



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

RACHEL POMERANTZ  
DIRECTOR  
NEW YORK OFFICE

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Sent via email only to: [jchambers@potsdam.k12.ny.us](mailto:jchambers@potsdam.k12.ny.us)

Joann Chambers  
Superintendent of Schools  
Potsdam Central School District  
29 Leroy Street  
Potsdam, New York 13676

Re: Case No. 02-22-1033  
Potsdam Central School District

Dear Superintendent Chambers:

This letter is to notify you of the determination made by the U.S. Department of Education (the Department), Office for Civil Rights (OCR), regarding a complaint filed against the Potsdam Central School District (District A).

The Complainant alleged that District A discriminated against her son on the basis of his disability by failing to provide him with (a) individual speech and language therapy in a separate location; and (b) individual occupational therapy in a separate location, as required by his Individualized Education Program (IEP) from on or about September 8, 2021, through mid-October 2021 (Allegation 1). The Complainant also alleged that District A (a) discriminated against her son on the basis of his disability and/or (b) retaliated for her disability-related advocacy by dismissing her son from District A's Integrated Preschool Program (the Program) on October 20, 2021 (Allegation 2). For the remainder of this letter, OCR will refer to the Complainant's son as "the Student."

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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or

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participated in any manner in an investigation, proceeding or hearing held in connection with a complaint. The regulation implementing Title II contains a similar provision at 28 C.F.R. § 35.134. As a recipient of Federal financial assistance from the Department, District A is subject to Section 504. As a public elementary and secondary education system, District A is subject to Title II.

In its investigation, OCR interviewed the Complainant, District A staff, and staff from the XXXX XXXXX School District (District B). OCR also reviewed documentation that the Complainant and Districts A and B submitted. Before OCR completed its investigation of the allegations, District A expressed a willingness to resolve the complaint by taking the steps in the attached Resolution Agreement (Agreement), and OCR determined that a voluntary resolution is appropriate to resolve Allegations 1 and 2 pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*.<sup>1</sup> District A signed the attached Agreement to resolve the complaint on November 18, 2022.

### **Applicable Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that qualified individuals with disabilities shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity that receives federal financial assistance from the Department. The regulation implementing Title II, at 28 C.F.R. § 35.130, contains a similar provision.

Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(ii), (iv) and (vii), a recipient may not, on the basis of disability, afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide different or separate aid, benefits, or services to qualified individuals with a disability, unless such action is necessary to provide the qualified individual with a disability with aid, benefits, or services that are as effective as those provided to others; or, otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing the Title II, at 28 C.F.R. § 35.130(b)(1)(ii), (iv) and (vii), contains similar provisions. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.38, states that a recipient that operates a preschool education program or activity must take into account the needs of qualified individuals with disabilities in determining the aid, benefits, or services to be provided under the program or activity.

### **Investigative Findings, Legal Analysis, and Conclusions**

During school year 2021-2022, the Student was XXXXX years old and enrolled in an integrated XXXXXXXXXXX program in District A. District B, the Student's district of residence at the time, classified the Student as a XXX-XXXXXX student with a disability and created an IEP dated May 26, 2021. The Student's IEP stated that for school year 2021-2022, the Student should be placed in a XXXXXX special class in an integrated setting for two and one-half hours daily in District A's Program located at XXXXXXXXXXX XXXXXX XXXXXXXXXXXX XXXXXX (the School). The Student's IEP specified that the Student receive the following related services: individual speech and language therapy (speech) twice per week for 30 minutes in a therapy room; individual occupational therapy (OT) twice per week for 30 minutes in a therapy room; speech in a small group once per week

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<sup>1</sup> *Case Processing Manual* (July 18, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

for 30 minutes in a therapy room; and physical therapy twice per week for 30 minutes in a therapy room.<sup>2</sup>

### **Allegation 1**

With respect to Allegation 1, the Complainant alleged that from in or around September 8, 2021, through mid-October 2021, District A discriminated against the Student on the basis of his disability by failing to provide him with speech and OT individually in a separate location, as required by his IEP for school year 2021-2022. In support of the allegation, the Complainant stated that in an email to District A's Committee for Preschool Special Education Chairperson (CPSE Chairperson) sent on October 1, 2021, she reported that District A was not providing speech and OT to the Student on an individual basis as specified in his IEP. The Complainant alleged that during a virtual meeting held on October 4, 2021, Program staff, including the Student's classroom teacher (the Teacher), the speech/language therapist (Speech Therapist), the occupational therapist (Occupational Therapist), and the physical therapist, told her that they were not providing the Student's speech and OT in the designated "therapy room" because the room was "unsafe" for the Student; and instead, they were providing push-in services in the Student's classroom. The Complainant stated that because the Speech Therapist and Occupational Therapist were providing services to the Student in the classroom (e.g., speech provided during "circle time"), she was concerned that the Student was not receiving speech and OT individually in a separate location as required by his IEP.

With respect to Allegation 1(a) pertaining to speech, District A's records indicated that from September 3, 2021, through on or about October 22, 2021, the Speech Therapist provided individual speech to the Student in the therapy room on six occasions and within the classroom on 13 occasions. With respect to Allegation 1(b) pertaining to individual OT, District A's records indicated that from September 3, 2021, through on or about October 22, 2021, the Occupational Therapist provided OT to the Student in the therapy room on three occasions and within the classroom or in an unspecified location on 10 occasions. The Speech and Occupational Therapists both stated that they worked with the Student individually regardless of the location, including in a separate location in the back of the classroom that had a couch and a gym mat. The Teacher confirmed that the Student received speech and OT sessions in the classroom.

On October 1, 2021, the Complainant emailed the CPSE Chairperson and District B's Director of Special Education (District B Director), stating that she was concerned that District A was not providing the Student's services in accordance with his IEP. The Complainant further stated that she was frustrated by the lack of communication from Program staff. She also stated that the Student should be receiving his related services individually in a therapy room, and that she believed he was receiving "more group and less direct instruction."

OCR determined that on October 4, 2021, the Complainant, the Teacher, and the Speech and Occupational Therapists met and reviewed the Student's IEP. According to Program staff, during the meeting, they explained to the Complainant that they had safety concerns about pulling the Student out of the classroom to provide related services to the Student in the therapy room; and stated that they were providing speech and OT to the Student in a separate location in the classroom. Program staff stated that during the meeting, the Complainant was very focused on the Student's receiving

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<sup>2</sup> The Student's IEP also specified that he receive special education itinerant services, speech, OT, and physical therapy on a 1:1 basis at home.

“pull out” speech and OT and wanted the Program staff to identify a location other than the classroom to provide the services. The Program staff stated that they agreed to find a new location for the Student’s therapies and in the interim, agreed to provide the Student’s related services in a small alcove outside his classroom. Program staff confirmed that by the week of October 17, 2021, District A had identified another classroom to be used as a therapy room for students. OCR determined that District A terminated the Student’s enrollment in the Program as of October 22, 2021, and he did not receive any speech or OT services in the new location.

As stated previously, prior to the completion of OCR’s investigation, on November 18, 2022, District A signed the attached Agreement to voluntarily resolve Allegations 1(a) and 1(b), that District A discriminated against the Student on the basis of his disability by failing to provide him with speech and OT individually in a separate location, as required by his IEP for school year 2021-2022.

With respect to Allegation 2, the Complainant alleged that District A discriminated against the Student on the basis of his disability and/or retaliated for the Complainant’s disability-related advocacy by dismissing the Student from the Program on October 20, 2021. In support of Allegation 2, the Complainant stated that on October 19, 2021, she requested that the Teacher communicate with her more about the Student’s behavior in the Program, given some changes to his home routine. The following day, the District B Director notified her that the Student could not remain in the Program because he needed a 1:1 aide. The Complainant stated that the Student’s dismissal came abruptly and there was no previous communication with Program staff or District B indicating that the Student might not have been a fit for the Program.

The following three elements must be satisfied to establish a *prima facie* case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a *prima facie* case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

OCR determined that the Complainant engaged in protected activities through her ongoing disability-related advocacy on behalf of the Student, including contacting and/or meeting with the Program staff, the CPSE Chairperson, and the District B Director regarding the provision of the Student’s related services in September and October 2021. OCR also determined that District A was aware of the Complainant’s protected activities.

OCR determined that on October 20, 2021, the District B Director informed the Complainant via a series of emails that the Program did not think that the Student was a good fit and that District B would hold an IEP meeting in the future to discuss the Student’s educational program. The District B Director stated that she would arrange for the Student to receive his related services at his daycare and would work to find the Student a spot at a full-time XXXX XXXXX program. The District B Director informed the Complainant that the Program would permit the Student to attend through Friday, October 22, 2021. The Complainant responded that she would not send the Student to the Program after October 20, 2021, because she believed the Program staff did not want him there.

OCR determined that District B held an IEP meeting on Wednesday, October 27, 2021, to review the Student’s placement, which Program staff attended. District B changed the Student’s placement for October 27, 2021, through June 24, 2022, to at home with Special Education Itinerant Services (SEIT)

on a 1:1 basis twice weekly for 1 hour; speech on an individual basis three times per week for 30 minutes; OT on an individual basis twice per week for 30 minutes; and physical therapy twice per week for 30 minutes.

As stated previously, prior to the completion of OCR’s investigation, on November 18, 2022, District A signed the attached Agreement to voluntarily resolve Allegation 2, that District A discriminated against the Student on the basis of his disability and/or retaliated for the Complainant’s disability-related advocacy by dismissing the Student from the Program on October 20, 2021.

**Resolution Agreement**

Pursuant to the Agreement, District A will coordinate with the Student’s current home district (XXXXXXXX XXXXX XXXXXXXX XXXXXX XXXXXXXXX) to convene a meeting of a group of persons knowledgeable about the Student (such as the CPSE) to determine if the Student requires any remedial and/or compensatory services for individual speech and OT in connection with District A’s provision of such related services between September 3, 2021, through October 22, 2021, while he attended the Program. If the group determines that the Student requires remedial and/or compensatory services, it will develop a plan for providing such services by no later than June 30, 2023.

The Agreement also requires District A to train Program staff members and any related service providers and/or administrators regarding the requirements of Section 504, including that the Program may not exclude on the basis of disability qualified individuals with disabilities from the program or activity; and take into account the needs of such persons in determining the aid, benefits, or services to be provided. The Agreement requires that District staff members, including the CPSE Chairperson, the School principal, and teachers and related service providers receive training regarding District A’s obligations pursuant to Section 504 regarding the evaluation of students with disabilities prior to any significant change in educational placement; the implementation of each element of a student’s Section 504 Plan and/or IEP; and the prohibition regarding retaliation in Section 504 and Title II.

Additionally, District A will submit to OCR: copies of the Section 504 Plans and/or IEPs of all students who were enrolled in District A’s Program for school year 2021-2022, and from September 2022 through January 2023, and who were mandated to receive speech and/or OT in a separate location; and documentation of the dates, times, and locations that District A provided speech therapy and OT to each student, consistent with the student’s Section 504 Plans and/or IEPs. For any student for whom District A cannot provide such documentation, District A will convene a meeting of a group of persons knowledgeable about each student (such as the CPSE), to determine whether the student requires any remedial and/or compensatory services for any speech therapy and OT in a separate location that should have been provided pursuant to the student’s Section 504 Plan or IEP for school year 2021-2022 and from September 2022, through January 2023. For any student for whom the group determines that remedial and/or compensatory services are required, the group will develop a plan for providing such services by no later than June 30, 2023. District A will invite each student’s parent/legal guardian to attend this meeting and otherwise adhere to the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, in making these determinations.

The Agreement also requires District A to provide information to OCR regarding student participants who were dismissed, removed, or terminated from the Program (including the student’s disability status and classifications) for school years 2021-2022 and 2022-2023.

OCR will monitor District A’s implementation of the Agreement. Upon District A’s compliance with the terms of the Agreement, with Section 504 and its implementing regulations, at 34 C.F.R. 34 C.F.R. Part 104, and Title II and its implementing regulations, at 28 C.F.R. Part 35, which were at issue in this case, OCR will close the case.

This letter should not be interpreted to address District A’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 District A must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against District A 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 Marykate O’Neil, Compliance Team Attorney, at (646) 428-3814 or [marykate.oneil@ed.gov](mailto:marykate.oneil@ed.gov); Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or [jessica.daye@ed.gov](mailto:jessica.daye@ed.gov); or Felice Bowen, Compliance Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

/s/

Rachel Pomerantz

cc: XXXXX XXXXX, Esq. (XXXXXXXXXXXXXXXXXXXX.com)  
XXXXXXXXXX XXXXXX, CPSE Chairperson (XXXXXXXXXXXX.XXX.XX.XX)