



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

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August 22, 2023

Sent via email only to [dwight.bonk@wcsdny.org](mailto:dwight.bonk@wcsdny.org)

Dwight Bonk, Ed. D.  
Superintendent of Schools  
Wappingers Central School District  
25 Corporate Drive  
P.O. Box 396  
Hopewell Junction, New York 12533

Re: Case No. 02-23-1204  
Wappingers Central School District

Dear Superintendent Bonk:

By letter dated March 6, 2023, the U.S. Department of Education, Office for Civil Rights (OCR) notified you that it would investigate a complaint filed against Wappingers Central School District. The Complainant alleged that District staff discriminated against her daughter on the basis of disability by failing to implement her daughter's Section 504 plan (Allegation 1) and repeatedly suspending her daughter (Allegation 2), during school year 2022-2023. For the remainder of this letter, OCR will refer to the Complainant's daughter as "the Student."

Pursuant to Section 203 of OCR's *Case Processing Manual (CPM)*,<sup>1</sup> on March 6, 2023, OCR contacted the District to discuss OCR's Rapid Resolution Process (RRP) and the District indicated its willingness to resolve the complaint via RRP. As discussed further below, on August 22, 2023, the District signed an agreement under Section 302 of OCR's *CPM* to voluntarily resolve concerns OCR identified regarding [redacted content] implementation of provisions in the Student's Section 504 plan and the District's understanding of its obligations under Section 504 with respect to disciplining students with disabilities.

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 regulations 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 also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulations 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 public entity that receives federal financial assistance from the Department, the District is subject to Section 504, Title II, and their implementing regulations.

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

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## **I. Applicable Legal Standards**

The regulations implementing Section 504, at 34 C.F.R. § 104.33(a), provide 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 regulations, at 34 C.F.R. § 104.33(b)(1), define 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 a Section 504 plan is one means of meeting this standard. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. §35.103.

The regulations implementing Section 504, at 34 C.F.R. § 104.35(a), require a recipient to conduct an evaluation of any student who needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student or any subsequent significant change in placement. If the proposed exclusion of a person with a disability is permanent (expulsion) or for an indefinite period, or for more than ten consecutive school days, the exclusion constitutes a significant change in placement under the regulations implementing Section 504, at 34 C.F.R. § 104.35(a). If a series of removals that are each of ten days or fewer in duration creates a pattern of exclusions that constitutes a significant change in placement, the requirements of 34 C.F.R. § 104.35(a) also apply. The determination of whether a series of removals creates a pattern of exclusions that constitutes a significant change in placement must be made on a case-by-case basis. Among the factors that will be considered in determining whether a series of removals has resulted in a significant change in placement are the length of each removal, the proximity of the removals in time, and the total amount of time the student is excluded from the classroom.

In order to implement an exclusion that constitutes a significant change in placement, a recipient must first conduct a reevaluation of the student, in accordance with 34 C.F.R. § 104.35. As a first step in this reevaluation, the recipient must determine, using appropriate evaluation procedures that conform to the regulations implementing Section 504, whether the misconduct is caused by the student's disability. If it is determined that the disabled student's misconduct is caused by the student's disability, the recipient must determine whether the student's current educational placement is appropriate. If it is determined that the misconduct is not caused by the student's disability, the student may be excluded in the same manner as a similarly situated non-disabled student.

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

In its investigation, OCR interviewed the Complainant and reviewed documentation that the Complainant and District submitted.

For school year 2022-2023, the Student was in the [redacted content] grade at the District's [redacted content] (the School). The District determined that the Student is a qualified individual with a disability<sup>1</sup> eligible to receive related aids and services pursuant to [redacted content].

### **Allegation 1**

With respect to Allegation 1, the Complainant alleged that District staff discriminated against the Student on the basis of disability by failing to implement the Student's Section 504 plan. In support of Allegation 1, the Complainant alleged that the Student's Section 504 plan provided for [redacted content]. The Complainant alleged that the Student's [redacted content] teachers (Teachers 1 and 2, respectively) [redacted content]. As described below with respect to Allegation 2, the Complainant alleged that Teachers 1 and 2 [redacted content].

OCR determined that Plan 1 required that the Student's classroom teachers provide the Student with [redacted content]. OCR determined that Plan 2, [redacted content]. Plan 2 further required that [redacted content].

The District did not provide any documentation to OCR regarding Teacher 1's and Teacher 2's implementation of the Student's Section 504 plan, or the dates, times, and reasons for which District staff [redacted content], as the Complainant alleged. As stated above, prior to the completion of OCR's investigation of Allegation 1, on August 22, 2023, the District signed the attached Resolution Agreement to voluntarily resolve OCR's concern with respect to Teacher 1's and Teacher 2's implementation of the Student's Section 504 plan providing for [redacted content].

### **Allegation 2**

With respect to Allegation 2, the Complainant alleged that District staff discriminated against the Student on the basis of disability by repeatedly suspending the Student during school year 2022-2023. The Complainant alleged that the District repeatedly suspended the Student for [redacted content], without providing any written notice of these removals from the classroom, maintaining records of such removals, or conducting manifestation determination reviews (MDRs), as required.

OCR determined that in an email to the Superintendent dated [redacted content], 2022, the Complainant reported that the School was [redacted content]. By letter dated [redacted content], 2022, the Assistant Superintendent of Student Support Services (the Assistant Superintendent) informed the Complainant that he conducted an investigation pursuant to Section 504, in which he comprehensively reviewed staffing assignments for [redacted content], Plan 1, the Student's discipline record as recorded in the District's student management system, and the Student's academic records and progress reports, and conducted interviews with referring staff members, the school psychologist, and school counselor. Based on his investigation, the Assistant Superintendent found that the Student's teachers engaged in progressive discipline consistent with the District's Code of Conduct by giving verbal prompts and warnings over a period of months, and only wrote official behavioral referrals when it appeared that non-punitive or restorative efforts were not achieving desired results. The Assistant Superintendent further concluded that because students at the School serve ISR and ISS "with a certified teacher supporting academic/curricular needs," the Student's placement in ISR and ISS did not represent a disciplinary change in

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<sup>1</sup> The Student has [redacted content].

placement requiring the Section 504 committee to conduct an MDR. The disciplinary records the Assistant Superintendent reviewed in making this finding reflected that at that time, the Student had been assigned [redacted content] since the beginning of school year 2022-2023. The Complainant provided information to the District that the Student had served [redacted content] as of [redacted content], 2022.

By email dated [redacted content], 2022, the Complainant appealed the District's findings and outlined her reasons for [redacted content]. OCR determined that the District began [redacted content]. On [redacted content], 2023, the Assistant Superintendent issued a response to the Complainant's appeal, in which he reiterated the District's position that students serving ISR or ISS do so with a certified teacher supporting academic/curricular needs such that placement there does not represent a disciplinary change in placement requiring a manifestation determination. The Assistant Superintendent further determined that at that time, the Student's disciplinary records reflected that she [redacted content], which he stated did not constitute a disciplinary change in placement requiring a manifestation determination. The Assistant Superintendent also determined that since the Complainant filed her appeal, the Section 504 team [redacted content]; and that the Complainant [redacted content].

As stated above, prior to the completion of OCR's investigation of Allegation 2, on August 22, 2023, the District signed the attached Resolution Agreement to voluntarily resolve OCR's concerns regarding the District's understanding of its obligations under Section 504 to consider lunch detention, ISR, and ISS as removals that can create a pattern of exclusions creating a significant change of placement.

### **Obligations Under the Resolution Agreement**

Pursuant to the resolution agreement (the Agreement), the District will convene a meeting of a group of persons knowledgeable about the Student, such as the CSE, and invite the Complainant to the meeting, to determine whether the Student requires any remedial and/or compensatory services as a result of the alleged failure to implement [redacted content] pursuant to her Section 504 plans in the Student's [redacted content] courses during school year 2022-2023. If the group of knowledgeable persons determines that the Student requires remedial and/or compensatory services, the group will develop a plan for providing such services, and begin implementing the services in October 2023, with a completion date not to extend beyond February 29, 2024.

The District will also review the disciplinary files of all students with disabilities at the School who were issued disciplinary sanctions, including lunch detentions, ISRs, ISSs, and/or OSSs, in school year 2022-2023, to determine whether such removals created a pattern of exclusions that constituted a significant change in placement, and determine whether the District conducted an MDR for the student, in accordance with Section 504. Where appropriate, the District will then convene a group of persons knowledgeable about each student with a disability for whom the District did not hold an MDR, to determine whether the student requires any compensatory and/or remedial services, and develop a plan for providing such services, with a completion date not to extend beyond February 29, 2024. For any student that the group of knowledgeable persons determines received exclusionary discipline during school year 2022-2023 as a result of behavior that was a manifestation of the student's disabilities, the District will expunge the discipline record(s) of the related infractions.

The District will also submit documentation to OCR of all students with disabilities eligible to receive special education and/or related aids and services under Section 504 at the School in school year 2023-2024 who were issued disciplinary sanctions, including lunch detentions, ISRs, ISSs, and/or OSSs of ten or more consecutive days and/or a series of such removals from class or school that together total more than ten school days, and of the MDRs the District conducted on behalf of each such student, including notices sent to each student's parent(s) and/or guardian(s).

The District will also train the administrators, social worker(s), counselor(s), psychologist(s), and teachers at the School regarding the requirement to implement all elements of a student's Section 504 plan in order to provide a FAPE, pursuant to 34 C.F.R. § 104.33(b)(1). In addition, the District will train all District-level administrators and staff members responsible for imposing discipline on students with disabilities at the School, regarding their obligations under Section 504, including that prior to taking any disciplinary action that would result in a significant change in placement, the District must conduct a reevaluation of the student in accordance with 34 C.F.R. § 104.35.

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 Allegations 1 and 2, OCR will close the case.

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 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 Lauren Numeroff, Senior Compliance Team Attorney, at (646) 428-3895 or [lauren.numeroff@ed.gov](mailto:lauren.numeroff@ed.gov); or Andy Artz, Compliance Team Leader, at (646) 428-3901 or [alexander.artz@ed.gov](mailto:alexander.artz@ed.gov).

Sincerely,

/s/

Rachel Pomerantz

cc: Gregory R. Picciano, Esq.

Attachment