



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD  
DIRECTOR  
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November 25, 2020

By email only to [lwool@harrisoncsd.org](mailto:lwool@harrisoncsd.org)

Dr. Louis N. Wool  
Superintendent of Schools  
Harrison Central School District  
50 Union Avenue  
Harrison, New York 10528

Re: Case No. 02-20-1272  
Harrison Central School District

Dear Dr. Wool:

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 Harrison Central School District (the District). The Complainant alleged that the District discriminated against her daughter (the Student), on the basis of her disability, by failing to respond appropriately to complaints and reports that she and/or the Student made alleging that, from on or about XXXX XX, 2020, through XXXX 2020, other students subjected the Student to harassment because of her disability.

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 pertaining to public entities.

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

[www.ed.gov](http://www.ed.gov)

Disability harassment 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, 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 if so, 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.

In its investigation, OCR reviewed documentation that the Complainant and the District submitted. OCR also interviewed the Complainant, the Student's father (the Parent), the Student, and District staff. OCR made the following determinations.

The Student was enrolled in the XXXX grade at the XXXXXXXXXXXXXXXXXXXX (the School) during school year 2019-2020. The Student was identified as a qualified individual with a disability and determined eligible to receive special education and/or related aids and services pursuant to individualized education programs (IEPs) dated XXXX XX, 2019, and XXXX XX, 2020. As a result of COVID-19, the School physically closed after March 13, 2020; and all students, including the Student, received virtual instruction from March 16, 2020, through the remainder of school year 2019-2020.<sup>1</sup>

The Complainant alleged that the District discriminated against the Student, on the basis of her disability, by failing to respond appropriately to complaints and reports that she and/or the Student made alleging that, from on or about XXXX XX, 2020, through XXXX 2020, other students subjected the Student to harassment because of her disability. The Complainant identified three incidents of alleged harassment (Incidents 1, 2, and 3) that she alleged that she or the Student reported to the School; and for which, she alleged, the School failed to respond.

OCR determined that the District's Code of Conduct (the Code) 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 students, employees, and third parties. Pursuant to the Code, the District's Board of Education appoints a Dignity for All Students Act (DASA) Coordinator(s) for each school, who, among other responsibilities, investigates and takes appropriate action in response to complaints or allegations related to the bullying and/or harassment of students that has a nexus to school. The Code established the School's principal (the Principal) and two assistant principals as the School's DASA Coordinators for school year 2019-2020. Policy 3420 states that it is essential that any employee, student, or other individual who has been the victim of harassment in the school environment, or is aware of any possible occurrence, should immediately report such alleged harassment to DASA Coordinators, preferably in writing. According to Policy 3420, upon completion of an equitable and thorough investigation, if the District determines there has been a violation of Policy 3420, immediate corrective action is taken as warranted.

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<sup>1</sup> The Student's parents XXXXXXXXXXXXXXXXXXXXXXXXXXXX for school year 2020-2021.

With respect to incident 1, the Complainant and the Student stated that, on XXXX XX, 2020, through an online platform called “Google Hangouts,”<sup>2</sup> the Student reported to the School’s XXXXXXXXXXXX (Counselor 1) that five fellow students were mocking the Student and another student (Student A) for being in a special education class; and were calling them “sped.”<sup>3</sup> The Student advised Counselor 1 that this was occurring in group chats on the Student’s personal accounts on the “Houseparty”<sup>4</sup> and “Snapchat”<sup>5</sup> Apps. The Student stated that she and Student A also shared the messages with Counselor 1. The Student stated that Counselor 1 did nothing about the harassment.

The Complainant provided to OCR what she asserted was a screenshot of a group chat exchange on “Google Hangouts” among the Student, Student A, and Counselor 1, on XXXX XX, 2020.<sup>6</sup> OCR reviewed the messages, which stated that the Student and Student A were being bullied about “how where [sic] in [a] special class” and said they were “sped.”<sup>7</sup> The Student also provided the names of five students who allegedly bullied her and Student A. In the group chat exchange, Counselor 1 suggested that the Student not participate in the conversations and block anyone who was being unkind on social media.<sup>8</sup>

Counselor 1 advised OCR that she recalled that the Student and Student A raised concerns to her on or about XXXX XX, 2020, regarding someone sending messages XXXXXXXX the Student; however, Counselor 1 did not recall the Student or Student A reporting that students had made comments related to special education, that they had been called “sped,” or that they were bullied because they were in special education. Counselor 1 stated that shortly after she received the

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<sup>2</sup> According to Google’s online Chrome web store, “Hangouts” can be used for free video or voice calls, and individual or group chats. Users may retain the history of their conversations on the platform. See <https://chrome.google.com/webstore/detail/google-hangouts/nckgahadagoaajjgafhacjanaoiihapd?hl=en> (site last visited November 13, 2020).

<sup>3</sup> An abbreviation for “special education.”

<sup>4</sup> According to Houseparty’s website, “Houseparty is a social networking app that allows up to eight people to video chat at once in a ‘room.’ Users can have infinite rooms and easily float between rooms. Users receive a notification when friends open the app and can join chats with friends (and friends of friends).” See <https://houseparty.com/faq/> (site last visited November 13, 2020).

<sup>5</sup> According to the Apple app store, Snapchat opens right to a camera, so users can send a Snap in seconds, and add a caption to send to friends and family. See <https://apps.apple.com/us/app/snapchat/id447188370> (site last visited November 13, 2020).

<sup>6</sup> OCR was unable to determine from the screenshot provided whether it reflected the complete exchange between the Student, Student A, and Counselor 1; or was an excerpt of the exchange. Counselor 1 stated that, at the end of school year 2019-2020, she deleted all messages in her Google Hangouts account, and no longer had access to the conversation she had with the Student and Student A on XXXX XX, 2020. The District asserted that the Complainant did not otherwise provide a copy of this screenshot to the District.

<sup>7</sup> Student A reported to Counselor 1 that the students were “calling us sped and mean stuff.”

<sup>8</sup> In the text messages, Counselor 1 also told the Student that one of the School’s assistant principals (the Assistant Principal) had informed her that the Student had contacted him and that he had tried to contact the Student, but was unable to reach her. Counselor 1 inquired if the Student still wanted to speak with the Assistant Principal. The Student did not respond to the inquiry. OCR determined that in an email to the Assistant Principal dated XXXX XX, 2020, the Student had stated that she was “having some issues with other girls and there [sic] saying bad things in the group chat to me, I wanted to know if we can talk about it.” The following day, the Assistant Principal sent the Student an email requesting the Student’s availability to discuss the concerns; the Assistant Principal informed OCR that the Student never replied to his email.

report, she notified the Assistant Principal, by text message, of the Student's concerns; and that the Assistant Principal informed her that he would contact the Student to address the matter.

OCR determined that by text message on XXXX XX, 2020, Counselor 1 informed the Assistant Principal that the Student believed that her Google account XXXXXXXXXX; and whoever XXXXXXXXXX was saying mean things about the Student.<sup>9</sup> The Assistant Principal stated that, on the following day, he called the Parent and left a voicemail message asking that the Parent contact him to discuss the Student's concerns. The Assistant Principal stated that neither the Parent nor the Student contacted him. The Assistant Principal denied that he was ever made aware that the Student was being called "sped" or being mocked for having a disability, or that he saw "Houseparty" or "Snapchat" messages in which the Student was called "sped" or was outed for having a disability. The Assistant Principal took no further action regarding incident 1.<sup>10</sup>

With respect to incident 2, the Complainant stated that, on or about XXXX XX, 2020, she reported to the School XXXXXXXXXX (Counselor 2) that a student who XXXXXXXXXXXXXXXXXXXX (Student B) sent messages to the Student through "Snapchat," threatening XXXXXXXX the Student and Student A. The Complainant did not recall whether she reported to Counselor 2 that Student B's comments were made because of the Student's disability. The Student did not recall whether she reported Student B's comments to District staff or whether Student B made any disability-related comments to her.

Counselor 2 informed OCR that, during a telephone conversation<sup>11</sup> with the Complainant and the Student's teacher (the Teacher), the Complainant stated that Student B had threatened XXXXXXXX the Student and Student A; the Complainant did not report other comments. Counselor 2 stated that the Complainant did not report that the comments were based on or related to the Student's disability.<sup>12</sup> OCR determined that Counselor 2 notified building-level administrators about the alleged threats and advised the Complainant to contact the police.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the assertion. Here, the preponderance of the evidence did not substantiate that the Complainant or the Student reported

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<sup>9</sup> The District provided to OCR a copy of the text messages between Counselor 1 and the Assistant Principal on XXXX XX, 2020. In the text messages, Counselor 1 stated that she was in a group chat with the Student and Student A, and the Student "thinks her XXXX XX XXXX amidst girl drama" and that whoever is XXXXX the Student is "being mean." Counselor 1 requested that the Assistant Principal call the Student and suggested that the Student's concerns could be addressed if she changed her password. Counselor 1 did not inform the Assistant Principal that the Student or Student A had reported bullying because they were in special education classes, nor did she provide the names of the five students alleged to have harassed the Student and Student A.

<sup>10</sup> In a letter to the District's committee on special education (CSE) dated XXXX XX, 2020, the Complainant noted, among other concerns spanning the school year, that on XXXX XX, 2020, the Student reported to Counselor 1 that other students harassed her and Student A for being in special education, but no action was taken. The Assistant Principal acknowledged that he was aware of the letter and stated to OCR that the District did not specifically respond to incident 1 at this point because "there was a lot to unpack [about the letter]," the District's attorneys were involved, and the District was trying to address as much as it could in real-time.

<sup>11</sup> Counselor 2 did not recall the date of the telephone conversation.

<sup>12</sup> OCR determined that, although the Complainant's letter to the CSE, dated XXXX XX, 2020, generally referenced that the Student was subjected to disability discrimination in school year 2019-2020, it did not state that incident 2 was because of or related to the Student's disability.

to Counselor 2, or anyone at the School, that Student B's comments to the Student were made because of the Student's disability.

With respect to incident 3, the Complainant stated that, during the school day on XXXX XX, 2020, Student A XXXXXX the Student's "Google Hangouts" and "Google Classroom" accounts and XXXX, XXXXXXXXXXXXXXXXXXXX, to School students, teachers, and administrators, stating that the Parent was XXXXXXXXXXXXXXXXXXXX. OCR determined that multiple individuals, including Counselor 2,<sup>13</sup> the Teacher, other teachers, and students, reported this activity to the School administration out of concern for the Student's safety. The Complainant and the Student informed OCR that neither reported to School staff that Student A XXXXXX the Student's account or made the alleged comments because of the Student's disability; and stated that they were unsure whether Student A's actions were related to the Student's disability. The Principal and Assistant Principal stated that incident 3 was not reported as disability-related discrimination, nor did the content of the comments Student A posted lead them to conclude that the actions were based on the Student's disability.<sup>14</sup>

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the Complainant or the Student reported incident 3 as harassment or discrimination based on the Student's disability. OCR also determined that nothing in the description of incident 3 or Student A's comments indicated that Student A's actions were because of or motivated by the Student's disability.

OCR determined that in response to the comments, the Principal and Assistant Principal confirmed that the Student was safe, and then began an investigation on XXXX XX, 2020, to determine who was responsible for posting the messages related to incident 3. The Principal stated that the XXXXXXXXXXXXXXXXXXXX determined that XXXXXXXXXXXXXXXXXXXX Student A's computer. The Principal and the Assistant Principal interviewed Student A, with her mother present; Student A admitted that XXXXXXXXXXXX the Student's Google Classroom account and had posted the messages. As a result, Student A was charged with violations of the Code, and was disciplined.

Prior to OCR's completing the investigation, on November 24, 2020, the District signed the enclosed agreement to resolve the complaint without further investigation. OCR will monitor the implementation of the resolution agreement. Upon the District's satisfaction of the commitments made under the agreement, OCR will close the case.

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<sup>13</sup> Counselor 2 stated to OCR that early in the morning of XXXX XX, 2020, the Teacher called her to report that the Student had sent her a message stating that the Student was XXXXX XXXXXXXXXXXX. Counselor 2 stated that she and the Teacher immediately called the Parent, who informed them that the Student was fine and doing her classwork. Counselor 2 stated that while she was on the telephone with the Student and the Parent, the messages XXXXXXXX XXXX the Student continued to be posted XXXX XXXX XXXX XXXX XXXX XXXX, so she knew that the messages were not from the Student. Counselor 2 reported incident 3 to the Assistant Principal who asked her to contact the Student's teachers to inform them that the Student was safe.

<sup>14</sup> OCR further determined that, although the Complainant's letter to the CSE, dated XXXX XX, 2020, generally referenced that the Student was subjected to disability discrimination in school year 2019-2020, it did not state that incident 3 was because of or related to the Student's disability.

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 David Krieger, Senior Compliance Team Attorney, at (646) 428-3893 or [David.Krieger@ed.gov](mailto:David.Krieger@ed.gov); R. Colin Power, Compliance Team Attorney, at (646) 428-3832 or [R.Colin.Power@ed.gov](mailto:R.Colin.Power@ed.gov); or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or [Anna.Moretto.Cramer@ed.gov](mailto:Anna.Moretto.Cramer@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

cc: Michael Lambert, Esq.

Encl.