



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

RACHEL POMERANTZ
DIRECTOR
NEW YORK OFFICE

November 30, 2022

Sent via email only to mmcloughlin@mtsd.us

Mary E. McLoughlin
Superintendent of Schools
Montgomery Township School District
1014 Route 601
Skillman, New Jersey 08558

Re: Case No. 02-22-1315
Montgomery Township School District

Dear Superintendent McLoughlin:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the complaint filed against the Montgomery Township School District. The Complainant alleged that the District discriminated against her son (the Student) on the basis of his disability, by failing to implement his Individualized Education Program (IEP) during the New Jersey Graduation Proficiency Assessment (NJGPA) administered in XXXX XXXX. As discussed below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint under OCR's Rapid Resolution Process. OCR determined that a voluntary resolution is appropriate under Section 302 of OCR's *Case Processing Manual (CPM)*.¹ On November 30, 2022, the District voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of the *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 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 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 District is subject to Section 504. As a public elementary and secondary education system, the District is subject to Title II.

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

I. Applicable Legal Standards

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 in any program or activity that receives federal financial assistance. The regulation implementing Title II, at 28 C.F.R. § 35.130, contains a similar provision.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), requires that a recipient that operates a public elementary or secondary education program or activity provide a free appropriate public education (FAPE) to each qualified disabled person 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 nondisabled persons are met. The implementation of an IEP is one means of meeting this standard.

II. Investigative Findings, Legal Analysis, and Conclusions

In its investigation, OCR interviewed the Complainant, the Student, and District staff. OCR also reviewed documentation that the Complainant and the District provided. OCR made the following determinations.

During school year XXXX-XXXX, the Student was in the XXXX grade at XXXX XXXX XXXX (the School) and received special education and related aids and services pursuant to an IEP dated XXXX XX XXXX.² The Complainant alleged that the District discriminated against the Student on the basis of his disability, by failing to implement the provisions of his IEP pertaining to XXXXXXXXXXXX and XXXXXXXXXXXX during the NJGPA administered in XXXX XXXX. The Student’s IEP stated in pertinent part, “[The Student] currently uses XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX” With respect to testing modifications for statewide assessments, the Student’s IEP provided for XXXXXXXXXXXX, XXXXXXXXXXXX, small group testing, frequent breaks, and extended time.

On XXXX X XXXX, the School principal sent an email to parents and guardians of XXXX grade students informing them that the School would administer the NJGPA on XXXX XX and XX XXXX, with makeup dates on XXXX XX and XX XXXX. In an email dated XXXX X XXXX, the Student’s case manager (the Case Manager) informed the Complainant that the School would proctor the exam for the Student in a small group and that his teacher would use the XXXX for XXXXXXXXXXXX. Between XXXX XX and XX XXXX, the Case Manager, the Complainant, the Student’s teacher of the deaf (the Teacher), and the Director for Special Services and Nursing (the Director) discussed arrangements for the Student to take the NJGPA, which included locating testing devices compatible with the Student’s XXXXXXXXXXXX, the availability of XXXXXXXXXXXX, and the testing location. On XXXX XX XXXX, the Case Manager informed the Complainant that she and the Student had successfully conducted a test of the XXXX XXXXXXXXXXXX, and that the Student would begin the NJGPA assessment the following day in a private one-to-one location

² The Student was diagnosed with an XXXX XXXX.

with a proctor. The Case Manager also stated that the Student would be provided with XXXXXXXXXXXX.

The Student took the NJGPA on XXXX XX and XX XXXX, administered by the Case Manager. The Complainant and Student alleged that during the administration of the NJGPA the Case Manager did not XXXXXXXXXXXX XXXX and the District did not provide XXXXXXXXXXXX. The Student received scores of XXX on the ELA section and XXX on the Math section.³

With respect to XXXXXXXXXXXX, the Case Manager acknowledged that she did not XXXXXXXXXXXX XXXX during the administration of the NJGPA, because the Student tested in a one-to-one setting. The Case Manager, the Teacher, and Child Study Team (CST) staff informed OCR that the purpose of the XXXX is to XXXXXXXXXXXX. In a XXXXXXXXXXXX, one-to-one setting, including during testing, it is not necessary to XXXXXXXXXXXX XXXX because the Student XXXXXXXXXXXX.

With respect to XXXXXXXXXXXX, the Case Manager stated that XXXXXXXXXXXX was automatically set up for the Student; during XXXXXXXXXXXX the NJGPA, students XXXXXXXXXXXX XXXXXXXXXXXX. The Case Manager acknowledged that she did not confirm with the Student that XXXXXXXXXXXX was working. The Student acknowledged to OCR that he did not inform the Case Manager that there was an issue with XXXXXXXXXXXX during the administration of the NJGPA.

On October 31, 2022, OCR contacted the District to discuss OCR’s Rapid Resolution Process (RRP). The District communicated its willingness to voluntarily resolve the OCR complaint through RRP, by disseminating a memorandum to all staff who are responsible for developing, implementing, and monitoring the Student’s IEP during school year XXXX-XXXX, reminding them of their obligations under Section 504 and Title II to implement the Student’s IEP, and submitting documentation indicating that it provided the Student with his testing modifications for all state assessments administered during school year XXXX-XXXX. On November 30, 2022, the District voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of the *CPM*. OCR will monitor the District’s implementation of the resolution agreement. Upon the District’s compliance with the terms of the resolution agreement, Section 504 and its implementing regulation 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 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 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

³ Scores of 750 and above indicate that students are “graduation ready.” XXXXXXXXXXXX. See also https://www.nj.gov/education/assessment/requirements/2023_2025.shtml.

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 Tiffany Lyttle, Compliance Team Attorney, at (646) 428-3754 or tiffany.lyttle@ed.gov; or me, at (646) 428-3901 or alexander.artz@ed.gov.

Sincerely,

/s/

Alexander H. Artz
Compliance Team Leader

Attachment

cc: Stephen R. Fogarty, Esq.