



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

January 23, 2014

Dr. L. Oliver Robinson
Superintendent
Shenendehowa Central School District
5 Chelsea Place
Clifton Park, New York 12065

Re: Case No. 02-13-1247
Shenendehowa Central School District

Dear Dr. Robinson:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against the Shenendehowa Central School District. The complainant alleged that the District discriminated against her son (the Student), on the basis of his disability, by applying a modified grading formula that reduced his grades in his mainstream math class during school year 2012-2013.

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 and 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 (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 jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

OCR determined that the student was enrolled in XXXXX grade at the District's XXXXXXXX Elementary School (the School) during school year 2012-2013. OCR determined that the Student had been diagnosed with XXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXX X XXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX. OCR determined

that the Student was placed in an integrated co-taught math class, which used fifth grade curriculum with content modification; he was placed in a XXXXXXXXXXXX XXXXXXXXXXXX XXXXX XXXXXXXXXXXXXXXX XXXXXX XXXXXXXXXXXXXXXX classroom for all other subjects. OCR determined that the Student's Individualized Education Program (IEP) for school year 2012-2013, provided that the Student would receive "modified assignments" and "modified curriculum in content area along with modified grading" in all academic settings throughout the school day.

The complainant alleged that the District discriminated against the Student, on the basis of his disability, by applying a modified grading formula that reduced his grades in his mainstream math class during school year 2012-2013. Specifically, the complainant alleged that the District multiplied the Student's math grades, as well as the grades of other students receiving special education in mainstream classes, by "0.69"; thereby adjusting their grades downward.¹ The complainant stated that as a result, the highest possible grade such a student could achieve was 69%. The complainant alleged that despite receiving math test grades of XX, XXX, XX and XX, and quiz grades of XX and XXX, the Student received a XX for his XXXXX quarter XXXX grade, following application of the 0.69 formula. The complainant stated that School staff informed her that because the Student was placed in a co-taught setting for math that used grade level material, he should be graded according to grade level standards.

OCR determined that the School used a 0.69 formula to determine the grades of all students taught using modified curriculum in mainstream classes; the formula was implemented for school year 2012-2013 by the Schools' Grade Book Committee (the Committee). The District informed OCR that the Committee determined that the 0.69 formula was necessary to account for the fact that these students were receiving modified tests in class so they could achieve a level of success; and that without the adjustment, the report cards of these students would not accurately measure their performance against the grade level standard and would in effect contain inaccurate and inflated grades.²

OCR determined that pursuant to this policy, for the XXXXX and XXXXXX quarters of school year 2012-2013, the School multiplied the Student's grades by a factor of 0.69. This resulted in his grades being adjusted downwards from XX to XX for the XXXXX quarter, and from XX to XX for the XXXXXX quarter. The School stated that the Student received the adjusted grades "because it was believed that his original grades were not indicative of meeting that percentage of the common core standards."

OCR determined that the District changed the Student's math placement for the XXXXX and XXXXXX quarters of school year 2012-2013, from the integrated co-taught math class to the XXXX, XXXXXXXXXXXXXXXX classroom, with the complainant's agreement. The School stated that the Student's math grades for the XXXXX and XXXXXX quarters were not calculated by applying the 0.69 formula, since he was no longer in a mainstream math classroom.

¹ The complainant stated that the District advised her that it did so "to show parents where their children match up amongst their peers."

² The District stated that it developed the 0.69 formula based on the "New York State Assessment Rubric of 1-4," "as it related to a 1-100%," and the "determination for the 0.69 formula was based on a Level 2 result on a NYS test equaling a 56-59% on a Regents exam."

Rather, the Student's teacher based his grades on "collected grades"³ and teacher observation/opinion on his ability to meet grade level standards." The XXXXXXXXXX XXXXXXXX stated that the Student received an XX for the XXXXX quarter, which was reduced to a XX, because the XX did not "accurately reflect grade level expectations;" and the "XX was given because he [was] not on grade level (scores of 70-89) but is making progress (scores of 56-69)." OCR further determined that the Student received a grade of XX for the XXXXXXXX quarter. The XXXXXXXXXX XXXXXXXX did not recall what the original grade was, but stated that she used the same rationale for reducing his grade as she had used for the XXXXX quarter.⁴ OCR determined that the Student's grades were not adjusted in any other subject.

OCR determined that the School also applied the 0.69 formula to adjust downwards the grades of all six students enrolled in the fourth grade self-contained 15:1 reading class because their "original grades were not indicative of meeting that percentage of the common core standards." In addition, the School adjusted the grades of all of the other 10 students with IEPs enrolled in the fifth grade co-taught math class "due to their modified program." OCR determined that these were the only two classes in which the School used the formula. The District informed OCR that these were the only two classes in which there were students with IEPs who were not performing at "grade level standards." OCR determined that the students in the fifth grade co-taught math class were given quarterly grades ranging from 55 to 99, which were adjusted downwards to 38 to 68. OCR further determined that the students in the fourth grade 15:1 reading class were given quarterly grades ranging from 58 to 100, which were adjusted downwards to 40 to 69. The School informed OCR that out of the seven other elementary schools in the District, at least four others also used the 0.69 formula for school year 2012-2013 (Tesago Elementary, Chango Elementary, Karigon Elementary, and Orenda Elementary). OCR determined that the District's middle and high schools did not utilize the 0.69 formula.

Section 504 and Title II do not have specific provisions addressing report cards. Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.4(a), however, a recipient may not subject a qualified individual with a disability to discrimination under any program or activity. Additionally, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4), provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting a qualified individual with a disability to discrimination on the basis of disability.

Qualified individuals with a disability must be provided the same opportunities to succeed as non-disabled students. Accordingly, pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.33(a), the District is required to provide a free appropriate public education (FAPE) to each qualified individual with a disability, regardless of the nature or severity of the student'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 individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met,⁵ and are based upon adherence to procedures that satisfy the

³ The District defined "collected grades" as grades on quizzes, tests and assignments.

⁴ The XXXXXXXXXX XXXXXXXX stated that there were not many test, quiz and assignment grades for the XXXXXXXX quarter due to the Student's "increased fragile emotional state and [his mother's] request to decrease academics... requesting nothing exceeding third grade curriculum as anything higher would cause frustration."

⁵ Implementation of an IEP is one means of meeting this standard.

requirements of §§ 104.34, 104.35 and 104.36. Recipients and public entities may provide a different aid, benefit, or service to persons with disabilities where necessary to provide an aid, benefit, or service that is as effective as that provided to others. See 34 C.F.R. § 104.4(b)(1)(i)-(iv) and 28 C.F.R. § 35.130(b)(1)(i)-(iv). Among the aid, benefits, and services provided to students and parents are report cards.

Report cards are provided to parents to indicate their child's progress or level of achievement in specific classes, course content, or curriculum. Consistent with this purpose, it would be permissible under Section 504 and Title II for a report card to indicate that a student is receiving special education or related services, as long as the report card informs parents about their child's progress or level of achievement in specific classes, course content, or curriculum consistent with the underlying purpose of a report card. For instance, a report card for a student with a disability may refer to an IEP or a plan for providing services under Section 504 in order to report on the student's progress on the specific goals in the IEP or plan developed under Section 504. Under Section 504 and Title II, in general, a District must provide students with disabilities report cards that are as informative and effective as the report cards provided for students without disabilities.⁶

Nothing in Section 504 or Title II requires a District to use any particular format or method to provide information to parents about their child's progress or level of achievement in specific classes, course content, curriculum, IEP, or plan under Section 504. Generally, Section 504 and Title II would require that students with and without disabilities in the same regular education classes in the general education curriculum be graded using the same standards; however, nothing in Section 504 or Title II prohibits Districts from deciding how to establish standards to reflect the progress or level of achievement of students with disabilities who are taught using different course content or a modified or alternate education curriculum. To the extent that a student with a disability is being taught under a modified or alternate curriculum, it would be up to the District to determine the standards to be used to measure the student's progress or level of achievement.

Under Section 504 and Title II, in order to properly reflect the progress of a student with a disability in a modified or alternate education curriculum, a District may distinguish between special education programs and services provided under a modified or alternate education curriculum and regular education classes under the general education curriculum on the student's report card. For instance, it would be appropriate for the report card to indicate that the student's progress was measured based on the modified education curriculum. This distinction also may be achieved by using an asterisk or other symbol meant to reference the modified or alternate education curriculum as long as the statements on the report card, including the asterisks, symbols or other coding, provide an explanation of the student's progress that is as informative and effective as the explanation provided for students without disabilities.⁷

⁶ See OCR Dear Colleague Letter on Report Cards and Transcripts for Students with Disabilities, issued by Stephanie Monroe, Assistant Secretary, on October 17, 2008.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20081017.pdf>

⁷ Ibid.

Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.35(c), decisions about the provision of regular or special education and related aids and services must be made by a group of persons knowledgeable about each individual child and the meaning of placement options. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.36, requires recipients to implement a system of procedural safeguards regarding the educational placement of these children that provides parents or guardians with an opportunity to participate in an impartial hearing should there be a disagreement with a child's individual educational program.

Based on the foregoing, OCR determined that the District treated the Student differently, based on his disability, by applying the 0.69 formula to reduce his math grades for the XXXXX and XXXXXX quarters, and by reducing his math grades for the XXXXX and XXXXXX quarters during school year 2012-2013. OCR determined that the District also treated students with disabilities in the School's fifth grade co-taught math class and fourth grade 15:1 reading class, and in other District elementary schools, differently by adjusting their grades downwards using the 0.69 formula.⁸ OCR determined that the reduction of the Student's and other students' grades was based on their disabilities. The use of this criterion and this method of administration had the effect of subjecting these qualified individuals with disabilities to discrimination on the basis of those disabilities; and, the purpose of the 0.69 formula was not to provide an aid, benefit, or service that was as effective as that provided to others consistent with 34 C.F.R. § 104.4(b)(1)(i)-(iv) or 28 C.F.R. § 35.130(b)(1)(i)-(iv).

While the regulation implementing Section 504 does not prohibit a recipient from instituting a system to measure the progress of a qualified individual with a disability in a particular course or classroom, such a system must be devised by a group of persons knowledgeable about each individual student pursuant to the regulation at 34 C.F.R. § 104.35(c); and, must be based on each student's individual educational needs, pursuant to the regulation at 34 C.F.R. § 104.33(b)(1). In addition, the system of explaining the student's progress must be as informative and effective as the explanation provided for students without disabilities. The application of a standard formula for reducing grades of qualified individuals with disabilities is in violation of these sections of the regulation implementing Section 504, because the use of a standard formula for reducing grades does not reflect the individual nature of the educational program developed for the disabled students and does not provide the parents/guardians with information about the student's progress that is as informative and effective as the information provided for students without disabilities. The system for measuring progress must be designed to reflect the student's achievement under the individual educational program developed specifically for that student pursuant to 34 C.F.R. § 104.33(b)(1); and, pursuant to 34 C.F.R. § 104.36, parents must be provided with an opportunity for input and a mechanism for requesting an impartial hearing should they disagree with the modified grading system developed by the group of knowledgeable persons.

On January 15, 2014, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concern identified in this letter. OCR will monitor the implementation

⁸ During the course of OCR's investigation, the District informed OCR that it discontinued its practice of adjusting the grades of students with disabilities through application of a standard formula whereby the original grades are multiplied by 0.69.

of the resolution agreement. If the District fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

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 he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another 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, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determination, please contact Emma Kim, Senior Compliance Team Attorney, at (617) 289-0159 or emma.kim@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.