



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

Xxxxxx x xxx, xxx.  
Ennis Britton Co., L.P.A.  
1714 West Galbraith Road  
Cincinnati, Ohio 45239

Re: OCR Docket #15-15-1153

Dear xxx xxxx,

This is to notify you of the disposition of the above-referenced complaint that was filed on February 10, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against your client, the Clermont Northeastern Public School District (the District). The complaint alleged that the District discriminated against a District student (the Student) based on xxx disabilities. Specifically, the complaint alleged:

[x--- paragraph redacted---x]

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II). 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. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following issues:

- Whether the District excluded a qualified person with a disability from participation in, denied her the benefits of, or otherwise subjected her to discrimination under any of its programs or activities, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130;

- Whether the District failed to provide a qualified student with a disability with a free and appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33(a); and
- Whether the District failed to establish appropriate procedures for the periodic reevaluation of students with disabilities in violation of 34 C.F.R. § 104.35(d).

OCR investigated these allegations by interviewing the complainant and the District’s former special education coordinator, and by reviewing documentation provided by the complainant and the District. Based on this information, OCR determined that the District failed to comply with Section 504 and Title II when it failed to properly consider providing a xxx xx xxx xxxx for the Student as a disability-related service, and when it refused to allow the Student to xxxx on xxxxxxxxxx that other students used. However, prior to OCR’s completion of its investigation into the remaining allegations, the District voluntarily agreed to voluntarily resolve the complaint through Section 302 of OCR’s Case Processing Manual (the Manual). On September 25, 2015, the District signed the attached resolution agreement (Agreement), which once implemented, will address the complaint allegations and any compliance concerns OCR has identified to date. As is discussed in more detail below, the District has already implemented remedies to address all individual claims regarding the Student, who no longer attends school in the District. Thus, the Agreement is focused on District-wide remedies. A summary of OCR’s investigation is presented below.

## **Background**

The complainant’s xxxxxxxx (the Student) is x years old and attended the xxx grade at Clermont-Northeastern Elementary School during the 2014-2015 school year. The Student’s district of residence is xxxx xxxxxxxx, but she has attended the District since the xxxxx xxxxxx.

[x--- paragraph redacted---x]

[x--- paragraph redacted---x]

[x--- paragraph redacted---x]

[x--- paragraph redacted---x]

[x---paragraph redacted---x]

[x---paragraph redacted---x]

[x---paragraph redacted---x]

[x---paragraph redacted---x]

**Allegation #1 - the District's alleged refused to consider a xxx xx xxx xxx as a disability-related service for the Student.**

- **Summary of OCR's Investigation to Date**

As noted above, the complainant contends that the District refused to consider a xxx xx xxx xxx for the Student, asserting that the Student was not eligible for a xxx xx xxx xxx because xxx was not a special education student.

OCR reviewed the Student's Section 504 plans dated xxxxxxxx x xxxx, and xxxxxxxx xx xxxx. OCR confirmed that both plans stated that the Student was to be accompanied by xx xxxxx at all times, but did not provide her with a xxx xx xxx xxx. OCR spoke with the District's special education coordinator, who confirmed that the complainant asked for a xxx xx xxx xxx for the Student during the 2014-2015 school year. She also confirmed that at one of the Section 504 meetings regarding the Student -she could not recall which one - she told the complainant that Section 504 students were not eligible for the services of a xxx xx xxx xxxxx, or something to that effect. She noted, however, that prior to the meeting in question, she asked the superintendent about the possibility of a xxx xx xxx xxx the Student, and the superintendent was adamant that the District would not provide the Student with a xxx xx xxx xxx. Thus, she stated that she went into that meeting knowing that a xxx xx xxx xxx would not be provided. She also stated that the District believed it could meet the Student's xxxxxxxxxx needs with the Section 504 plan that was in place.

- **Applicable Legal Standards / Analysis and Conclusion**

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person 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. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a).

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.35(a), recipient school districts must evaluate any student 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 student in regular or special education, and prior to any significant change in the student's placement. The Section 504 regulation, at 34 C.F.R. § 104.33(a), requires Districts to provide each qualified student with a disability within its jurisdiction with a free and appropriate public education (FAPE). A FAPE is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met and that satisfy the procedural requirements of Section 504. *See* 34 C.F.R. § 104.33(b).

OCR finds that the District violated Section 504 when it refused to consider a xxx xx xxx xxxxx as a disability-related service for the Student during the 2014-2015 school year because xxx was not a special education student. As noted above, Section 504 requires districts to provide each student with a disability with the disability-related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met. If a student with a disability covered under Section 504 requires a xxx xx xxx xxxxx to receive FAPE, the district is obligated to provide it, regardless of whether the student qualifies for special education. Thus, the District's refusal to consider this service for the Student because she did not qualify for special education constitutes a violation of Section 504. OCR noted that the District's own policies regarding the identification, evaluation and placement of students with disabilities are consistent with the Section 504 regulation regarding the provision of FAPE.

The District has agreed to implement the attached Agreement to address OCR's compliance concerns. As was discussed above, after this OCR complaint was filed, the District and the complainant reached an agreement regarding the appropriate placement and disability-related services for the Student for the 2015-2016 school year. Further, the District and the complainant agreed that the Student does not require any compensatory education services as a result of the District's failure to properly evaluate and provide disability-related services to the Student during the 2014-2015 school year. Accordingly the attached Agreement does not include individual remedies for the Student, but is focused on District-wide training to ensure District staff understand their obligations pursuant to Section 504 and Title II with respect to the identification, evaluation and placement of students with disabilities.

**Allegation #2- the District's alleged failure to provide the Student with xxxxxx xxxxxxxxxxxx at all times as required by xxx Section 504 plan**

- **Summary of OCR's Investigation to Date**

OCR confirmed that the Student's Section 504 plans for the 2014-2015 school year provided that xxx was to be accompanied by an xxxxx at all times. The complainant asserted that there were a number of occasions where the Student was not xxxxxxxxxxxx by an xxxxxx, either because the District failed to provide that xxxxxxxxxxxx, e.g., when the Student was going to and from the bus, or because the Student was able to xxxx xxxxx from the xxxxxx xxxxxxxxxxxx xx. OCR obtained an email from the District, dated xxxxxxxx xx xxxx confirming one of these incidents. In the email, the principal acknowledged that the Student had been in the hallway xxxxxxxxxxxx and apologized for the error. Further, the special education coordinator recalled that there was an incident or incidents where the Student was able to xxxx xxxx when xxx class had a substitute teacher.

- **Applicable Legal Standards / Analysis and Conclusion**

As noted above, pursuant to Section 504, Districts have an obligation to provide each qualified student with a disability within its jurisdiction with a free and appropriate public education (FAPE). One way a District can demonstrate that it is providing a student with FAPE is by showing that it is implementing the Student's properly developed Section 504 Plan or IEP. Similarly, a District's failure to properly implement a Student's Section 504 Plan or IEP may, if sufficiently severe, result in the student being denied FAPE.

In the instant case, the Student's 2014-2015 Section 504 plans provided that she was to be accompanied by an xxxxx at all times. Based on information provided by the complainant and the District, OCR was able to confirm that there were occasions when the Student was not provided with xxxxx xxxxxxxxxxxx. However, before OCR could further investigate this allegation to determine if the District's failure to implement this provision of the plan constituted a denial of FAPE, the District offered to take action to voluntarily resolve this allegation. The District has agreed to implement the attached Agreement to address OCR's compliance concerns. As the District and the complainant have agreed that the Student does not require compensatory education as a result of the District's failure to provide disability-related services to the Student during the 2014-2015 school year, the Agreement does not include individual remedies for the Student, but is focused on District-wide training to ensure District staff understand their obligations pursuant to Section 504 and Title II to provide FAPE to students with disabilities.

**Allegation #3 – The District limited the area where the Student could xxxx during xxxxx**

- **Summary of OCR's Investigation To Date**

The complainant stated that the Student was treated differently than students without disabilities in that xxx was prohibited from xxxxxxxx on certain xxxxxxxxxxxx equipment and was limited to a particular area of the xxxxxxxxxxxx so that District staff could xxxxxxxxxxxx xxx as required by xxx Section 504 plan. OCR noted that the Student's Section 504 plan was revised in xxxxxxxx xxxx to state that the Student was not allowed on any xxxxxxxxxxxx equipment other than xxxxxx and xxxxxxxx. The special education coordinator recalled that the Student's Section 504 team included this provision to ensure that the Student was provided with adequate xxxxxxxxxxxx.

- **Applicable Legal Standards / Analysis and Conclusion**

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person 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. Title II's implementing regulation contains a similar provision for public entities at

28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that are not equal to that afforded others; and providing a qualified person with a disability aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv).

A recipient school district may not subject a student to different treatment based on his or her disabilities without a legitimate, non-discriminatory reason for doing so.

In the instant case, based on the information gathered to date, OCR confirmed that the Student was subjected to different treatment based on xxx disabilities when xxx was not permitted to xxxx on xxxxxxxxxxxx equipment that other students were permitted to use. While the information provided by the District indicates that the District imposed this limitation, and added it to xxx Section 504 plan, in order to provide the Student with appropriate supervision, OCR does not find this to be a legitimate, non-discriminatory reason for the different treatment, as other methods, such as adding additional staff to the xxxxxxxxxxxx, could have been implemented to ensure the District's compliance with the Student's Section 504 plan. Pursuant to the Section 504 implementing regulation at 34 C.F.R. § 104 Appendix A, Subpart D, OCR does not, except in extraordinary circumstances, review individual placement and other educational decisions, such as the particular services provided in a student's Section 504 plan, so long as a school district complies with the process requirements of Section 504. However, in this instance, OCR finds that the Section 504 team's decision to limit the Student's access to xxxxxxxxxxxx equipment as a provision in xxx Section 504 plan, as opposed to providing needed xxxxxxxxxxxx services, is an extraordinary circumstance. OCR noted that the District's own policies regarding the identification, evaluation and placement of students with disabilities state that the District will not discriminate against students with disabilities with respect to the provision of extra-curricular services and activities. The policies further state that the District will provide "accommodations/modifications/interventions to the District's non-academic and extra-curricular services and activities unless such accommodations/modifications/interventions would impose an undue financial burden, or would alter the fundamental nature or purpose of the service or activity."

In light of the foregoing, OCR finds that the District subjected the Student to different treatment based on xxx disabilities in violation of Section 504 and Title II with respect to this allegation. The District has agreed to implement the attached Agreement to address OCR's compliance concerns. For the reasons previously discussed, the Agreement contains no individual remedies for the Student with respect to this allegation, but requires training for District staff to ensure that they understand their obligations pursuant to Section 504 and Title II with respect to students with disabilities.

**Allegation #4 – The District’s failure to respond to the requests by the Student’s parent to reconvene the Student’s Section 504 team**

- **Summary of OCR’s Investigation to Date**

The complainant alleged the in xxxxxxxx and xxxxx xxxx, xxx asked District personnel on three occasions to reconvene the Student’s Section 504 team, as xxx did not believe that the existing plan was meeting the Student’s needs, but the District did not schedule a meeting. OCR spoke with the special education coordinator regarding this allegation and she stated that she was not aware that the complainant asked to reconvene the Section 504 team or revisit the Section 504 plan in xxxxxxxx or xxxxx xxxx. However, OCR obtained emails between the complainant and the District from xxxxx xxxx, wherein the complainant raised concerns about the xxxxxxxxxxxx the Student was receiving, and the District responded by asking to meet to address xxx concerns and to review the Section 504 plan. Based on the emails, the times the District suggested for a meeting did not work for the complainant, and the complainant asked for an alternative. OCR has no record of the District responding.

- **Applicable Legal Standards / Analysis and Conclusion**

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.35(a), recipient school districts must evaluate any student 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 student in regular or special education, and prior to any significant change in the Student’s placement. The Section 504 regulation further provides, at 34 C.F.R. § 104.35(d), that recipient school districts must establish procedures for the periodic reevaluation of students who have been provided with special education or related services.

Pursuant to Section 504, if a recipient school district has information available to support that a student’s existing disability related aids and services are not effective, the recipient district has an obligation to reconvene the student’s Section 504 or IEP team to evaluate whether changes are needed. OCR noted that the District’s own policy regarding the identification, evaluation and placement of students with disabilities provides that the Section 504 plan can be reviewed at any time during the school year if there are concerns regarding the appropriateness of the services being provided, and that this review can be initiated by the staff or parents.

In the instant case, the complainant contends that xxx asked to reconvene the Student’s Section 504 team in xxxxxxxx and xxxxx xxxx to discuss problems with the Student’s disability-related services, but no meeting was ever scheduled. The emails provided by the complainant and the District indicate that the District asked to schedule a meeting in xxxxx xxxx, but according to the complainant, no such meeting ever took place. Before OCR could further investigate this issue, the District agreed to take steps to resolve this allegation pursuant to Section 302 of OCR’s CPM. The District has agreed to implement the attached Agreement to address OCR’s compliance concerns. For the reasons

previously discussed, the Agreement contains no individual remedies for the Student with respect to this allegation, but requires training for District staff to ensure that they understand their obligations pursuant to Section 504 and Title II with respect to students with disabilities.

### **Resolution Agreement**

As noted above, on September 25, 2015, the District signed the attached Agreement, which once implemented, will fully resolve the complaint allegations, and the compliance concerns OCR has identified to date. The Agreement requires the District to provide mandatory Section 504 and Title II training to the District's superintendent, Section 504/ADA compliance officers, special education coordinator, and all staff at the District's elementary school who are involved in the identification, evaluation and placement of students with disabilities, including but not limited to, the elementary school principal, assistant principal and teachers. The training must cover Section 504 and Title II's prohibition against discrimination and different treatment on the basis of disability, Section 504 and Title II's requirements regarding the identification, evaluation, re-evaluation, and placement of students with disabilities; the District's policies and procedures regarding the identification, evaluation, reevaluation and placement of students with disabilities; and Section 504 and Title II's requirement that students with disabilities be provided with a free and appropriate public education (FAPE).and on the District's policies and procedures regarding the identification, evaluation and placement of students with disabilities.

### **Conclusion**

In light of the foregoing, OCR is closing this complaint effective the date of this letter. OCR will, however, monitor the District's compliance with the terms of the Agreement.

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.

Please be advised that the District may not harass, coerced, 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, we 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.

The complainant may have the right to file a private suit in federal court, whether or not OCR finds a violation.

OCR appreciates the District’s cooperation during the investigation of this complaint. If you have any questions, please contact me at (xxx) xxx-xxxx. For questions about implementation of the Agreement, please contact xxx xxxxxxx xxxxxxx at (xxx) xxx-xxxx, or by e-mail at xxxxxxx.xxxxxxx@ed.gov who will be monitoring the District’s implementation of the Agreement. We look forward to receiving the District’s first monitoring report, which is due by November 30, 2015.

Sincerely,

Lisa M. Lane  
Supervisory Attorney/Team Leader

Enclosure

## File Sign-Off

<b>docket #</b>	Type docket number	
<b><u>Document Type</u></b> (Check all that apply)	<input type="checkbox"/> Letter of Acknowledgement <input type="checkbox"/> Letter of Notification <input type="checkbox"/> Dismissal/Admin Closure <input type="checkbox"/> Resolution Letter/Letter of Finding <input type="checkbox"/> Monitoring <input type="checkbox"/> Other: _____	
<b><u>Position</u></b>	<b><u>Name</u></b>	<b><u>Date</u></b>