



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

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Sent via email only to [tmwilliams@buffaloschools.org](mailto:tmwilliams@buffaloschools.org)

Dr. Tonja M. Williams  
Superintendent of Schools  
Buffalo Public Schools  
712 City Hall  
65 Niagara Square  
Buffalo, New York 14202

Re: Case No. 02-22-1424  
Buffalo Public Schools

Dear Superintendent Williams:

On August 25, 2022, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint filed against the Buffalo Public Schools (the District). The Complainant alleged that the District discriminated against her daughter on the basis of her disability by denying the Complainant the opportunity to participate meaningfully in a Committee on Special Education (CSE) meeting held for the Complainant's daughter on XXXXX XX 2022 (Allegation 1); and in XXXXX 2022, denying the Complainant's request to review her daughter's academic records, including Individualized Education Program (IEP) goal data (Allegation 2).

As discussed below, before OCR completed its investigation of Allegation 1, the District expressed a willingness to resolve Allegation 1 by taking the steps in the enclosed Resolution Agreement (Agreement). OCR determined that a voluntary resolution is appropriate to resolve Allegation 1 under Section 302 of OCR's *Case Processing Manual (CPM)*.<sup>1</sup> The District signed the enclosed Agreement to resolve Allegation 1 of the complaint on March 9, 2023. OCR further determined that there was insufficient evidence to support the Complainant's allegation that the District discriminated against the Complainant's daughter on the basis of her disability with respect to Allegation 2. For the remainder of this letter, OCR will refer to the Complainant's daughter as "the Student."

OCR enforces 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 federal financial assistance from the Department. In addition, OCR 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

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

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.

### **I. Applicable Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides 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 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 non-disabled persons are met. The implementation of an IEP is one means of meeting this standard.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), further requires a recipient to conduct an evaluation of any person 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 person in regular or special education and any subsequent significant change in placement.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(c), requires that in interpreting evaluation data and making placement decisions a recipient shall: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with 34 C.F.R. § 104.34.

Further, the regulation implementing Section 504, at 34 C.F.R. § 104.36, requires a recipient to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes, among other things, an opportunity for the parents or guardian of a student with a disability to examine relevant records.

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

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

For school year 2022-2023, the Student is in the XXXXXXXX grade at the District's School XXXXXXXXXXXXXXXX (the School). The District determined that the Student is a qualified individual with a disability eligible to receive special education and related aids and services pursuant to an IEP dated XXXXXX XX, 2022, in effect for school year 2022-2023 (the IEP). The IEP recommended the Student's placement in an XXXXXXXXXXXXXXXX class for XXXXXXXXXXXX

XXX XXXXXXXX, and that she receive XXXXXXXXXXXX XXXX XXXX XXX XXXXX (XX XXXXX) and XXXXXXXXXXXXXXXXXXXX (XX XXXXX) XXXXX XXXXXXXX.

**A. Allegation 1**

With respect to Allegation 1, the Complainant alleged that the District discriminated against the Student on the basis of her disability by denying the Complainant the opportunity to participate meaningfully in a CSE meeting held for the Student on XXXXX XX, 2022.

OCR determined that at the Complainant’s request, the District conducted an XXXXXXXX evaluation (the XXX evaluation) for the Student, which took place over two days, on XXXXXXXXXXXX XX, 2021 (Part One), and XXXXXXXX XX, 2022 (Part Two). By email on XXXXXXXX XX, 2022, the evaluator sent the results of the XXX evaluation to the Complainant. The evaluator stated that she was not recommending XXXXXXXX XXXXXXXX for the Student, as the evaluator had explored XXXXXXXX XXXXXXXX with the Student but the Student preferred XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX and XX. On XXXXXXXX XX, 2022, the District invited the Complainant and the Student’s father (Parent A) to participate remotely in a CSE meeting scheduled for XXXXXXXX XX, 2022, to conduct an annual review of the Student’s IEP (annual review meeting).

The Complainant alleged that the District did not give her and Parent A a copy of the report for Part Two of the Student’s XXXX evaluation (the Part Two XXX report) prior to the annual review meeting. The Complainant alleged that during the annual review meeting, she complained that she had not received a copy of the Part Two XXX report. The Complainant also alleged that because of connectivity issues with the District’s network, she repeatedly lost connection to the videoconference during the meeting. The Complainant alleged that because of this, she had to join the meeting by telephone and the connection was still poor. She alleged that she was unable to hear what the evaluator said during the meeting about her findings from the Student’s XXX evaluation. The Complainant informed OCR that based on the results of the AT evaluation, the CSE determined that the Student did not need XXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The Complainant alleged that she was unable to provide meaningful input during the meeting regarding the Student’s need for XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX because she did not have access to the full XXX report prior to the CSE meeting and was not able to hear the evaluator’s comments during the meeting.

The Complainant stated that the School’s CSE Chairperson (Chairperson 1) offered to send her the Part Two XXX report during the meeting, but the Complainant asked that it be emailed to her afterwards because she did not have time to review it during the meeting. Chairperson 1 stated he did not recall if the District sent the report to the Complainant in advance of the meeting. Chairperson 1 also stated that he did not recall that there were network connectivity issues during the meeting, or the Complainant’s raising concerns about connectivity during or after the meeting.

Prior to the completion of OCR’s investigation of Allegation 1, OCR identified a possible compliance concern with respect to the Complainant’s ability to participate meaningfully in the Student’s annual review meeting. Documentation OCR reviewed indicated that the Complainant received a copy of the Part Two XXX report via email during the meeting but it is not clear that

the Complainant had an opportunity to review the report prior to or during the meeting, or whether connectivity issues interfered with her ability to hear meeting participants, including the evaluator.

As stated previously, prior to the completion of OCR’s investigation, on March 9, 2023, the District signed the attached Agreement to voluntarily resolve Allegation 1, that the District discriminated against the Student on the basis of her disability by denying the Complainant the opportunity to participate meaningfully in a CSE meeting for the Student on XXXXX XX 2022.

**Obligations Under the Resolution Agreement**

Under the Agreement, the District will reconvene a meeting of a group of persons knowledgeable about the Student, such as the CSE, to conduct an annual review of the Student’s special education and/or related aids and services, and invite the Complainant to attend this meeting. The District will ensure that prior to the meeting, it provides copies to the Complainant of any evaluations that have been completed prior to the date of the meeting.

The District will also issue a memorandum to District administrators and staff responsible for evaluating students at the School and making determinations regarding special education and/or related aids and services. The memorandum will cover the District’s obligation to evaluate any student who, because of disability, needs or is believed to need special education and/or related services before taking any action with respect to the placement of the student in regular or special education and any subsequent significant change in educational placement. The memorandum will inform staff that in interpreting evaluation data and in making placement decisions, the District shall, in accordance with the regulation implementing Section 504, at 34 C.F.R. § 104.35(c), draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student (such as students’ parents, whenever possible), the meaning of the evaluation data, and the placement options; and, ensure that the placement decision is made in conformity with 34 C.F.R. § 104.35, including by providing evaluation reports to parents prior to such meetings.

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 this case, OCR will close the case.

**B. Allegation 2**

With respect to Allegation 2, the Complainant alleged that the District discriminated against the Student on the basis of her disability in XXXXX 2022, by denying the Complainant’s request to review the Student’s academic records, including IEP goal data.

OCR determined that in an email to the School Principal, Chairperson 1, and the District-level CSE Chairperson (Chairperson 2) dated XXXX XX, 2022, the Complainant requested copies of the Student’s IEP “data collection records as they pertain[ed] to [the Student’s] XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX goals.” The Complainant informed OCR that she requested the records so she could review anything discussed that she had been unable to hear during the annual review meeting on XXXXX XX, 2022, and to prepare for another

IEP meeting or pursue a due process petition regarding the CSE’s determinations at the annual review meeting. The Complainant alleged that the District denied her access to these records, stating that she needed to request them from the Student’s XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX.

OCR determined that during a telephone call with the Complainant on XXXXX XX, 2022, Chairperson 2 agreed to collect the records the Complainant requested. By email dated XXXXX XX, 2022, Chairperson 2 sent the Complainant the Student’s reading and math diagnostic scores and Dynamic Indicators of Basic Early Literacy Skills (DIBELS) scores. The next day, Chairperson 2 sent the Complainant an email with copies of the Student’s XXXXXXXXXXXX XXXXXXXXXXXX session notes and a copy of the draft IEP the CSE developed for the Student at the annual review meeting. The Complainant confirmed receiving these documents.

OCR further determined that prior to the meeting on XXXXX XX, 2022, the District provided the Complainant with XXXXX XXXXXXXX progress reports dated XXXXX XX and XXXXX XX, 2022; XXXXX XXXXXXXX progress report dated XXXXX XX, 2022; and quarterly progress reports aligned with the Student’s IEP goals from November 2021, and January, April, and June 2022. Each of these reports documented the Student’s progress toward her IEP goals. The Complainant confirmed receipt of these reports prior to the annual review meeting. Chairperson 2 stated to OCR that the District provided all of the Student’s records to the Complainant and denied that there were any further records relating to the Complainant’s request.

The Complainant alleged to OCR that the XXXXX and XXXXXXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX’ session notes and other documents the District provided were insufficient, and that the District should have provided “core data sheets” prepared by the Student’s XXXXX XXXXXXXX. By email on XXXX XX, 2022, the Complainant asked Chairperson 2 if the XXXXXXXX XXXXXXXX XXXXXXXX XXXXXXXX’ session notes were the only means by which the XXXXXXXX collected data. Chairperson 2 responded to the Complainant that she was not aware of any other method but stated that the XXXXXXXX may have their own personal methods. The Complainant confirmed to Chairperson 2 that she had the contact information for the Student’s XXXXXXXX XXXXXXXX.

OCR determined that the evidence indicated that the District maintained documentation reflecting the Student’s progress toward her IEP goals, as required by the Student’s IEP, and provided all such documentation to the Complainant. Notwithstanding the Complainant’s assertion that the Student’s teachers and XXXXXXXX XXXXXXXX should maintain core data sheets documenting the Student’s progress toward her IEP goals, the Student’s IEP does not require the Student’s teachers or XXXXXXXX XXXXXXXX to do so. The regulation implementing Section 504 does not require the District to provide related aids and services to the Student that are not included in her IEP. To the extent that the Complainant objects to the format in which the District maintains data regarding the Student’s progress toward her IEP goals or believes that the Student’s IEP should require the District to maintain core data sheets, absent extraordinary circumstances not present here, it is OCR’s policy to refrain from assessing the appropriateness of decisions made by a group of knowledgeable persons convened for the purpose of evaluating a student and/or making determinations about a student’s placement, including decisions regarding the methods by which a student’s progress data may be maintained. Any disagreement between the Complainant and the group should be addressed through a due process hearing. A due process hearing officer is

empowered to review the determinations made by the group of knowledgeable persons. The Complainant may exercise her right to due process by contacting the District in writing.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the Complainant's allegation that the District discriminated against the Student on the basis of her disability in XXXXX 2022, by denying the Complainant's request to review the Student's academic records, including IEP goal data. Accordingly, OCR is closing Allegation 2 as of the date of this letter. As stated above, OCR will monitor the District's compliance with the Agreement the District entered into to resolve Allegation 1.

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 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, Compliance Team Attorney, at (646) 428-3895 or [lauren.numeroff@ed.gov](mailto:lauren.numeroff@ed.gov); or Andy Artz, Compliance Team Leader, at (202) 987-1463 or [alexander.artz@ed.gov](mailto:alexander.artz@ed.gov).

Sincerely,

/s/

Rachel Pomerantz

Attachment

cc: Shauna L. Strom, Esq.