

Julia A. Bauer, Esq.
Scott, Scriven & Wahoff LLP
250 East Broad Street
Suite 900
Columbus, Ohio 43215

Re: OCR Docket # 15-13-1259

Dear Ms. Bauer:

This letter is to inform you of the resolution of the complaint that was filed on May 1, 2013, with the U.S. Department of Education's Office for Civil Rights (OCR) against the Elida Local School District (the District). The complaint alleged that the District discriminated against a student (the Student) on the basis of disability when:

1. The District failed to implement the Student's Section 504 plan during the xxxx-xxxx school year, by failing to xxxxx xxxx xxx xxxxxxxxxxxxxxxx xxx xxxxxxxxxxxx xxx xx xxxxxxxx xxxxxxxx xxxxx xxxxxxxx xx xxxxxxxx xxx xxxxx xxxxxx xxxxxxxx xxx xxxxxxxx xxx xx xxxxxxxxxxxxxxxx xx xxxxxxxx xxxxxxxx xxxxxx xxx xxx xxxxxxxxxxxxxx xxx xxxxx xx xxxxx xxxxx xx xx xxx xxxxxxxx xx xxxxxxxxxxxx xx xxx xxx xxxxxxxx xx xxxxxx
2. The District failed to reevaluate the Student in response to his increased need for xxxxxxxxxxxx and prior to changing his placement to the xxxxx xxxxxxxx xxxxxxxxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx
3. The District failed to provide the Student's parents with notice of their procedural rights after the Section 504 team's decision to place the Student at an xxxx
4. The District failed to consider the Student's need for xxxxxxxxxxxxxxxxxxxx as a related service as part of the Student's educational program.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department of Education (Department). In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to Section 504 and Title II.

Under the regulation implementing Section 504, at 34 C.F.R. § 104.33, school districts are required to provide a free, appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met. When those services are provided outside the school district, Section 504's implementing regulation at 34 C.F.R. § 104.33(c)(2) requires school districts to ensure that the students receive adequate transportation at no greater cost to the students or their parent/guardian than if they were receiving those services in the district. Moreover, the regulation implementing Section 504, at 34 C.F.R. § 104.35(a), specifically requires a recipient that operates a public elementary or secondary education program to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to the initial placement of the person in a regular or special education program or any subsequent significant change in placement.

Based on the information provided to OCR to date, OCR was concerned that the District may not have xxxxxxxxxx the Student in accordance with the requirements of the regulation implementing Section 504, at 34 C.F.R. § 104.35 and may not have considered xxxxxxxxxxxxxxxx as a related service, in accordance with 34 C.F.R. 104.33(c)(2), prior to placing the Student at the xxxx. However, in an effort to promptly resolve this complaint, the District submitted a signed resolution agreement (Agreement) to OCR, dated November 26, 2013. Pursuant to the Agreement, the District agrees to take the following steps: (1) determine the xxxxxxxxxxxxxxxx costs incurred by the parent, during the xxxxxxxxxx and xxxxxxxxxx school years; (2) discuss any revisions to the written Section 504 plan for the Student for the xxxxxxxxxx school year, which includes consideration of the Student's need for transportation as a related service as part of the Student's education program; and (3) notify the Student's parent, in writing, that the District is reconvening the Student's Section 504 team to determine whether the District will provide the Student with xxx xxxxxxxxxxxxxxxx to the xxx during the remainder of the xxxxxxxxxx school year and, if not, the manner in which the District will reimburse the Complainant for the cost of xxxxxxxx xxxxxxxxxxxxxxxx to the xxxx. The Agreement further requires the District to reimburse the Student's parent for the xxxxxxxxxxxxxxxx costs she incurred during the xxxxxxxxxx and xxxxxxxxxx school years.

The Agreement also requires the District to provide District staff involved in the identification, evaluation and placement of students with disabilities with training on the requirements of Section 504 and Title II, including Section 504 and Title II's requirements regarding the provision of transportation to students with disabilities. When the terms of the Agreement are implemented, it will resolve the concerns OCR identified with respect to these allegations. The provisions of the Agreement are aligned with the issues raised in the complaint and are consistent with the applicable regulations. OCR will monitor the District's implementation of the Agreement.

With reference to the Complainant's allegation that the District failed to implement the Student's Section 504 plan during the xxxxxxxxx school year, OCR reviewed data provided by the District, which included statements from the Student's teachers and the Student's Section 504 plan. OCR noted that the teachers all provided descriptions of the manner in which they implemented the Student's Section 504 plan. OCR further noted that the Student's Section 504 plan, as written, provides teachers with a lot of discretion on how and when to provide the services contained in the plan. Therefore, OCR finds insufficient evidence that the District failed to implement the Student's Section 504 plan during the xxxxxxxxx school year.

Regarding the Complainant's allegation that the District failed to provide the Complainant with notice of her procedural rights after the Section 504 team's decision to place the Student at the xxxx OCR reviewed data provided by the District. OCR notes that the Complainant was provided with notice of her procedural rights on xxxx xx xxxxx which she initialed, and again on xxxxx xx xxxxx Therefore, OCR finds insufficient evidence that the District failed to provide the Complainant with notice of her procedural rights.

This concludes OCR's investigation of the complaint and 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 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 harmed individual may file a 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, OCR 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.

OCR will monitor the District's implementation of the attached agreement. The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further the District understands that during the monitoring of this Agreement, OCR may visit the District, interview staff and students and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. Part 104, and Title II at 28 C.F.R. Part 35 which were at issue in this complaint.

The District further understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. Part 104, and Title II at 28 C.F.R. Part 35. The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Thank you for the District's cooperation during the resolution of this complaint. We look forward to receiving the District's first monitoring report by December 30, 2013. Should you have any questions, please contact Ms. xxxxxxxx xxxxxxx the OCR attorney who will be coordinating OCR's monitoring of the District's implementation of the agreement. Ms.xxxxx can be contacted at (216) 522-xxxx or xxxxxxxxxxxxxx@ed.gov. Should you have any questions about this letter, please contact Ms. xxxxxxx xxxxxxxx Acting Team Leader, at (216) 522-xxxx or by e-mail at xxxxxxxxxxxxxx@ed.gov.

Sincerely,

/s/

Brenda Redmond
Acting Team Leader

Enclosure