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October 28, 2016

IN RESPONSE, PLEASE REFER TO: #03-15-5001

Mr. Jeffrey Finch
Superintendent
Grove City Area School District
511 Highland Avenue
Grove City, PA 16127

Dear Superintendent Finch:

This is to inform you of the resolution of this compliance review of the Grove City Area School District (the District) initiated by the U.S. Department of Education, Office for Civil Rights (OCR), under Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794 and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 et. seq.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities.

As a recipient of Federal financial assistance and a public entity, the District is subject to Section 504, Title II and their implementing regulations.

The compliance review assessed whether the District discriminates against students with disabilities who attend George Junior Republic (the School), a private, non-profit residential treatment center for boys. The review examined the District's policies, procedures and practices as they relate to the provision of a free appropriate public education (FAPE) for students with disabilities who attend the School. In addition, OCR assessed whether students with mental illness at the School are educated in the least restrictive environment and whether all students with disabilities at the School, including students in the Special Needs Program of the School, have access to education resources, including, for example, computers, science labs, the library,

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vocational educational opportunities and athletics. OCR received information from advocacy groups indicating specific concerns in these issue areas. OCR also obtained information from the District, conducted interviews of District and School personnel, reviewed students' educational records, and visited the School and toured its facilities from August 2 through August 4, 2016.

As a result of its investigation, OCR found insufficient evidence of a violation of Section 504/Title II regarding the issue of whether students with disabilities at the School (including students with mental illness) were educated in the least restrictive environment.

During the course of the investigation, the District requested to resolve the other issue areas under review by OCR. Prior to concluding the investigation of these issue areas, the District signed the enclosed Resolution Agreement on October 19, 2016, which when fully implemented, will resolve the issue areas, specifically: whether the policies, procedures and practices for the provision of a FAPE for students with disabilities who attend the School meet the requirements of Section 504/Title II and relevant OCR policies; and whether all students with disabilities at the School, including students in the Special Needs Program of the School, have access to all of its education resources.

Legal Standards

Free Appropriate Public Education (FAPE) and Procedures for the Provision of FAPE

The Section 504 regulation at 34 C.F.R. §§104.33(a), (b) (1), (2) and (3) (c) (1) and (3) requires a recipient that operates a public elementary or secondary education program or activity to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. The provision of a FAPE is:

- 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 nondisabled students; and
- the provision of educational and related services without cost to the student or to his or her parents or guardian, except for those fees that are imposed on nondisabled students or their parents or guardians.

If a public or private residential placement is necessary to provide a FAPE, the placement, including non-medical care and room and board, must be provided at no cost to the student or his or her parents or guardian.

The Section 504 regulation at 34 C.F.R. §§104.35 (a), (b) (1) (2) and (3)(c) and (d) requires the recipient to conduct an evaluation of any student who, because of 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 any subsequent significant change in placement.

In interpreting evaluation data and in making placement decisions, the recipient must draw upon information from a variety of sources, including aptitude and achievement tests, teacher

recommendations, physical condition, social or cultural background, and adaptive behavior. The recipient must also establish procedures to ensure that information obtained from all such sources is documented and carefully considered and ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. In addition, the recipient must establish procedures for periodic reevaluation of students.

The Section 504 regulation at 34 C.F.R. Section §104.36 requires the recipient to implement, with respect to actions regarding the identification, evaluation, or educational placement of students who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards.

Least Restrictive Environment

The Section 504 regulation at 34 C.F.R. Section §104.34 (a), (b) and (c) requires the recipient to educate each qualified student with disabilities with students who are not disabled to the maximum extent appropriate to the needs of the disabled student. The recipient must place a student with disabilities in the regular educational environment unless it is demonstrated by the recipient that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever the recipient places a student in a setting other than the regular educational environment, it must take into account the proximity of the alternate setting to the student's home.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and, the recipient must ensure that students with disabilities participate with nondisabled students to the maximum extent appropriate to the needs of the students with disabilities.

Non-Academic and Extracurricular Services and Activities

The Section 504 regulation at 34 C.F.R. §§104.37 (a) (1) and (2) (b) requires the recipient to provide non-academic and extracurricular services and activities in such manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient.

Applicable Title II Standards

The Title II regulation, at 28 C.F.R. § 35.130, requires that a public entity may not afford a qualified disabled person with an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded to others. Title II has been interpreted to adopt the standards of Section 504 in areas where Title II has not adopted a different standard. Since Title II does not specifically address discrimination in public elementary and secondary education programs, OCR has applied the Section 504 standards in conducting this investigation.

Background

The School is a private, non-profit residential treatment center for delinquent and dependent adjudicated male youth. Students come from across the country and are placed at the School by court order. The School is located in the District’s geographic jurisdiction, although no District students attend the School.

All facilities on the campus are owned and operated by the School. Under Pennsylvania Code¹, the District is responsible for providing educational services to students in facilities located in its jurisdiction. The District is contracted by the School to provide these services.

The School is located on approximately 500 acres and includes the Maurice B. Cohill Academic Center (the Academic Center), William H. Gladden Career and Technical Center (the Career and Technical Center), four gymnasiums, dozens of residential cottages and approximately 22 therapeutic units.

The Academic Center replicates a traditional high school, with course offerings aligned to the common core standards of the Pennsylvania Department of Education. Students are able to transfer all credits from the School to their home school district upon discharge. Based on individual needs and past school records, students are placed into an academic track such as General Academics, Career and Technical (vocational education), or College Prep. Students receive 140 hours of instruction per month in classes that are led by a certified teacher and a teacher’s aide.

The Career and Technical Center houses the School’s vocational education program taught by District teachers. The areas of study are:

- Automotive Body Repair,
- Automotive Mechanics,
- Culinary Arts / Food Service,
- Metal Fabrication / Welding, and
- Carpentry and Masonry.

All of the vocational programs are Pennsylvania Department of Education approved and the School reported that each follows industry validated competency lists. Each student in the vocational program spends half of each school day receiving vocational training, in addition to the other required academic coursework.

¹ [*Pennsylvania Code, Chapter 11, §11.11\(a\)\(1\)*](#) “A school age child is entitled to attend the public schools of the child’s district of residence.”

[*Pennsylvania Code, Chapter 11, §11.18\(a\)*](#) “The board of school directors of a school district in which there is located a licensed shelter, group home, maternity home, residence, facility, orphanage or other institution for the care or training of children or adolescents, shall admit to the district’s public schools school age children who are living at or assigned to the facility or institution and who are residents of the district or another school district in this Commonwealth.”

All students placed at the School complete an orientation program, which includes the following assessments:

- Group Mathematics Assessment and Diagnostic Evaluation (GMADE): measures individual student math skills and identifies areas where students need assistance;
- Group Reading Assessment and Diagnostic Evaluation (GRADE): determines what developmental skills a student has mastered and where the student needs instruction or intervention;
- Casey Life Skills Assessment is an online self-reporting instrument that assesses:
 - Ability to maintain healthy relationships;
 - Work and study habits;
 - Planning and goal-setting;
 - Using community resources;
 - Daily living activities;
 - Budgeting;
 - Computer literacy; and
 - Their permanent connections to caring adults.
- CareerScope: a standardized and timed interest and aptitude assessment for education and career guidance.

District staff also request and receive the student’s records from his previous school or placement within the first five days of arriving at the School.

The School remains open all year, though the District’s education program operates on a traditional school year schedule, from September through early June. The School receives and discharges students throughout the calendar year and typically has a daily enrollment of approximately 500 students. The duration of a student’s stay is determined by the court placing the student. Chart 1 below shows the total number of students at the school for each of the previous four school years.

<i>Chart 1</i>	
Total Enrollment	
2012-2013	796
2013-2014	769
2014-2015	788
2015-2016	825

Students attending the School come from more than 140 districts across the country. Chart 2 below shows the total number of school districts nationwide whose students have attended the School for each of the previous four school years.

<i>Chart 2</i> # of districts represented at the School	
2012-2013	143
2013-2014	146
2014-2015	149
2015-2016	163

The School offers two treatment modalities: the General Residential Program and the Special Needs Program. Students are placed in either program according to the requirements of their court order and courts will consider a student's performance on the School's behavioral system to change treatment modality.

The General Residential Program is for youth who require:

- supervision, support, and structure;
- development of coping and social skills;
- behavioral and clinical efforts aimed at teaching new behaviors and resolving dysfunctional behavioral and emotional patterns; and
- development of task and goal completion skills, anger management, problem solving, conflict resolution, or positive relationship skills.

The General Residential Program requires students to:

- participate in social interactions with staff supervision;
- perform assigned tasks with staff supervision;
- participate in the School's academic and vocational programs;
- maintain personal hygiene and grooming with staff supervision; and
- refrain from absconding or engaging in self-harm.

Students in the General Residential Program live in a cottage that operates as a traditional family home for 8 to 10 students. Cottages are situated in a neighborhood-like setting on the campus. Students in the General Residential Program are required to walk from their cottage to the Academic Center, Career and Technical Center as well as any other facilities on the campus. Each cottage is staffed with a live-in married couple that function as full time professional counselors, as well as an evening child care worker who is awake in the home during sleeping hours.

The Special Needs Program is for youth who:

- have significant functional and psychosocial impairments;
- need more secure care because of a history of harm to self or others;
- are a risk for absconding; and
- have a severe pattern of delinquency.

Students placed in the Special Needs Program live in a therapeutic unit for 8 to 10 students, which provides a common area, education, recreation, dining, visiting, and injury prevention areas while attempting to replicate a natural home like environment. Each unit is designed to provide youth with an individual bedroom and access to a self-contained classroom. These units are staff secure, self-contained, and highly structured to address and manage a student's acute or persistent/recurring disorders. Students are transported to the Academic Center for art, library, music and career counseling (a required class). Students are also transported to one of the four gymnasiums on campus for physical education.

Counseling and therapy for students in both the General Residential and Special Needs Programs operate on a multi-disciplinary treatment team approach. The treatment teams consist of a Team Coordinator (a master's level therapist), clinical managers, psychiatrist, campus director, and medical staff. The treatment team develops and implements an individualized treatment plan for each youth that includes time specific short and long-term goals and objectives. The teams complete weekly reviews of each student's progress in reaching the therapeutic goals and objectives. In the General Residential Program, students receive one hour of counseling each week while in the Special Needs Program youth receive two to four hours of therapy sessions per week.

The School utilizes a four level behavioral system that is applied to all students and addresses a student's on and off-campus (e.g., during home visits) behavior. All students begin at Level I and accrue points through daily monitoring of behavior. After successful completion of Level I, students move to Level 2 and continue to accrue points through weekly monitoring. At Level III, points are no longer accrued and students are required to negotiate with School staff for increased privileges through more responsibilities and greater expectations. To move to Level IV, students must demonstrate sufficient progress such that they are permitted the maximum amount of independence and privileges available at the School.

Referring courts use a student's performance in the School's behavioral system to determine whether to move him from the Special Needs to the General Residential Program and when to discharge him from the School. For example, the School and the District explained that referring courts generally require students to achieve Level II before transitioning the student from the Special Needs Program to the General Residential Program.

The District explained to OCR that students receiving instruction in the therapeutic units cannot participate in the vocational educational program because it cannot create a schedule that permits these students to attend all of their required academic classes as well as the vocational classes, which require half of the academic day to complete. However, the District explained that at any given time there are 20 to 30 students who are in a therapeutic unit but are transitioning to the General Residential Program because they have achieved Level II in the behavioral system; given this status, these students are able to attend classes in the Academic Center and may also participate in the vocational program.

Issue #1: Whether the policies, procedures and practices for the provision of a free appropriate public education (FAPE) for students with disabilities who attend the School meet the requirements of Section 504 and relevant OCR policies.

Information provided to OCR from advocacy groups alleged that the District frequently did not:

- include parents, guardians, and/or court appointed guardians in the IEP process;
- provide these individuals with Notice of Recommended Placement(NOREP)/Prior Written Notice (PWN) or notice of procedural safeguards;

Relevant District Policies

The District reported to OCR that it follows its policies regarding the provision of a free appropriate public education (FAPE) for students with disabilities who attend the School. The District's policy *103.1 – Nondiscrimination: Qualified students with disabilities* (the Policy) requires the District to provide each qualified student with a disability enrolled in the District a FAPE, including special education and related aids, services, or accommodations that are needed to afford equal opportunity to participate and/or benefit from the District's programs. The Policy discusses, in general terms, the process for identifying, evaluating and placing students who need special education and related aids and services.

The Policy states that the District must:

- allow parents/guardians the opportunity to inspect and review all relevant school records of the student;
- meet with the appropriate school officials to discuss any and all issues relevant to the evaluation and accommodations of their child;
- give or withhold their written consent to the evaluation and/or the provision of services;
- not modify or terminate a student's current plan without the parent's/guardian's written consent;
- educate a qualified student with a disability with students who are not disabled to the maximum extent appropriate to the needs of the student with a disability;
- not discriminate against any student with a disability in its provision of nonacademic services and extracurricular activities, including but not limited to, counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs, and referrals to agencies which provide assistance to individuals with disabilities; and
- establish and implement a system of procedural safeguards that includes notice of rights to the parent/guardian of a student suspected of being a qualified student with a disability, an opportunity for the parent/guardian to review relevant records, an impartial hearing with an opportunity for participation by the student's parent/guardian, and a review procedure.

Special Education Placement Process

The District stated that it only becomes aware that a student has a disability or has an education plan upon the arrival of his records from his previous placement or if the student notes this during the intake process. The District stated that it does not identify many students as having a disability as virtually all students were identified by one of their previous placements.

The District reported to OCR that a majority of the students enrolled at the School have a disability. Chart 3 below shows the percentage of the School’s population which consists of students with disabilities for each of the previous four school years.

<i>Chart 3</i>		
Enrollment of Students with Disabilities		
	# students with disabilities	% of total enrollment
2012-2013	504	63.3%
2013-2104	518	67.4%
2014-2015	509	64.6%
2015-2016	517	62.7%

Placement in the School is a “significant change in placement” according to District policies and requires development of a new IEP. Upon learning that a student has a disability and has an IEP, District staff begin the process for developing a new IEP. The process at the School is:

- Special education staff send the student’s parents/guardians or representatives the notice of procedural safeguards as well as a parental input form to be completed and returned.
- The District assigns a lead teacher to act as the case manager for the IEP process. The lead teacher is electronically notified of the student’s arrival, the results of the orientation assessment and the arrival of previous school records. The lead teacher is responsible for drafting the proposed IEP based upon the available information.
- The lead teacher is also responsible for scheduling an IEP meeting to discuss the proposed IEP and for inviting District staff and the parents/guardians/representatives. A copy of the draft IEP is sent to all the parties in advance of this meeting.
- For the parents/guardians/representatives, notification of recommended placement/prior written notice (NOREP/PWN) is included with the draft IEP.
- After the meeting concludes and the IEP is agreed upon, the parents/guardians/representatives are provided with copies of the finalized IEP.

The District asserted that a low number of parents/guardians respond to the Parent Input Form, NOREP/PWN or the IEP meeting invitation, though it experiences a better response rate among court or agency appointed representatives. The District stated that for those parents/guardians or representatives that wish to participate in IEP meetings, they may come to the School or participate by telephone. The District asserts that this process, from arrival to finalization of the IEP, occurs within 30 days.

The District stated that it follows the same process for the development of subsequent IEPs, which may be revised at the request of teachers and other educational staff as well as the student’s parent/guardian/representative.

OCR's Review of Student Files

OCR reviewed 44 of the 278 (15.8%) active special education files at the School to assess whether the District followed its policies, procedures and practices. Through our review, OCR found that:

- The average amount of time it took to receive information from a student's previous placement after placement in the School was 14 days. Lengthy delays in receiving information were generally caused by the previous school district delaying in responding to a request or sending incomplete records.
- Every student except for one entered the school already identified as a special education student. In the one exception, a judge ordered the District to complete an evaluation for the student to determine whether the student had a disability and, if so, his eligibility for special education and related aids and services. The District conducted this evaluation and the evaluation team determined the student did not have a disability.
- In every file, except in two noted below, the development of the initial IEP included Notice of Procedural Safeguards, Parent Input Form, Invitation to IEP Meeting and NOREP/PWN (with draft IEP) sent to the parents/guardians/representatives.
 - In one file was there no information that a parent/guardian/representative was contacted regarding Procedural Safeguards, Parent Input or NOREP/PWP.
 - In one file there was no information that Notice of Procedural Safeguards were sent to parent/guardian upon initial placement.
- OCR found three files where individuals were appointed to represent students in educational matters. The District communicated with these individuals, including sending them the following documents: Notice of Procedural Safeguards, Parent Input Forms, NOREP/PWN and Invitation to an IEP Meeting.
- There was no information in any of the files reviewed that the District sent copies of the finalized IEP to parents/guardians/representatives.
- In five files, we found the District reevaluated the student:
 - In one file, the District requested consent to reevaluate only two weeks before the reevaluation occurred.
 - In one file, the requested consent is dated the same day as the reevaluation report and the form is not signed.
 - In three files, there is no Permission to Evaluate/Reevaluate form.
- In four files, we found a section of the IEP that states, "The LEA and parent have agreed to make the following changes to the IEP without convening an IEP meeting, as documented by..." In these files there was no information to support that the parent was contacted or agreed to this change.
- In one file we found that an IEP was drafted only four days after the parents were sent a NOREP/PWN, a draft IEP and invitation to the IEP meeting. The parents did not respond to the invitation.
- In one file we found that the student's IEP was drafted 51 days after the reevaluation was completed.
- In one file we found it took 61 days between the student's admission and IEP meeting date. In the same file we found that the student's reevaluation report is dated the same day as the request to evaluate was sent to his parents.

- In one file no information was sent to the student’s parent.
- In one file the student’s parents (both hearing impaired) requested American Sign Language video chat for the IEP meeting. There was no information that this was done or that the parents participated in the meeting.

Analysis and Conclusion

Our investigation established that the District has appropriate policies regarding the provision of a FAPE for students with disabilities who attend the School as well as notice of procedural safeguards. OCR’s file review found that the District invited parents, guardians and representatives to participate in the IEP process and provided these individuals with NOREP/PWNs as well as notice of procedural safeguards. However, OCR’s review also identified instances where these procedural processes were not followed. In addition, OCR could not find any evidence in the student files that the District provided these individuals with final copies of executed IEPs.

OCR’s file review did not identify any students who were moved from the General Residential to the Special Needs Program. The School advised OCR that it specifically notifies parents/guardians of movement to and from the Special Needs Program by telephone within 24 hours of the change occurring. OCR’s file review also indicated that the District conducted reevaluations of its students. Prior to the completion of OCR’s investigation, the District signed the Resolution Agreement, which when fully implemented, will result in the District’s compliance with the requirements set forth in Section 504 and Title II with regard to provision of a FAPE for students with disabilities who attend the School.

Issue #2: Whether students with mental illness at the School are educated in the least restrictive environment.

Advocates informed OCR that students with disabilities are not being educated in the least restrictive environment as evidenced by the use of the therapeutic units. In addition, advocates stated that students in therapeutic units are educated in a full-time emotional support classroom and every student must have an IEP to be in the classroom. They alleged that the District will create an IEP after placement in a unit if the student did not have one. Finally, advocates alleged that the District fails to inform those responsible for the student when they are moved to a therapeutic unit.

Placement in the Special Needs Program

Enrollment in the therapeutic units for the 2015-2016 school year was 540 students, including 40 (7.4%) students without disabilities. The District reported that the setting in the units is full-time Emotional Support because of the acute emotional and behavioral needs of the students placed there.

As previously discussed, courts are responsible for the placement of students in either the Special Needs or General Residential Program. The decision to remove students from the Special Needs Program and place them into the General Residential Program is also made by courts with the input of therapeutic unit staff. The School submitted sample of court orders showing the

placements of students during 2016; this documentation was provided for 27 students, and 12 of these 27 students had orders specifically indicating that they were to be placed in the Special Needs Program.

The District is not involved with, nor is it consulted, regarding a student's placement in either the General Residential or Special Needs Programs. The District will reconvene the IEP team to draft a new IEP for special education students moved to or from a unit since it constitutes a significant change of placement. Our file review did not identify any students that were moved from or to the Special Needs Program.

Under the School's procedures, the School's Social Worker or the student's Treatment Team Coordinator notifies parents/guardians or representatives by telephone when a student is moving to or from the Special Needs Program.

The District schedules non-academic subjects, specifically music, art, library, career counseling and physical education, during the school day. Students educated in the therapeutic units generally do not participate in these classes with students from the General Residential Program, except for physical education. The District reported that this is a function of class scheduling since students from each therapeutic unit are treated as an individual class for scheduling purposes.

Analysis and Conclusion

Our review focused on the placement of students with disabilities in the therapeutic units of the School, the most restrictive setting. Specifically, we examined whether these students were being educated in the least restrictive environment and were required to have an IEP. We also considered whether the District failed to inform those responsible for students when they were moved to or from a therapeutic unit and whether the District evaluated students prior to making this change in placement; we included this analysis under Issue 1, as it pertains to Section 504 procedures regarding evaluation and placement, and specifically changes in placement, under 34 C.F.R. § 104.35.

Our investigation established that the Special Needs Program is designed to address the needs of youth that require greater structure, supervision and therapy than students in the General Residential Program. Initial placement of students in either the Special Needs or General Residential Program is only made pursuant a court order and orders are required for any subsequent movements between the two types of programs offered in the School. Each court has its own set of factors for evaluating the type of program that is appropriate for students and determining when students should be removed or placed in the Special Needs Program, but they generally require students to show improvement on the School's behavioral system. OCR examined court orders placing students specifically in either the Special Needs or the General Residential Program. We also found that a small number of students from the units attend class at the Academic Center in conjunction with their transition to the General Residential Program.

Our investigation found no evidence indicating that District staff is involved in these decisions regarding placement within the School. Most students in the Special Needs Program attend classes directly within their unit, but do leave the unit for art, music, library, career counseling

and physical education where they take these non-academic and special subjects with other students from their unit. For nonacademic and special subjects, OCR's investigation likewise determined that the degree of access that students in these units have to the general education setting is a function of the placement determined by the court system and the level of behavioral and emotional support that these entities have deemed to be necessary for these students. We also note that some students without disabilities are placed in the Special Needs Program.

Based upon the evidence, OCR finds that there is insufficient evidence to support a conclusion that the District violated Section 504, Title II, or their implementing regulations regarding this issue.

Issue #3: Whether all students with disabilities at the School, including students in the Special Needs Program of the School, have access to education resources, including, for example, computers, science labs, the library, vocational educational opportunities and athletics.

Advocates asserted to OCR that students in the therapeutic units are denied access to computers, science labs, vocational education opportunities, and athletics, and are only permitted to use the library after school. Further, advocates alleged to OCR that the School's vocational education program will only admit students with IEPs and that students with Section 504 Plans and students without disabilities are not eligible to participate.

Educational Programs

OCR found that the District offers the following educational programs at the Academic Center:

- Reading and math remediation programs are offered both before and after school;
- Tutoring;
- Credit recovery or acceleration opportunities through Cyber Service or American School Correspondence;
- Postsecondary credit opportunities in speech, anatomy and sociology through Butler County Community College;
- Opportunities to take the Scholastic Aptitude Test (SAT);
- Driver's Education; and
- General Education Development (GED) program.

OCR found that most students placed in the Special Needs Program receive all instruction within their therapeutic unit. A small number of students transitioning from the Special Needs Program to the General Residential Program are permitted to take classes at the Academic Center. These students have access to all of the programs and resources in the Academic Center. For the students that remain in the therapeutic units and who are not in the process of transitioning to the general residential program, they also have access to all of the programs provided in the Academic Center, except for Driver's Education. Students from the therapeutic units are transported to the Academic Center for after school programs (e.g., remediation programs, tutoring). For on-line programs, students complete these in their unit. Certain students in the School, whether in the Special Needs or General Residential Program, are prohibited from participating in Driver's Education because their sending courts have prohibited them from

getting a driver's license. Additionally, some students from the Special Needs Program cannot participate in Driver's Education being ambulatory is a requirement for participation.

Resources

OCR identified the following resources at the Academic Center:

- Two computer labs, a mobile computer lab and several iPads preloaded with reading assistance applications;
- A music lab with various types of specialized equipment;
- Two science labs; and
- All classrooms are equipped with a computerized board to enhance instruction.

OCR found that students in each therapeutic unit have access to computers and classrooms with the same computerized board. However, students in the therapeutic units do not have access to a music lab or the science labs and the specialized equipment that they contain. The District explained that the music lab is used by students as an extracurricular activity.

Library

As discussed in the preceding issue, OCR found that students from the therapeutic units have library scheduled into their academic day and go to the library located in the Academic Center during the school day, the same as other students in the School.

Athletics

The School has two athletic teams, a basketball team and a track and field team. In general, participation on the teams is considered a privilege and students must be in good standing, both behaviorally and academically, to join and maintain their membership. Students from the Special Needs Program are permitted to participate on the athletic teams. The District noted that for certain students (whether in Special Needs or General Residential), the court has determined that the student is not permitted to travel with the team for competitions.

Vocational Education

OCR found that nondisabled students participate in the District's vocational education program. Chart 4 below shows the percentage of the both students with and without disabilities who have participated in the District's vocational educational program during the past four years.

<i>Chart 4</i>				
Participation in Vocational Education				
	Students with disabilities		Students without disabilities	
	General Enrollment	Voc. Ed. Enrollment	General Enrollment	Voc. Ed. Enrollment
2012-2013	63.3%	51.3%	36.8%	48.8%
2013-2014	67.4%	53.7%	32.6%	46.3%
2014-2015	64.6%	58.2%	35.5%	41.8%
2015-2016	63.7%	48.2%	37.2%	51.9%

OCR also found that virtually all students with disabilities in the School entered the School already identified as such and with an IEP. Only one student with a Section 504 Plan attended the School during the period examined by OCR and this student participated in the vocational education program.

Students receiving educational services in the therapeutic units are not permitted to participate in the vocational education program because of a scheduling conflict between the classes offered in the units and the classes offered at the Career and Technical Center.² District staff explained that the Academic Center schedules multiple periods of core curriculum courses (i.e., the courses students must take) and they are available both morning and afternoon. Therefore, students in the Academic Center can participate in vocational education and still complete required core curriculum courses. In the therapeutic units, the class schedule is set for all students in that unit and core curriculum courses are presented once. Consequently, a student cannot leave for vocational education for part of the day and also complete all required curriculum. District staff stated that they have not been able to resolve this scheduling issue.

District staff also noted that some students in the Special Needs Program would present a hazard in the Career and Technical Center because of their history of harm to self and others; specifically, there is a concern about them using the equipment and machinery. However, the District has not specifically determined which students could or could not participate.

Analysis and Conclusion

OCR reviewed whether all students with disabilities at the School, including those in the Special Needs Program, have equal access to the School's programs, services and resources, including computers, vocational education opportunities, and athletics. In addition, we examined whether a student had to have an IEP to participate in the vocational education program.

OCR found that students in the Special Needs Program have access to the majority of programs and services offered at the Academic Center, specifically remediation programs, tutoring, credit recovery, SAT test taking opportunities and GED courses. In most instances, students in the

² The District noted that approximately 20 to 30 therapeutic unit students attend class in the Academic Center at any given time because of their progress on the behavioral system. Because of this status, they are also eligible to participate in the vocational education program.

therapeutic units are transported to the Academic Center to participate, unless it is a computer based program, in which case he can participate in his unit. OCR also found equivalent computer facilities in the therapeutic units as in the Academic Center as well as identical classroom amenities. OCR found that all students at the School are permitted to participate on the athletic teams as long as they maintain appropriate academic and behavior performance. Students may also be limited in their participation in athletics by court order. Finally, OCR found that students with and without disabilities participate in vocational education programs.

Although OCR did not complete its investigation, we did note several areas of concern regarding access to: Driver's Education, programs/resources of the science and music labs located in the Academic Center; and vocational education programs. .

Prior to the completion of OCR's investigation, the District signed the Resolution Agreement, which when fully implemented, will result in the District's compliance with the requirements set forth in Section 504 and Title II regarding students with disabilities at the School, including those in the Special Needs Program, having equal access to the School's programs, services and resources.

Overall Conclusion

OCR procedures provide that a compliance review may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a resolution agreement. The provisions of the resolution agreement must be aligned with the issues identified at the outset, the issues investigated, and are consistent with applicable regulations. Such a request does not constitute an admission of a violation on the part of the District, nor does it constitute a determination by OCR of any violation of our regulations.

The District requested to resolve this compliance review by means of a voluntary resolution agreement during the pendency of OCR's investigation. Based on the information obtained in OCR's investigation, OCR determined that it is appropriate to resolve the compliance review with a resolution agreement with respect to the whether the policies, procedures and practices for the provision of a FAPE for students with disabilities who attend the School meet the requirements of Section 504/Title II; and whether all students with disabilities at the School, including students in the Special Needs Program of the School, have access to all of its education resources. With respect to the issue of whether students with disabilities at the School (including students with mental illness) were educated in the least restrictive environment, OCR found insufficient evidence of a violation of Section 504/Title II.

Consistent with OCR's procedures, on September 26, 2016, the District requested to resolve this complaint through a Voluntary Resolution Agreement (the Agreement). On October 19, 2016, the District signed the Agreement with OCR to resolve the compliance review. Accordingly, OCR is concluding its investigation of this review. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District's implementation of the Agreement.

The Agreement requires the District to develop and implement procedures for consistently documenting special education identification, evaluation and placement decisions to include identifying:

- appropriate timeframes for when each decision and action will be made, where appropriate;
- appropriate timeframes for when decisions and items will be recorded in the student's special education file; and
- the individual(s) responsible for maintaining the contents of the student's special education file.

These procedures will also require documentation of:

- all communication with the student's previous placement for collecting pertinent records;
- all communication with parents/guardians/representatives, both written and oral, regarding the student's identification, evaluation, placement and any subsequent actions related to the student's educational program and notifications of procedural safeguards;
- all requests and responses to parent/guardians/representatives seeking permission to evaluate/reevaluate;
- all invitations to placement meetings;
- all invitations to IEP meetings;
- finalized IEPs are sent to parents/ guardians/representatives;
- changes/modifications to IEPs that are made without a meeting and agreed to by the parent/guardian/representative; and
- requests by parents/guardians/representatives for accommodations of disabilities to participate in any meetings have been appropriately addressed under Section 504 and the Title II; and
- placement in the Special Needs Program has been made by an appropriate entity (e.g., juvenile court).

Concerning non-academic programs, the Agreement requires the District to permit those students in the Special Needs Program and receiving educational services in the therapeutic units to participate specifically in the vocational educational and driver's education programs. In addition, the District will also:

- Develop essential requirements for participation in the vocational educational and driver's education program;
- Make an individual determination of the student's eligibility based upon the essential requirements by a group of individuals knowledgeable about the student and the essential requirements of each program;
- Ensure documentation is maintained for students specifically prohibited from participating in vocational education and/or driver's education by court order or by order of some other appropriate authority; and
- Conduct individualized assessments of students in the Special Needs Program previously barred from these programs and following that determination, it will notify them of their eligibility.

Regarding the music and science labs, the District will permit students in the Special Needs Program and receiving education services in the therapeutic units to use the music and science

labs in the Academic Center or, if more appropriate, provide access to an equivalent music lab and science lab in another part of the campus to the same extent that students in the General Residential Program have access to the music and science labs.

This letter sets forth OCR's determination in an OCR compliance review. 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.

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.

OCR appreciates the courtesy and cooperation shown by your staff during the investigation and resolution of this case. We thank you and all District and School administrators and staff who worked with OCR throughout the course of this review. If you have any questions or concerns, please contact Investigator Michael Branigan at (215) 656-8516.

Very truly yours,

/s/

Wendella P. Fox
Director
Philadelphia Office

Enclosure

Cc: Andrew Kemper (via email only)