



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

March 12, 2020

Via email only to jgriffin@maloneschools.org

Jerry Griffin
Superintendent of Schools
Malone Central School District
P.O. Box 847
Malone, New York 12953

Re: Case No. 02-19-1471
Malone Central School District

Dear Superintendent Griffin:

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 Malone Central School District (the District). The Complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, by failing to provide him with speech/language therapy (SLT) as required by the Student's Section 504 plan, during school year 2019-2020 (Allegation 1). The complainant also alleged that the District discriminated against students at Davis Elementary School (the School), on the basis of their disabilities, by failing to provide students with mandated SLT as a related aid and/or service, 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 subjected to discrimination under

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any program or activity that receives or benefits from federal financial assistance. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), contains a similar provision.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that a recipient that operates a public elementary or secondary education program or activity shall provide a free, appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation, at 34 C.F.R. § 104.33(b)(1)(i), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The implementation of a Section 504 plan and/or an individualized education program (IEP) are means of meeting this requirement.

OCR interviewed the Complainant during the course of the investigation. OCR also reviewed documentation that the District submitted. OCR made the following determinations.

During school year 2019-2020, the Student was enrolled in the first grade at the School. The District identified the Student as a qualified individual with a disability,¹ and determined that the Student should receive related aids and services pursuant to a Section 504 plan dated XXXXXX XX, XXXX (the 504 Plan).

With respect to Allegation 1, the Complainant alleged that the District discriminated against the Student, on the basis of his disability, by failing to provide him with SLT, as required by the 504 Plan, during school year 2019-2020. Specifically, the Complainant asserted that the Student did not receive any SLT between XXXX XX and XX, XXXX.²

OCR determined that the 504 Plan specified that the Student should receive SLT in a small group, XXX XXXXX XXX XXXXX XXX, for XX minutes per session. During the course of the investigation, the District acknowledged that the Student may not have received all sessions of SLT, as required by the 504 plan, between XXXX XX and XX, XXXX.

On March 10, 2020, the District signed the enclosed agreement (Agreement) to voluntarily resolve Allegation 1 without further investigation, pursuant to Section 302 of OCR's *Case Processing Manual*.

With respect to Allegation 2, the Complainant alleged that the District discriminated against students at the School, on the basis of their disabilities, by failing to provide students with mandated SLT as a related aid and/or service, during school year 2019-2020. Specifically, the Complainant asserted that District staff members informed her that multiple students within the School were not receiving their mandated SLT at the beginning of school year 2019-2020.³

¹ The Student's Section 504 plan states that the Student has a speech/language impairment.

² The Complainant asserted that the District began providing SLT to the Student on XXXX XX, XXXX, but the District failed to offer the Student compensatory SLT for the sessions he had missed between XXXX XX and XX, XXXX.

³ The Complainant also asserted that as of October 25, 2019, she was aware that another student, who also attended the School, had not received any SLT.

The documentation the District provided to OCR indicated that 90 students at the School (including the Student) were entitled to receive SLT pursuant to their IEPs or Section 504 plans during school year 2019-2020. During the course of the investigation, the District acknowledged that 18 students at the School, including the Student, did not receive all of the sessions of SLT required by their Section 504 plans or IEPs during school year 2019-2020. Specifically, the District indicated that these students could not be serviced by the School's two existing SLT providers; the School hired an additional SLT provider in January 2020, who then began providing services to the students who had not been assigned to an existing provider.⁴

On March 10, 2020, the District signed the Agreement to voluntarily resolve Allegation 2 without further investigation, pursuant to Section 302 of OCR's *Case Processing Manual*. OCR will monitor the implementation of the Agreement. Upon the District's satisfaction of the commitments made under the Agreement, OCR will close this 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 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, please contact Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisa.khandhar@ed.gov; Charles Skrinier, Compliance Team Attorney, at (646) 428-3890 or charles.skrinier@ed.gov; or me, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s/
Nadja Allen Gill
Compliance Team Leader

Attachment

⁴ As stated above, the Student began receiving SLT in XXXX XXXX.

cc: XXXXXXXXXXXXX, Esq.