the classroom and sent him to the principal’s office due to behavioral difficulties that were related to his disability; and, (b) that the principal had required the complainant to pick up the Student from school prior to dismissal, on XXXXX XX, 2019, as described in Allegation 1. In support of Allegation 2, the complainant provided a copy of an email she sent to the Superintendent, dated April 16, 2019; and, that she asserted she also sent via email to the District’s School Board President.

The regulation implementing Section 504, at 34 C.F.R § 104.7(b), requires that a recipient adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation. Additionally, the regulation implementing the ADA, at 28 C.F.R. § 35.107, requires any public entity that employs 50 or more persons to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the ADA and its implementing regulation. OCR determined that the District has policies and procedures prohibiting discrimination on the basis of disability, which are published on the District’s website and describe the process for filing complaints alleging discrimination on the basis of disability.⁶

OCR reviewed the complainant’s email, dated April 16, 2019, which outlined the complainant’s concerns, including her disagreement with the content of the Student’s Section 504 Plan; statements allegedly made by School staff that the complainant should medicate the Student; that the School had repeatedly removed the Student from the classroom due to behavioral difficulties that were a manifestation of his disability; and, the principal’s handling of the incident that occurred on XXXXX XX, 2019, described in Allegation 1. In her email, the complainant specifically stated that she believed the Student “was not treated fairly or was afforded the same opportunities as other children to participate and benefit from instruction. He was not treated equally at all. They did not want to deal with my son anymore because I moved and essentially, she told me that I would have to pick him up because of behavioral issues related to his disability.” The last paragraph of the complainant’s email stated, “my intention with this e-mail is so that you are aware of these issues and in hopes that you provide more training opportunities for your staff regarding communication with parents, working with children with XXXX, and sensitive family issues.”

The Superintendent confirmed that he received complainant’s email of April 16, 2019, although the School Board President denied receiving it.⁷ The Superintendent stated that he did not respond to the complainant’s email, or forward it to any other District staff for processing, because he “thought [the complainant’s] assumptions about the principal were not accurate” and he “did not want to argue/debate the complainant’s representations in the email.” In addition, he stated that in reading the complainant’s email, he did not understand her to be reporting disability discrimination; rather, he understood the purpose of her email to be a request for training of District

⁶See, <https://www.straussesmay.com/seportal/Public/DistrictRegulation.aspx?regulationid=1510&search=1510&id=f42c4228b7cd43c78ef50e3ed757572f> (Site last visited September 16, 2019).

⁷ The Superintendent stated that he did not forward the email to the District’s School Board President.

staff, referring to the last paragraph of the complainant's email. The Superintendent further stated that he did not speak to the principal regarding the complainant's allegations or otherwise investigate the complainant's allegations.

OCR determined that the complainant's email to the Superintendent, dated April 16, 2019, constituted a complaint to the District of alleged disability discrimination; and, the information she provided was sufficient to enable the District to respond or proceed with an investigation. However, the District did not take any action to investigate the complainant's allegations. Based on the foregoing, OCR determined that the District failed to investigate the complainant's allegations of disability discrimination to determine whether discrimination occurred. Accordingly, OCR determined that the District failed to provide the complainant with a prompt and equitable resolution to address her complaint of disability discrimination filed on behalf of the Student.

On October 10, 2019, the District signed the enclosed Agreement to remedy the compliance issue identified in this investigation.⁸ 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. 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.

The complainant has a right to appeal OCR's determination regarding Allegations 1(a) and (b) within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have any questions regarding OCR's determination, please contact Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: David Rubin, Esq.