



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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March 6, 2020

By email only to tchase@greenburghcsd.org

Dr. Tahira A. DuPree Chase
Superintendent of Schools
Greenburgh Central School District
475 West Hartsdale Avenue
Hartsdale, New York 10530

Re: Case No. 02-19-1444
Greenburgh Central School District

Dear Dr. Chase:

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 Greenburgh Central School District (the District). The Complainant alleged that a special education teacher (the Teacher) in the District's XXXXX XXXXXXXXXXXX XXXXXXXXXXXX Summer Program (the Summer Program) discriminated against her son (the Student), on the basis of his disability, by verbally harassing and pushing him in or around XXXXXXXX 2019.

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 or 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 (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. § 104.4(a), states that no qualified individual with a disability shall, on the basis of disability, be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance. The regulation implementing the ADA, at 28 C.F.R. 35.130(a), contains a similar provision. Harassment based on a student's disability that creates a hostile environment is a form of discrimination prohibited by Section 504, the ADA, and their implementing regulations. Harassing conduct by an employee, another student, or a third party can include verbal, written,

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

graphic, physical or other conduct; or conduct that is physically threatening, harmful or humiliating. Harassment can create a hostile environment if it is sufficiently serious to interfere with or deny a student's participation in or receipt of benefits, services, or opportunities in the institution's program. If OCR determines that harassing conduct occurred, OCR will examine additional factors to determine whether a hostile environment existed and whether the District took prompt and effective action that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects. The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), requires a recipient to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging action prohibited by the regulation. The regulation implementing the ADA, at 28 C.F.R. § 35.107(b), contains a similar provision applicable to public entities.

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

OCR determined that the Student was XXXXX years old and classified as a XXXXXXXXXX student with a disability at the time of the alleged harassment. The Complainant stated that the Student has XXXX XXXXXXXXXXXXXXX, XXXX XXXXXXXXXX, a XXXXXXX XXXXX, and XXXX XXXXX XXXXXXX. The Student was eligible to receive special education and/or related aids and services during summer 2019, pursuant to an individualized education program (IEP) dated XXXXX XX, 2019. The Student's district of residence, the XXXXXXX XXXXXXX XXXXXXX, placed the Student in a XXXXXXX special class at the Summer Program (within the District's XXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX), which began on XXXXX XX, 2019, and ended on XXXXXXX XX, 2019.¹ The Teacher taught the Student's XXXXX class in the Summer Program, with the help of two teaching assistants (Assistant A and Assistant B). The Student's class included XX other students with disabilities.

OCR determined that the District's Policy 7550, Dignity for All Students Act (DASA) and Policy 3420, Non-Discrimination and Anti-Harassment in the School District (collectively, the District's Policies) govern the District's process for reporting and investigating incidents of disability-based harassment by an employee. Pursuant to Policy 7550, the Principal, Superintendent, or their designee leads and/or supervises an investigation. Policy 7550 also provides that if the investigation reveals harassment, the District will take prompt action reasonably calculated to end the harassment, "eliminate any hostile environment, create a more positive school culture and climate, prevent recurrence of the behavior, and ensure the safety of the student or students against whom such harassment, bullying, and/or discrimination was directed."

The Complainant alleged that the Teacher discriminated against the Student, on the basis of his disability, by verbally harassing and pushing him in or around XXXXXXX 2019. The Complainant asserted that the Teacher targeted the Student because of his XXXX XXXXX XXXXX, XXXXX XXXX XXXXXXXXXXX XX XXX XXXXXXXXXXXXXXX.

¹ The XXXXXXX Summer Program was designed to instruct students in the following subject areas: XXXXX XXXXXXX, writing, drawing, math, XXXXXXXXXXXXXXX, science and discovery, XXXXXXX XXXXXXXXXXX, arts and crafts, music and movement, and outdoor educational activities

Assistant A advised OCR that, in or around XXXXXXXX 2019, she orally reported to the Summer Program XXXXXXX XXXXXXX (the XXXXXXX XXXXXXX) that she was concerned about the Teacher's behavior towards the Student.² Assistant A advised OCR that she told the XXXXXXX XXXXXXX that the Teacher got frustrated with students in her class generally, and particularly frustrated with the Student because he could not complete certain tasks due to his disability. Assistant A further informed OCR that she reported that the Teacher should have understood the Student's needs and what was reasonable to expect of him given his disability.

The XXXXXXX XXXXXXX acknowledged that she met with Assistant A in or around mid-July 2019.³ The XXXXXXX XXXXXXX advised OCR that Assistant A reported concerns about the manner in which the Teacher was speaking to the Student. The XXXXXXX XXXXXXX stated that Assistant A informed her that if the Student did not follow through quickly on something the Teacher directed him to do, the Teacher would get very close to the Student and speak "abruptly" and "very, very firmly" to him, which made the Student "shut down," cry, and retreat to Assistant A in response. The XXXXXXX XXXXXXX stated that Assistant A further reported that the Teacher acted more harshly towards the Student compared to other Students in the class, but that Assistant A did not elaborate on why the Teacher treated the Student more harshly. The XXXXXXX XXXXXXX advised OCR that during her meeting with Assistant A, she called the Summer Program Principal (the Principal) and arranged a meeting between Assistant A and the Principal that week or the following week.

Assistant A advised OCR that, thereafter, during the second or third week of the Summer Program, she attended an in-person meeting with the Principal. Assistant A advised OCR that she informed the Principal that the Teacher did not know the Student's needs and became frustrated with the Student because of XXXXXXXXXXX XXXXXXXXXX disability. Assistant A stated that she informed the Principal that the Teacher routinely spoke to the Student more sternly than to the other students in the class.⁴ Assistant A also advised OCR that she gave the Principal five examples of the type of behavior in which the Teacher engaged.⁵

With respect to the first example, Assistant A advised OCR that she informed the Principal during the meeting that on numerous occasions throughout the course of the Summer Program, the Student was unable to open his juice bottle by himself, and the Teacher instructed Assistants A and B to not help the Student despite his struggles (Incident 1).⁶ Assistant A stated that she informed the Principal that she eventually started helping the Student. Assistant A stated that she

² Assistant A did not recall the date of her report to the XXXXXXX XXXXXXX. Assistant A informed OCR that she became concerned with the Teacher's behavior towards the Student during the first two weeks of the Summer Program; namely, that the Teacher instructed her and Assistant B to not help the Student even though he was struggling, stating that he needed to be more independent.

³ There were no other witnesses to this meeting.

⁴ For example, Assistant A stated that the Teacher told the Student "you need to find out what to do now," and "what's next," in a "very strong" and "inappropriate" tone.

⁵ Assistant A informed OCR of another incident but acknowledged that she did not report this incident to the Principal. Specifically, Assistant A advised OCR that when the Student arrived at the Summer Program in the mornings, he frequently stepped off of the bus and stood in place expecting to be guided, but the Teacher would not allow Assistant A to assist the Student in getting to the classroom; instead instructing her to "just leave him there." Assistant A stated that this resulted in the Student's frequently crying and appearing nervous and confused about where to go.

⁶ Assistant A could not recall specific dates when this occurred.

informed the Principal that the Teacher did not direct her or Assistant B to not assist other students in the class.

With respect to the second example, Assistant A advised OCR that she informed the Principal during the meeting that there was an incident wherein the Student asked Assistant A for water from the cooler during recess and Assistant A told the Student that he should ask the Teacher, but the Student appeared afraid to do so. Assistant A stated that she informed the Principal that she walked the Student over to the Teacher and asked if the Student could have water, and that the Teacher responded by stating that he already had water and did not need more (Incident 2). Assistant A recalled that this occurred in the second or third week of the Summer Program. Assistant A stated that she informed the Principal that the Teacher did not refuse to provide water to other students in the class.

With respect to the third example, Assistant A advised OCR that she informed the Principal during the meeting that on one occasion during the first two or three weeks of the Summer Program, the Teacher did not allow the Student to participate in recess until he completed his “XXXX puzzle” (Incident 3). Assistant A stated that she informed the Principal that the Teacher did this to punish the Student, as the Teacher did not prohibit other students who had not completed tasks from attending recess.

With respect to the fourth example, Assistant A advised OCR that she informed the Principal during the meeting that on numerous occasions during the Summer Program, the Student was unable to change his clothes by himself to participate in water activities; as a result, he was unable to play in the sprinklers with the other students. Assistant A stated that she informed the Principal that the Teacher refused to help the Student to change his clothes and directed Assistants A and B to not assist him in changing (Incident 4). Assistant A stated that she informed the Principal that, eventually, she assisted the Student so that he could participate in the sprinkler activities with his peers. Assistant A stated that she informed the Principal that the Teacher did not direct her or Assistant B to not assist other students in the class.

With respect to the fifth example, Assistant A advised OCR that she informed the Principal during the meeting that sometime in XXXX 2019, the Teacher wanted the Student to put his lunchbox on a table but the Student appeared confused as to what to do; so the Teacher grabbed the Student by his arms and “inappropriately” pushed him towards his assigned table (Incident 5). Assistant A stated that she informed the Principal that the Teacher also yelled at the Student during this incident. Assistant A stated that she informed the Principal that she did not see the Teacher push any other students in the class.

During OCR’s interview with the Complainant, she asserted that the Student informed her that during the five weeks the Student attended the Summer Program, the Teacher yelled at him when he attempted to open a snack, and allowed him to struggle to open his snack XXXX XXXXXX XX XXXXX XXX XX XX XXX XX XXX XXXXXXXXXXXX. This correlated with Incident 1 as reported by Assistant A. The Complainant also advised OCR that the Student informed her that on one occasion, the Teacher walked by the Student and pushed him. This correlated with Incident 5 as reported by Assistant A.

OCR interviewed the Principal during the course of the investigation; the interview was after OCR's interview with the Complainant but prior to OCR's interview with Assistant A. Accordingly, OCR did not ask the Principal specifically about Incidents 1-5; however, OCR asked the Principal about the Complainant's allegation that the Teacher pushed the Student, and whether Assistant A advised him of any such incident. The Principal acknowledged to OCR that he met with Assistant A in XXX XX XXXXXXXX 2019, who informed him that she was concerned about the Teacher's treatment of the Student.⁷ The Principal advised OCR that Assistant A stated that the Teacher was "very firm" with the Student, and that the Teacher was not nurturing to the students in the class. The Principal denied that Assistant A asserted that the Teacher targeted or otherwise discriminated against the Student because of the nature of his disability. The Principal advised OCR that Assistant A did not go into detail regarding the Teacher's behavior, and denied that Assistant A ever alleged that the Teacher pushed the Student. The Principal informed OCR that, nevertheless, he spoke to the Teacher the next day about Assistant A's report, and that he conducted regular, unannounced "walk-throughs" of the Teacher's classroom. The Principal also stated that he spoke with Assistant A one week after her report and she informed him that the situation was improving.

The Teacher informed OCR that neither the Principal nor anyone in the District spoke to her about her behavior in XXXXXXXX 2019. Assistant A denied that the Principal spoke with her after her report; she also refuted the Principal's claim that she had advised him that the Teacher's conduct towards the Student had improved.

OCR determined that on XXXXXX X, 2019, the Complainant met with the XXXXXX XXXXXX. OCR reviewed the XXXXXX XXXXXX's contemporaneous notes of the meeting. The notes reflected that the Complainant informed the XXXXXX XXXXXX that the Teacher had targeted the Student and had yelled at and pushed the Student; and as a result, the Student had been crying and did not want to attend the Summer Program. The XXXXXX XXXXXX advised OCR that she called the Principal during her meeting with the Complainant on XXXXXX X, 2019.

The Principal informed OCR that he met with the Complainant on XXXXXX X, 2019. The Principal informed OCR that during the meeting, the Complainant stated that the Teacher yelled at the Student; pushed the Student; and made the Student do things he XXXXXX XX XX XXXXX XX XX XXX XXX, such as putting on his shoes and changing his clothes before playing in the sprinkler. The Principal denied that the Complainant asserted that the Teacher's conduct was because of the nature of the Student's disability, and the Complainant acknowledged to OCR that she did not state during her meeting with the Principal that she believed that the Teacher's conduct toward the Student was because of the nature of the Student's disability.

OCR determined that on the same day, XXXXXX X, 2019, the Principal, the XXXXXX XXXXXX, and the Complainant, met with the Teacher, Assistant A, and Assistant B, separately.⁸ The Student and the Student's older sister also were present at the meetings. The Principal advised OCR that prior to these meeting, he had spoken individually with the Teacher, Assistant A, and

⁷ There were no other witnesses to this meeting.

⁸ The Principal, XXXXXX XXXXXX and the Complainant were present at all meetings. The Teacher, Assistant A, and Assistant B joined the group, one at a time, to address the Complainant's questions and concerns about what was happening in the Student's classroom.

Assistant B, regarding the Teacher’s alleged conduct in the classroom towards the Student; however, the Teacher, Assistant A, and Assistant B, all denied that the Principal spoke with them prior to their attending their respective meetings with the Principal, the XXXXXX XXXXXX, and the Complainant on XXXXXX X, 2019.

Assistant A advised OCR that, during her meeting with the Principal, XXXXXX XXXXXX and the Complainant on August 1, 2019, the Complainant stated that the Student “is special needs” and the Teacher needs to be patient with him.⁹ Assistant A also advised OCR that the Complainant said that she knew that the Student was being mistreated because he came home crying every day. Assistant A advised OCR that she told the Complainant that the Teacher is “very strong,” and that she is not a mean person but gets frustrated easily. Assistant A informed OCR that she did not feel comfortable telling the Complainant the specifics of what she had previously told the Principal about the Teacher’s conduct towards the Student.

Assistant B informed OCR that during her meeting with the Complainant, the Principal, and the XXXXXX XXXXXX on August 1, 2019, they discussed the Complainant’s concerns regarding what was happening in the classroom. During her interview with OCR, OCR specifically asked Assistant B about Incidents 1-5, as reported to OCR by Assistant A. With respect to Incident 1, Assistant B denied to OCR that the Teacher instructed her or Assistant A to not help the Student; rather, she stated that the Teacher instructed them to “make sure [the Student] tried” first before helping him. Assistant B did not recall that the Student had issues opening his juice bottle but recalled that he had issues opening his snack; nevertheless, she asserted that he was always helped if he continued to struggle to open it. With respect to Incident 2, Assistant B stated to OCR that the Student did not have issues with accessing water; and, she did not recall an incident wherein the Student was denied water. With respect to Incident 3, Assistant B stated to OCR that she recalled that on one occasion, the Teacher remained with the Student after lunch so that he could finish his “XXXX puzzle.” Assistant B stated that the Teacher did not keep the Student from recess to punish him; rather, she wanted the Student to finish the puzzle. With respect to Incident 4, Assistant B stated to OCR that the Teacher did not direct her or Assistant A to not help the Student change his clothes. Assistant B stated that while the Student had trouble changing his clothes, there were no instances in which he did not get to play in the sprinkler. With respect to Incident 5, Assistant B stated to OCR that the Teacher did not yell at the Student and spoke to all students in the same manner. She stated to OCR that none of the Teacher’s interactions with the Student were alarming or inappropriate.

The Teacher informed OCR that she did not specifically recall the discussion during her meeting with the Principal, XXXXXX XXXXXX and the Complainant held on XXXXXX X, 2019, but she recalled telling the Complainant that she did not hit the Student. During her interview with OCR, OCR specifically asked the Teacher about Incidents 1-5 as reported to OCR by Assistant A. With respect to Incident 1, the Teacher stated to OCR that she did not recall the Student having any issues opening his juice. She recalled that he struggled with taking the straw off his juice container and that he was assisted with this task. The Teacher did not recall instructing Assistants A and/or B to not help the Student. With respect to Incident 2, the Teacher stated to OCR that she did not recall any instance wherein the Student asked for water and she refused to provide it. With respect to Incident 3, the Teacher stated to OCR that she remained with the Student during the

⁹ Assistant A stated that this was the first time she met or had spoken to the Complainant.

recess period so that he could finish his “XXXX puzzle,” because he had to finish this task before he could move on to the next activity. The Teacher did not recall any instances where other students remained with her during recess to complete a task. With respect to Incident 4, the Teacher stated to OCR that she did not recall the Student’s struggling with changing his clothes. With respect to Incident 5, the Teacher denied to OCR that she ever pushed the Student. The Teacher recalled an incident in which she was annoyed that the Student would not sit down for snack time. The Teacher stated that on that occasion, she told the Student to go around the table and find his seat. The Teacher stated that the Student went over to his seat, but he kept standing. The Teacher stated that she twice asked him to sit down and he started to cry. The Teacher stated that the Student then sat down while Assistant A pushed his chair in. The Teacher denied yelling at the Student.

The Principal informed OCR that in response to the Complainant’s concerns as conveyed during the meeting on XXXXXX X, 2019, Assistant A was assigned to work directly with the Student. Assistant A confirmed that after the meeting on XXXXXX X, 2019, she worked only with the Student. The Complainant also had requested that the Student’s classroom be changed; however, the Principal advised OCR that the District was unable to change the Student’s classroom because there was no other XXXXX XXXXXXXXXXXX in the Summer Program. The District’s Director of Pupil Personnel Services (the Director) advised the Complainant that the District was unable to change the Student’s classroom.

Assistant A informed OCR that, thereafter, on or about XXXXXX X, 2019, she was working with the Student on an art project. Assistant A stated that the Student was excited about his art project and showed it to the Teacher, who told the Student that she did not want to see his project in a “harsh” and “mean” tone, resulting in the Student’s crying (Incident 6). Assistant A stated that the Teacher did not act in this manner towards any other students in the class. During OCR’s interviews with the Teacher and Assistant B, neither recalled this incident.

The XXXXXX XXXXXX’s notes reflected that the next day, on XXXXXX X, 2019, Summer Program staff contacted the Complainant to pick up the Student because he appeared unwell. The XXXXXX XXXXXX’s notes indicated that the Complainant informed the XXXXXX XXXXXX that the Student would not be returning to the Summer Program because she thought that the Teacher’s behavior towards the Student had XXXXXXXXXXXX X XXXXXXXX.

The Complainant advised OCR that on XXXXXX X, 2019, the Summer Program contacted her to request that she pick the Student up from school because he was XXXXXXXXXXX XXX XXXX XXX XXXXXXXXXXX XXXXXXXX. The Complainant asserted that the Student’s doctor diagnosed this XXXXXXXXXXX XX X XXXXXXXX, due to stress caused by his experiences at the Summer Program. The Complainant stated that the Student did not return to the Summer Program after XXXXXX X, 2019.

OCR determined that the Director met with Assistant A on XXXXXX XX, 2019, to discuss Assistant A’s concerns about the Teacher. The Director stated that, at the meeting, Assistant A informed her of the Teacher’s conduct towards students, generally, as well as about Incident 1. The Director did not recall that Assistant A informed her of any other incidents, although Assistant A recalled that she informed the Director of Incidents 1 through 6.

The Director stated that the District issued a counseling memorandum to the Teacher regarding her conduct in the classroom. OCR's review of the counseling memorandum, dated XXXXXX XX, 2019, indicated that it summarized the meetings the Principal, XXXXXX XXXXXX, and the Complainant held on XXXXXX X, 2019, with the Teacher, Assistant A, and Assistant B; as well as, the meeting between Assistant A and the Director on XXXXXX XX, 2019. Further, the memorandum stated that the District was concerned that the Teacher's stern nature might be causing students and coworkers to feel uncomfortable. The memorandum also stated that the Teacher would be formally and informally observed during the school year. The Director informed OCR that the District did not offer the Student any other remedies, including counseling, because there was only one week left of the Summer Program, the Student did not XXXXXX XXXXXX XXX XXXXXXXX, and the District did not perceive there to be any complaint or report of disability harassment.

The Teacher confirmed that she, the Principal, the Director, and her union representative met to discuss the counseling memorandum and her tone of voice. The Complainant informed OCR that the District notified her that a letter regarding the Teacher's conduct was placed in the Teacher's file.

Prior to the completion of OCR's investigation, the District voluntarily agreed to sign a resolution agreement to resolve the complaint, without further investigation, pursuant to Section 302 of OCR's Case Processing Manual (CPM); OCR determined that it was appropriate to resolve the complaint pursuant to Section 302 of the CPM. On March 5, 2020, the District signed the enclosed resolution agreement. 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 a 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.

If you have any questions regarding OCR's determination, please contact David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or david.krieger@ed.gov; Sandy Araj, Compliance Team Attorney, at (646) 428-3879 or sandy.araj@ed.gov; Geraldo Perez, Compliance Team Investigator, at (646) 428-3765 or geraldo.perez@ed.gov; or me, at (646) 428-3826 or anna.moretto.cramer@ed.gov.

Sincerely,

/s/
Timothy C. J. Blanchard

Encl.

cc: Carol A. Melnick, Esq.