



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  
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March 28, 2023

Sent via email only to: [ctangorra@nhart.org](mailto:ctangorra@nhart.org)

Dr. Cosimo Tangorra  
Superintendent  
New Hartford Central School District  
33 Oxford Road  
New Hartford, New York 13413

Re: Case No. 02-22-1468  
New Hartford Central School District

Dear Superintendent Tangorra:

By letter dated March 7, 2023, the U.S. Department of Education (the Department), Office for Civil Rights (OCR) notified you that it would investigate a complaint filed against the New Hartford Central School District. The Complainant alleged that the District discriminated against her XXX on the basis of his disability by failing to evaluate him for a suspected disability since spring 2022. For the remainder of this letter, OCR will refer to the Complainant's son as "the Student."

As discussed below, on March 16, 2023, before OCR completed its investigation of the allegation, OCR contacted the District to discuss OCR's Rapid Resolution Process (RRP) pursuant to Section 203 of OCR's *Case Processing Manual (CPM)*.<sup>1</sup> On March 16, 2023, the District expressed its willingness to voluntarily resolve the allegation through RRP. On March 22, 2023, the District voluntarily entered into the attached resolution agreement (the Agreement) to resolve the complaint, in accordance with Section 302 of OCR's *CPM*.

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. As a recipient of federal financial assistance from the Department, the

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

District is subject to Section 504 and its implementing regulations. As a public elementary and secondary education system, the District is subject to Title II and its implementing regulations.

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 that receives federal financial assistance. The regulation implementing Title II contains a similar provision at 28 C.F.R. § 35.130(a).

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 (FAPE) 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), 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.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), further requires a recipient to conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. The regulation implementing Section 504, at 34 C.F.R. § 104.35(c), requires that in interpreting evaluation data and making placement decisions a recipient shall: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with 34 C.F.R. § 104.34.

During school year 2021-2022, the Student was in the XXXXXXXXX grade at the District's XXX XXXXXXX XXXX XXXXXXX (the School). The Complainant alleged that the District discriminated against the Student on the basis of his disability by failing to evaluate XXX for a suspected disability since spring 2022. The Complainant stated that during school year 2021-2022, the Student attended classes in-person only for the first quarter and did not return to school in person for the remainder of school year 2021-2022. On February 15, 2022, the Complainant provided a note to the District from the Student's pediatrician, stating that the pediatrician was treating the Student for "XXXXXXXXXXXX XXXX XXXXXXXX."<sup>2</sup> The Complainant stated that in response to the doctor's note, the District provided the Student with a tutor for three weeks beginning on March 2, 2022, and sent assignments home for the Student to complete during the third quarter of school year 2021-2022, but refused to send the Student any assignments at home during the fourth quarter of school year 2021-2022, even though the Student had not returned to school in person.

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<sup>2</sup> The Complainant stated to OCR that she believed the Student also had anxiety but had difficulty obtaining mental health services to confirm her concern.

The Complainant stated that in September 2022, she requested that the District evaluate the Student for a Section 504 plan and/or an Individual Education Program (IEP). The District held a Section 504 meeting in September 2022 but determined that the Student did not qualify for a Section 504 plan. The Complainant also stated that District staff members advised the Complainant that the Student would not qualify for an IEP.

On October 3, 2022, the District dismissed the Student from the School for XXX-XXXXXXXXXX.<sup>3</sup> The Complainant advised OCR that as of January 30, 2023, the District enrolled the Student in the XXXXXX XXX XXXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX XXXXXX Board of Cooperative Educational Services (BOCES) XXXXXXX XXXXXXX XXXX XXXXXXX program, as well as a virtual program in the District to complete his remaining academic credits for graduation.

Prior to the completion of OCR’s investigation of the Complainant’s allegation, OCR noted possible compliance concerns with respect to whether District administrators and staff members, including instructional staff members, timely identified the Student as an individual with a suspected disability and/or referred and evaluated the Student to determine his eligibility for special education and/or related aids and services; and considered information from a variety of sources in making its determinations regarding the Student’s eligibility for a Section 504 plan and/or IEP. As stated previously, on March 22, 2023, the District signed the attached Agreement to voluntarily resolve the Complainant’s allegation that the District discriminated against the Student on the basis of his disability by failing to evaluate him for a suspected disability since spring 2022.

Pursuant to the Agreement, the District agreed to convene a meeting of a group of persons knowledgeable about the Student, such as the Committee on Special Education (CSE), to determine the Student’s eligibility for special education and/or related aids and services, including the need for evaluations, and invite the Complainant to attend this meeting. If the District determines that the Student is eligible for special education and/or related aids and services, it will convene a group of persons knowledgeable about the Student to determine the Student’s need for remedial or compensatory services and develop a plan for providing any services it deems necessary.

The District also agreed to train District administrators and staff members, including instructional staff, responsible for identifying, referring, evaluating, and making determinations regarding special education and/or related aids and services, including members of the CSE, Intervention and Referral Services Committee, and Section 504 Coordinator(s); and the School’s principal, assistant principal, guidance counselor, and special education teachers. The training will include a review of the District’s policies and procedures relating to the identification, referral, and evaluation of any student suspected of having a disability. The training will cover the District’s obligations to provide a free appropriate public education to each qualified student with a disability and the procedural safeguards required by Section 504; conduct a timely evaluation of any student, who, because of disability, needs or is believed to need special education and/or related aids and services; and draw upon information from a variety of sources in interpreting evaluation data and

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<sup>3</sup> The Student is over the age of compulsory education.

in making placement decisions; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that placement decisions are made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that the placement decision is made in conformity with Section 504.

OCR will monitor the District's implementation of the Agreement. Upon the District's compliance with the terms of the Agreement, Section 504 and its implementing regulations at 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 sets forth OCR's determination in an individual 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 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 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, please contact Erin Greene, Compliance Team Attorney, at (646) 428-3870 or [erin.greene@ed.gov](mailto:erin.greene@ed.gov); or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

/s/

Rachel Pomerantz

Attachment