



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

January 14, 2020

Richard A. Carranza
Chancellor
New York City Department of Education
52 Chambers Street
New York, New York 10007

Re: Case No. 02-19-1351
New York City Department of Education

Dear Chancellor Carranza:

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 New York City Department of Education (the NYCDOE). The Complainant alleged that the XXXXXX grade classroom teachers (the Teachers) at the XXXXXXXXXXXXXXXX School, XXXXX-XXXXXXXXXX (the School) (a) discriminated against her son (the Student) on the basis of his disability, or in the alternative (b) retaliated for her decision not to consent to an Individualized Education Program (IEP) for the Student in XXXXXXXXXXXX 2018, by banning the Student, on XXXXXXXXXXXX XX, 2018, from all future class trips unless accompanied by the Complainant, resulting in the Student's not being allowed to attend a trip from XXXXX XX-XX and on XXX X, 2019 (Allegation 1). The Complainant also alleged that the Teachers (a) discriminated against the Student on the basis of his race (Black), or in the alternative (b) retaliated for her decision not to consent to an IEP for the Student in XXXXXXXXXXXX 2018, by placing the Student in a XXX-XXXXXXXXXXXXXXXX classroom on XXXXX XX and XX, 2019, while his class attended a field trip (Allegation 2). The Complainant further alleged that the Teachers retaliated for her decision not to consent to an IEP for the Student in XXXXXXXXXXXX 2018, by informing the Complainant, on XXX X, 2019, that there was no classroom where the Student could go while the XXXXXX grade class attended a field trip on XXX X, 2019, resulting in the Student's missing school (Allegation 3).

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. In addition, OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

(Title VI), as amended, 42 U.S.C. § 2000d et seq., and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in programs and activities receiving financial assistance from the Department. The NYCDOE 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 Section 504, the ADA, and Title VI.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI, which provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

In analyzing whether retaliation occurred, OCR must first determine whether the three *prima facie* elements of retaliation can be established: (1) whether a recipient or other person subjected an individual to an adverse action; (2) whether the recipient or other person (a) knew that the individual engaged in a protected activity or (b) believed that the individual might engage in a protected activity in the future; and, (3) there is some evidence of a causal connection between the adverse action and protected activity. When a *prima facie* case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

OCR reviewed information that the Complainant and NYCDOE submitted to OCR. OCR also interviewed the Complainant. OCR made the following determinations.

During school year 2017-2018, the Student was referred for an initial evaluation and was determined, in XXXX 2018, to be eligible to receive special education and related aids or services pursuant to an IEP based on a classification of “Intellectual Disability.” The Complainant disagreed with the Student’s classification and recommended placement in XXXX 2018.

During school year 2018-2019, the Student was enrolled in XXXXXX grade at the School. In XXXXXXXXXX 2018, the Complainant again objected to the classification of “Intellectual Disability,” but agreed to the placement of the Student in an Integrated Co-Teaching (ICT) classroom.¹

Accordingly, OCR determined that the Complainant engaged in protected activity when she began advocating on behalf of the Student after Committee on Special Education (CSE) meetings on XXXX XX, 2018, and XXXXXXXXXX XX, 2018. OCR also determined that the NYCDOE was aware of the Complainant’s protected activities.

¹ ICT classes are taught by both a general education and special education teacher, and include students with IEPs and students without IEPs; no more than 12 (or 40 percent of the students) in an ICT class can have an IEP. The ICT teachers work together to adapt materials and modify instruction to make sure the entire class can participate.

With respect to Allegation 1, the Complainant alleged that the teachers (a) discriminated against the Student on the basis of his disability, or in the alternative (b) retaliated for her decision not to consent to an IEP for the Student in XXXXXXXXXX 2018, by banning the Student, on XXXXXXXX XX, 2018, from all future class trips unless accompanied by the Complainant, resulting in the Student's not being allowed to attend a trip from XXXXX XX-XX and on XXX X, 2019. The Complainant stated that since rejecting the proposed IEP for the Student in XXXXXXXXXX 2018, the Teachers had "penalized" the Student and treated him "unfairly." The Complainant asserted that the Student was excluded from all class trips because the Teachers claimed that they had observed the Student engaging in "unsafe" behaviors, particularly before a class trip.² The Complainant also asserted that on XXXXXXXX XX, 2018, she received an email from the Teachers, stating that in order for the Student to attend upcoming trips, she would also have to attend. The Complainant further asserted that, during a parent-teacher conference on XXXXX XX, 2019, in response to her asking why the Student could not attend class trips, the Teachers informed her that the Student did not listen when they instructed him to "stop," which was "unsafe." The Complainant additionally asserted that the School's Principal stated that the School wanted to "start allowing" the Student to attend trips in the future; but that it would be limited to trips that did not require public transportation, such as neighborhood walking trips. The Complainant asserted that, as a result, the Student was excluded from class trips to a XXXX in XXXXXXXX, New York, from XXXXX XX-XX, 2019, and to XXXXX XXXXXX, on XXX X, 2019.

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.

With respect to Allegation 2, the Complainant alleged that the Teachers (a) discriminated against the Student on the basis of his race (Black), or in the alternative (b) retaliated for her decision not to consent to an IEP for the Student in XXXXXXXXXX 2018, by placing the Student in a XXX-XXXXXXXXXXXXXXXX classroom on XXXXX XX and XX, 2019, while his class attended a field trip. The Complainant stated that the Teachers left her a voicemail message on XXXXX XX, 2019, stating that the Student was going to be placed in a XXX-XXXXXXXXXXXXXXXX class for two days while the Student's XXXXXX grade class went on a trip. The Complainant further stated that the Principal confirmed that it was a "last minute" change, but that the Student would have to go to the XXX-XXXXXXXXXXXXXXXX class since there was "no space" in any other classroom. The

² The NYCDOE asserted that in the XXXX of 2018, the Student began exhibiting behaviors that raised "significant safety concerns"; and, that the Student had "conflicts with other students, and would XXXX around on the XXXXX and run away from teachers and other staff." The NYCDOE also asserted that the Teachers, Principal, and District 1 administrators emailed and called the Complainant numerous times to communicate their concerns and ask to meet with her, but that the Complainant was only "sometimes receptive."

Complainant asserted that the Student's classmate (student A), whom she identified as biracial (XXXXXX/XXXXXX), chose not to attend the field trip and was sent to an appropriate classroom while the class attended the field trip. The Complainant stated that the Student was entitled to be sent to the same classroom as student A during the field trip.³ Further, the Complainant informed OCR that she sent an email to the Family Support Coordinator for NYCDOE's District 1 (Coordinator) explaining her concerns regarding the Student's classroom assignment during the field trip, and that the coordinator followed up with the Principal.⁴

The regulation implementing Title VI, at 34 C.F.R. §100.3(a), provides that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program operated by a recipient. Further, the regulation, at 34 C.F.R. §100.3(b)(1)(iii), states that a recipient may not, on the basis of race, color, or national origin, subject an individual to different treatment in any matter related to his receipt of any service or other benefit under the program.

With respect to Allegation 3, the Complainant alleged that the Teachers retaliated for her decision not to consent to an IEP for the Student in XXXXXXXXXX 2018, by informing the Complainant on XXX X, 2019, that there was no classroom where the Student could go while the XXXXXX grade class attended a field trip on XXX X, 2019, resulting in the Student's missing school. The Complainant stated that on XXXXXXXX XX, 2019, she sent an email to the Teachers informing them that they should send the Student to another class while his class attends field trips; however, she stated that she believed that the Teachers were angry at her for advocating on behalf of the Student because they made it seem that it was difficult to find a class for the Student to go when he was not participating in a class trip. The Complainant asserted that, during dismissal on XXX X, 2019, the Teachers informed her that the Student did not have a class assignment for the following day while his class went on a field trip to XXXXX XXXXXX; and, advised her that the Student would have to go to the principal's office. As a result, the Complainant asserted that she was "forced" to keep the Student out of school the next day.

Prior to the completion of OCR's investigation, the NYCDOE voluntarily agreed to sign a resolution agreement to resolve Allegations 1, 2 and 3, without further investigation, pursuant to Section 302 of OCR's Case Processing Manual (CPM); and, OCR determined that it was appropriate to resolve the allegations pursuant to Section 302 of the CPM. On January 10, 2020, the NYCDOE signed the enclosed resolution agreement to resolve Allegations 1-3 without further investigation. OCR will monitor the implementation of the Agreement. Upon the NYCDOE's satisfaction of the commitments made under the Agreement, OCR will close the case.

This letter should not be interpreted to address the NYCDOE's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter

³ The NYCDOE informed OCR that the Student's ICT class comprised XX students, XX of whom had an IEP; and, that a XXXXXXXX of the class identified as Black/African American. The NYCDOE stated that, in the event a student cannot attend a trip, the student is assigned to another class during that time; and, students are typically assigned to the smallest class available, whether that be within their grade or another grade.

⁴ The Complainant provided to OCR a copy of an email, dated XXXXX XX, 2019, in which the coordinator informed the Complainant of the following: "Just wanted to let you know that we did have a discussion with the XXXXXXXXXXXXXXXX School. We discussed with the principal what we thought would be appropriate options for class placements."

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 a right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the NYCDOE may not harass, coerce, intimidate, or discriminate against any individual because the individual 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 Amy Randhawa, Compliance Team Attorney, at (646) 428-3781 or sandeep.randhawa@ed.gov; Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or jessica.daye@ed.gov; or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXXXX. XXXXXX, Esq.