



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

August 4, 2020

Sent via email only to: d'angelo@maryvaleufsd.org

Joseph R. D'Angelo
Superintendent
Maryvale Union Free School District
1050 Maryvale Drive
Buffalo, New York 14225

Re: Case No. 02-20-1186
Maryvale Union Free School District

Dear Superintendent D'Angelo:

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 Maryvale Union Free School District (the District). The Complainant alleged that, during school year XXXX-XXXX, the District discriminated against his son (the Student), on the basis of his disability, by failing to provide the Student with special education and related aids and services as required by the Student's individualized education program (IEP), including a special education placement for school year XXXX-XXXX (Allegation 1) and speech-language therapy (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 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. The District 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 both Section 504 and the ADA.

OCR reviewed information that the Complainant and the District provided to OCR. OCR also interviewed the Complainant.

OCR determined that for school years XXXX-XXXX and XXXX-XXXX, the Student was classified as a student with a disability. During school year XXXX-XXXX, the District placed the

Student in an out-of-district special education placement at XXXXXXXXXXXX XXXXXXXX (the XXXXXXXX), which is operated by the XXXX X XXXXX XX XXXXXXXXXXXXX XXXXXXXXXXXXX XXXXXXXX (XXXXX).

With respect to Allegation 1, the Complainant alleged that the District’s Committee on Special Education (CSE) failed to determine the Student’s special education placement for school year XXXX-XXXX during a CSE meeting held in XXXX XXXX. The Complainant stated that, subsequently, during the summer of XXXX, he informed the District’s Director of Special Education (the Director) that he did not want the Student to return to the XXXXXXXX for school year XXXX-XXXX because the Student had been bullied by other students while attending the XXXXXXXX during the previous school year. The Complainant asserted that the Director agreed that the Student would not have to return to the XXXXXXXX and advised the Complainant that there were three or four other placements that the District could consider for the Student.

The Complainant stated that on XXXXXXXXXXXX X, XXXX, the day before the first day of school year XXXX-XXXX, the Director informed the Complainant that the Student was enrolled at the XXXXXXXX for school year XXXX-XXXX. The Complainant stated that he reiterated to the Director that he did not want the Student to attend the XXXXXXXX due to the bullying during the previous school year. The Complainant stated that the Director responded by proposing that the Student receive XXXX XXXXXXXXXXXXX while the Student was placed on a waitlist for a full-time special education placement elsewhere. The Complainant further stated that from XXXXXXXXXXXX X, XXXX, until XXXXXXXX or XXXXXXXXXXXX XXXX, the District failed to provide any academic instruction to the Student; and only provided eight hours per week of XXXX XXXXXXXXXXXXX to the Student thereafter. The Complainant further asserted that the District never followed up with providing any placement recommendations for the Student for school year XXXX-XXXX.

The District represented to OCR that it offered the Student an out-of-district placement operated by the XXXXX, but the Complainant did not want to send the Student to that placement.¹ District counsel explained that the District had difficulty finding a new placement for the Student at the start of school year XXXX-XXXX because none of the full-time special education placements had available seats at that time. As a result, the Student was placed on a waiting list for special education placements for students with XXXXXXXXXXXXX XXXXXXXXXXXXXXXX. District counsel further asserted that the Complainant agreed that the District would provide XXXX XXXXXXXXXXXXXXXX to the Student while the District sought alternative placement options for the Student. According to District counsel, the District began providing XXXX XXXXXXXXXXXXXXXX to the Student in XXXXXXXXXXXX XXXX and continued to provide XXXX XXXXXXXXXXXXXXXX to the Student for the remainder of school year XXXX-XXXX.

With respect to Allegation 2, the Complainant alleged that, during school year XXXX-XXXX, the District failed to provide the Student with speech-language therapy as required by his IEP for school year XXXX-XXXX. The District acknowledged that it did not provide speech-language services to the Student but asserted that the Student’s IEP for school year XXXX-XXXX did not

¹ Counsel for the District did not specifically identify the proposed placement for school year XXXX-XXXX; however, as stated above, the Complainant informed OCR that on XXXXXXXXXXXX X, XXXX, the Director informed him that the Student would be enrolled at the XXXXXXXX.

include such services. District counsel acknowledged that, in XXXX XXXX, the Complainant requested that the District conduct an evaluation of the Student to determine whether he needed speech-language services for school year XXXX-XXXX and the District agreed to do so. District counsel stated that the District conducted the evaluation in or around XXXXX XXXX; and the District's CSE determined that the Student had average speech-language abilities and did not qualify for speech-language services.

On July 31, 2020, the District signed the enclosed Agreement to voluntarily resolve Allegations 1 and 2 under Section 302 of OCR's Case Processing Manual without further investigation. 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 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 regarding this matter, please contact Erin M. Greene, Compliance Team Attorney, at (646) 428-3870 or erin.greene@ed.gov; Joy Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or joy.purcell@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Attachment

cc: Ryan Everhart, Esq.