



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

July 7, 2020

Sent via email only to vsmith@pointpleasant.k12.nj.us

Vincent S. Smith
Superintendent of Schools
Point Pleasant School District
2100 Panther Path
Point Pleasant, New Jersey 08742

Re: Case No. 02-20-1135
Point Pleasant School District

Dear Superintendent Smith:

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 Point Pleasant School District (the District). The Complainant alleged that the District discriminated against his son (the Student), on the basis of his disability, by failing to ensure that each of his classrooms XXXX X XXXXXXXXXX XXXX XXXXXXXXXX XXXX, and that each of his teachers XXXXX XXXX XXXXXXXX, throughout the XXXX XXXX XXXXXXX XXXX XXXX of school year XXXX-XXXX, as stipulated in his Section 504 plan.

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.

OCR interviewed the Complainant during the course of the investigation. OCR also reviewed documentation and information that the Complainant and the District provided.

The Complainant alleged that the District discriminated against the Student, on the basis of his disability, by failing to ensure that each of his classrooms XXXXX X XXXXXXXXXX XX XXXXXXXXXX XXXXXXXXXX, and that each of his teachers XXXX XXX XXXXXXXXXX,

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throughout the XXXXX XXX XXXXXX XXXXXX XXXXXX of school year XXXXX-XXXX, as stipulated in his Section 504 plan.¹ The Complainant provided to OCR a copy of the Student’s Section 504 plan, dated XXXXX XX, XXXX, which included a provision for XX “XX XXXXXXXXXXXX XXXXXXXX” XX XXXX XX XXX XXXXXXXXXXXX XXXXXXXXXXXX.² The Complainant also provided to OCR copies of emails he sent to District staff during school year XXXX-XXXX, in which he asserted that there was XX XXXX XXXXXXXXXXXX XXXXXX XX XXXXXXXXXXX XX XX XXXXXXXXXXXX XXXXXX, as follows: (i) XXXXXXXX class, from XXXXXXXXXXX X, XXXX, to on or about XXXXXXXXXXX XX, XXXX; (ii) XXXXXXXX XXXXXXXXXXX XXXX class, from XXXXXXXXXXX X, XXXX, to on or about XXXXXXXXXXX XX, XXXX; and (iii) XXXXXXXXXXX class beginning on XXXXXXXXXXX X, XXXX. In his emails to District staff, the Complainant also asserted that in classes XXXX XXXXX XXXX XX XXXXXXXXXXX XXXXXXXX, XXXX XX XXX XXXXXXXXXXX XXXXXXXX XXXXX XXX XXXXX XXX XXXXXXXX.

The regulation implementing Section 504, at 34 C.F.R § 104.33(a), requires that a recipient that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified disabled person 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), 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 nondisabled persons are met. The implementation of a Section 504 plan is one means of meeting this standard.

In an email to the Complainant dated XXXXXXXX XX, XXXX, the XXXX XXXXX stated that “a review of the [Student’s] academic classes shows all classrooms XXXX XXX XX XXXXXXXXXXX XXXXXXXX XXX XXX XXXXXXXX XX XXXXX XXXXXXXX.” In addition, after the Complainant emailed the District on XXXXXXXXXXX XX, XXXX, to complain that the Student’s XXXXXXXX teacher was XXX XXXXX the XX XXXXXXXX in the XXXXXXXXXXX XXXXXXXX class, the District’s XXXXXXXX of XXXXXXXX and XXXXXXXX responded by email dated XXXXXXXXXXX XX, XXXX, and informed the Complainant that XX XX XXXXXXXXXXX XXXXX XX XX XXX XXXXXXXXXXX XXXXXXXX XXXXXXXX beginning the following week.³ Counsel for the District acknowledged to OCR that the Student did not have access XX XX XXX XXXXXXXXXXXXXXXXXXX XXXXXXXX XX XXX XXXXXXXXXXXXXXXXXXX XXXXXXXX at all relevant times.⁴

On July 1, 2020, the District signed the enclosed agreement to resolve the complaint 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

¹ The first marking period was from September 4, 2019, through November 6, 2019. The second marking period was from November 7, 2019, through January 27, 2020.

² The Student was diagnosed with an XXXXXXXXXXX XXXXXXXXXXX XXXXXXXX.

³ OCR did not determine whether any of the Student’s teachers had a functioning XX XXXXXXXXXXXXXXXXXXX XXXXXXXX in their classrooms and failed to use it.

⁴ Counsel for the District informed OCR that as of XXXXXXXXXXX XX, XXXX, an XX XXXXXXXXXXX XXXXXXXX XXX XX XXXXX XX XXXXX XX XXX XXXXXXXXXXX XXXXXXXX.

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 Bernard Dufresne, Compliance Team Attorney, at (646) 428-3802 or bernard.dufresne@ed.gov; or Amy Breglio, Compliance Team Attorney, at (646) 428-3942 or amy.breglio@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Viola S. Lordi, Esq.
Ashley Morin, Esq.