



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
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April 8, 2022

IN RESPONSE, PLEASE REFER TO: 03221007

Wayne Roberts
Superintendent
Wayne County Schools
150 Cardinal Way
Monticello, KY 42633

Sent via email only: wayne.roberts@wayne.kyschools.us

Dear Superintendent Roberts:

This is to advise you of the resolution of the above-referenced complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received on October 7, 2021, against the Wayne County Schools, which we will refer to as “the District.” The Complainant, XXXX XXXXX, alleged that the District discriminated against XXXXXXXXXXXXXXXXXXXX, who we will refer to as “the Student,” on the basis of disability when it failed to implement accommodations and services set out in the Student’s Section 504 plan during the XXXXX school year. OCR investigated whether the District failed to provide the Student with the accommodations of (1) extended time on assessments, and (2) enlarged font.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973, 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, 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 from the Department of Education and a public entity, the District is subject to Section 504, Title II, and their implementing regulations.

In its investigation, OCR interviewed the Complainant and her spouse, whom we will refer to as the Student’s parents, and reviewed documentation from the Student’s parents and the District. Before the completion of OCR’s investigation, the District requested to resolve the allegation

The parents said that having to copy this information down in class impacted the Student negatively XX.

The parents stated that they raised this issue in a Section 504 meeting, and that sometime in XX XXXXXXXX the issue was resolved and the Student consistently received printouts in her XXX class with all of the information on the PowerPoint slides, not just the notes. According to the Student’s parents, compensatory services were not discussed or offered.

Documents in the data response reflect that the XXX teacher stated that she provided the text of the notes in large font to the Student each day prior to her arrival in class. However, the District confirmed that the Student’s XXXX teacher did not provide copies of pages which only contained photos and no text in the printed notes provided to the Student early in the school year.

LEGAL STANDARD

The Section 504 regulation, at 34 C.F.R. § 104.4, and the Title II regulation, at 28 C.F.R. § 35.130(a), provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under a recipient’s programs or activities on the basis of disability.

The Section 504 regulation, at 34 C.F.R. § 104.33, also requires recipients to provide a free appropriate public education (FAPE) to each qualified student with a disability in its jurisdiction. An appropriate education is 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 students without disabilities are met and that are developed in compliance with Section 504’s procedural requirements. OCR interprets the Title II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require recipients to provide a FAPE to the same extent required under the Section 504 regulation.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student’s plan or as otherwise agreed to by the student’s team. If OCR finds that a recipient has not implemented a student’s plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the recipient to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

LEGAL ANALYSIS

Regarding the Student’s accommodation of extended time, OCR did not find sufficient evidence to conclude that the District failed to implement this accommodation during the 2021-22 school year, as was alleged. Although the Student’s parents initially provided information indicating that they believed that extended time had not been provided, District documentation indicates that this was not an issue with respect to the classes offered by the District and the Complainant confirmed this. OCR finds there is insufficient evidence under Section 303(a) of the CPM to support the Complainant’s allegation.

Regarding the accommodation of provision of notes and materials with enlarged font to the Student as required by her Section 504 plan, based on the available evidence OCR has a

preliminary concern that the District did not provide this in the Student's XXXXX class. The evidence indicates that photos were not included in some of the copies of the power point slides provided to the Student, but OCR has not reached a determination as to the quantity of materials that were provided in this manner, or the frequency with which this issue occurred.

RESOLUTION AGREEMENT

As noted above, prior to OCR's completion of the investigation, the District expressed an interest in resolving this complaint under Section 302 of the CPM, and OCR determined that it would be appropriate to resolve the preliminary concerns OCR had identified. The District signed the enclosed Resolution Agreement that, when fully implemented, will resolve the complaint. The Resolution Agreement requires the District to convene the Student's multi-disciplinary team, including the Complainant, to determine if the Student was denied a FAPE when she was not provided copies of notes and materials, as required by her Section 504 plan and whether, as a result, the Student requires compensatory education and remedial services. As is our usual practice, OCR will monitor the District's implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint. 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 OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The Complainant has a right to appeal OCR's determination regarding the accommodation of extended time on assignments during the 2021-22 school year within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The District must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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OCR No. 03-22-1007

Thank you for your cooperation in this matter. If you have any questions, please contact Bradley Moore, Team Attorney, at 215-656-8502 or bradley.moore@ed.gov.

Sincerely,

/s/

Christina M. Haviland
Supervisory Attorney

Enclosure

cc: Michael A. Owsley, Esq. (via email)