



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005

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DIRECTOR  
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November 10, 2021

Sent by email only to [mcornell@hcsdk12.org](mailto:mcornell@hcsdk12.org)

Michael R. Cornell  
Superintendent  
Hamburg Central School District  
5305 Abbott Road  
Hamburg, New York 14075

Re: Case No. 02-21-1181  
Hamburg Central School District

Dear Superintendent Cornell:

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 Hamburg Central School District. The Complainant alleged that the District discriminated against her sons on the basis of their disabilities, by failing to ensure that the Buffalo Public Schools (District 2) provided educational instruction, speech/language services, and physical and occupational therapy to her sons, from September 2020 to March 2021, as required by their individualized education programs (IEPs). For the remainder of this letter, OCR will refer to the Complainant's sons as Student A and Student B, or collectively, the Students.

OCR enforces 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 Department. Additionally, OCR 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 the authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR reviewed documentation that the Complainant, the District and District 2 submitted. OCR also interviewed the Complainant and her husband. OCR made the following determinations.

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 excluded from participation in, be

denied the benefits of, or otherwise 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.

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 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 an IEP is one means of meeting this standard.

OCR determined that in school year 2020-2021, the Students were both XXXX years old and residents of the District. The District's Committee on Special Education (CSE) placed the Students out of district, at District 2's Public School XXXX (the School) for school year 2020-2021, pursuant to IEPs dated January 3, 2020.

Student A's IEP provided, in relevant part, for placement in a special (XXXX) class for 4.5 hours daily, individual occupational therapy (OT) for 30 minutes (3 times in a 6-day cycle), individual speech/language therapy (speech) for 30 minutes (2 times in a 6-day cycle), and small group speech for 30 minutes (3 times in a 6-day cycle). It also provided for physical therapy (PT) consultation services (4 times yearly for 30 minutes). The CSE also met and/or amended Student A's IEP on XXXX; however, the educational instruction, speech, PT and OT remained consistent with the IEP developed at the CSE meeting on XXXX, 2020.

Student B's IEP provided, in relevant part, for placement in a special (XXXX) class for 4.5 hours daily, individual occupational therapy (OT) for 30 minutes (3 times in a 6-day cycle), individual speech/language therapy (speech) for 30 minutes (2 times in a 6-day cycle), and small group speech for 30 minutes (4 times in a 6-day cycle). It also provided for individual PT for 30 minutes (3 times in a 6-day cycle). The CSE also met and/or amended Student B's IEP on XXXX; however, the educational instruction, speech, PT and OT remained consistent with the IEP developed at the CSE meeting on XXXX, 2020.

For school year 2020-2021, the School was physically closed due to the COVID-19 pandemic. District 2 provided remote instruction to all School students, including the Students, until February 2021. Beginning in February 2021, the School reopened for in-person learning.

Student A continued to receive remote instruction until XXXX, 2021. On XXXX, 2021, the CSE met and changed Student A's placement to a XXXX in a different public school district (District 3). Student A's last day of remote attendance at the School was XXXX, 2021. The Complainant asserted that the District failed to ensure that District 2 provided Student A the educational instruction and related aids and services required by his IEP while he was enrolled at the School from September 2020 through February 2021. According to the Complainant, Student A received only 1.5 hours of virtual educational instruction per day, consisting of a morning meeting, and occasional English, math and science instruction, as well as small group speech and OT services

one time per week each. The Complainant also asserted that Student A did not receive any PT consultation services.

On XXXX, 2021, the CSE met and changed Student B's placement to a XXXX in District 3. Student B's last day of remote attendance at the School was March 11, 2021. The Complainant asserted that the District failed to ensure that District 2 provided Student B the educational instruction and related aids and services required by his IEP while he was enrolled at the School from September 2020 through March 2021. According to the Complainant, Student B received only 1.5 hours of virtual educational instruction per day, consisting of a morning meeting, and occasional English, math and science instruction, as well as small group speech and OT services one time per week each. The Complainant also asserted that Student B received PT only once per week.

The District acknowledged that from September 2020 to February/March 2021, District 2 did not provide the Students all of the educational and related services required by their IEPs. The District asserted that it was difficult to find mutually-agreeable times to schedule such services during the COVID-19 pandemic. The District also asserted that it discussed these scheduling difficulties with the Complainant during multiple CSE meetings. Information OCR reviewed indicated that the Students generally received 2.5 to 3 hours of instruction per day, individual OT once per 6-day cycle, and group speech twice per 6-day cycle. District 2 provided information to OCR indicating that Student B received PT once per 6-day cycle in September and October 2020, which was increased to three times per 6-day cycle in December 2020. District 2 did not provide any information indicating that Student A received a PT consultation between September 2020 and February 2021.

The District expressed an interest in resolving the complaint allegation and OCR determined that it is appropriate to do so. On November 5, 2021, the District signed the enclosed resolution agreement to resolve the complaint allegation. OCR will monitor the implementation of the resolution 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 sets forth OCR's determination in the above-referenced individual OCR cases. 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.

It is important for the District to understand that the laws OCR enforces prohibit the District from harassing, coercing, intimidating, or discriminating against the Complainant because the Complainant filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint against the District with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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 Tracey Beers, Senior Compliance Team Attorney, at (646) 428-3804 or [tracey.beers@ed.gov](mailto:tracey.beers@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/

Rachel Pomerantz

Encl.

cc: Marnie E. Smith, Esq.