



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

December 23, 2019

Sent via email only to jniesz@bboed.org

John J. Niesz
Superintendent of Schools
Bayonne School District
669 Avenue A
Bayonne, New Jersey 07007

Re: Case Nos. 02-19-1361 and 02-19-1463
Bayonne School District

Dear Superintendent Niesz:

This letter is to notify you of the determinations made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaints filed against the Bayonne School District (the District). In Case No. 02-19-1361, the complainant alleged that the District discriminated on the basis of disability, by prohibiting fourth through eighth grade students in the Autism Program (the program) at the District's Woodrow Wilson Community School (the School) from attending a field trip to a local park on June 6, 2019 (Allegation 1). In Case No 02-19-1463, the complainant alleged that the District discriminated against students in the program at the School, on the basis of disability, by not allowing them to participate in extracurricular activities during school year 2019-2020 (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 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.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity

that receives federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.37(a), requires that a recipient provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. The regulation implementing Section 504, at 34 C.F.R. § 104.34(b), provides that “[i]n providing or arranging for the provision of non-academic and extracurricular services and activities, . . . a recipient shall ensure that [disabled] persons participate with [nondisabled] persons in such activities and services to the maximum extent appropriate to the needs of the [disabled] person in question.” In making decisions about a disabled student’s participation in extracurricular activities, the regulation implementing Section 504, at 34 C.F.R. §104.35(c), requires a recipient to ensure that decisions are made by a group of persons knowledgeable about the child and the meaning of evaluation data.

In its investigation, OCR interviewed the complainant. OCR also reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

OCR determined that the program serves District students in pre-kindergarten to eighth grade who have Autism Spectrum Disorder (ASD). Students in the program receive XXXXXXXX XXXXXXXXXXXX XXXXXXXX in XXXXXXXXXXXXXXXXXXXX classrooms with XXX XXXXXXXXXXXXXXXXXXXX XXXXXXXX, pursuant to XXXXXXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXX XXXXXXXX. During school year 2018-2019, the program was housed at the School, and consisted of 14 self-contained classrooms serving 59 students. The program was again housed at the School during school year 2019-2020. The District informed OCR that students in the program are “included within the school setting as deemed appropriate” and attend all-school functions such as assemblies.

With respect to Allegation 1, the complainant alleged that the District discriminated on the basis of disability, by prohibiting fourth through eighth grade students in the program from attending a field trip to a local park on June 6, 2019. The complainant stated that the principal of the School informed her that the prohibition was due to “safety” concerns. The complainant asserted that the School did not consider whether chaperones and/or transportation to and from the park could alleviate such safety concerns.

OCR determined that on June 6, 2019, the School held a field day.¹ Fourth through eighth grade students who were not in self-contained classrooms participated in the field day at the Hudson County Park (the park), which is located several blocks from the School. Fourth through eighth grade students at the School with ASD who were not in the program or another self-contained classroom participated in field day at the park. Kindergarten through third grade students who were not in self-contained classrooms participated in the field day at the School. All students in the program, and all students with disabilities in other self-contained classrooms, participated in the field day at the School, regardless of grade level. The District informed OCR that it decided to have all program students and other disabled students in self-contained classrooms participate in the field day at the School regardless of grade level because such students “have XXXXXXXXXXXX, XXXXXXXX and XXXXXXXXXXX XXXXXXXX that are much more difficult to address outside of and away from the school facility,” and because many of these students have XXXX

¹ The District distinguished “field day” from a “field trip”; and, characterized “field day” as “a day of outdoor activities held in the spring.”

that include XXXXXXXXXXXX for XXXXXXXX XXXX and XXXXXXXXXXXX that could not be provided for at the park, such as XXX XXXXXXXXXXXXXXXX; “XXXXXX XX XXXX to XXXXXXXXXXXXXXXX due to XXXXXXXX XXXXXXXX”; and, XXXXXXXX XXXXXXXXXXXXXXXX that could not be provided in the park’s XXXXXXXX XXXXXXXXXXXXXXXX.² The District did not provide any information to demonstrate that decisions about participation in the field day were made on an individual basis; rather, it appeared that disabled students in self-contained classes were prohibited as a class from participating in the field day off campus, without individual assessments regarding their ability to participate in an off-campus field day. The District also informed OCR that students in the program were invited to attend other off-campus field trips with their peers who were not in self-contained classrooms.³

With respect to Allegation 2, the complainant alleged that program students were excluded from the following extracurricular activities during school year 2019-2020: (i) an “Instrumental Demo Grades 4-8” activity on September 10, 2019; (ii) the “Back to School Bash” on October 4, 2019; and, (iii) Student Council Elections, in fall 2019. The complainant asserted that students in the program did not receive invitations for the “Back to School Bash”; therefore, they could not attend. The complainant asserted that students in the program could not participate in the elections because they were not given access to computers, which were needed to vote.

On December 19, 2019, the District signed the enclosed agreement to resolve Allegations 1 and 2 without further investigation. OCR will monitor the implementation of the 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 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 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.

² The District also asserted that “facilities and activities available at [the School] are much more developmentally appropriate and better suited to the needs and abilities of the students in the [program] than what is available at the [park].”

³ During school year 2018-2019, the School held the following field trips: (1) a trip to the Staten Island Zoo on May 4, 2019, for fourth grade students; (2) a trip to the Veteran’s Museum on April 2 and 4, 2019, for sixth grade students; (3) a trip to Medieval Times on March 15, 2019, for eighth grade students; and, (4) a trip to Great Adventure on June 14, 2019, for eighth grade students. Additionally, fifth and sixth grade students in the program participated in monthly community and life skill activities, by visiting grocery stores; the zoo; and, an amusement park.

If you have any questions regarding OCR's determination, please contact Bernard Dufresne, Compliance Team Attorney, at (646) 428-3802, or bernard.duresne@ed.gov; or Diane Castro, Compliance Team Investigator, at (646) 428-3808 or diane.castro@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Robert J. Merryman, Esq.