



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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August 2, 2017

Ms. Diane Massa
Executive Director
Porter County Education Services
750 Ransom Road
Valparaiso, Indiana 46385

Re: OCR Docket #05-15-1098

Dear Ms. Massa:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution efforts with regard to the above-referenced complaint against the Porter County Education Services (PCES). Specifically, the complaint alleged that PCES subjected a fourth grade student (Student A) and other students with disabilities at PCES' SELF School (School) to discrimination on the basis of disability in that:

1. beginning in fall 2013, PCES failed to conduct a timely re-evaluation of Student A;
2. PCES fails to provide Student A and other students with disabilities placed at the School an academic setting that includes nondisabled peers to the maximum extent appropriate to meet the needs of each student with disabilities;
3. PCES fails to provide Student A and other students with disabilities placed at the School with non-academic and extracurricular services and activities in settings that include nondisabled peers to the maximum extent appropriate to meet the needs of each disabled student; and
4. PCES fails to provide disabled students placed at the School with comparable resources, such as appropriately certified staff and comparable instructional materials, to those provided to nondisabled students.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and 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, PCES is subject to these laws.

In an educational setting, the standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. OCR has determined that the Title II regulations applicable to the allegations in this complaint do not provide greater protection than the

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

applicable Section 504 regulations. Therefore, OCR applied the Section 504 regulations in analyzing this complaint.

During its investigation, OCR reviewed information provided by the Complainant and PCES, examined student files, interviewed PCES' Executive Director, the School's Principal, and some of the School's teachers and paraprofessionals, and examined facilities at the School. OCR determined that the evidence was insufficient to establish a violation with regard to Allegation #1 and a portion of Allegation #4. Prior to the conclusion of OCR's investigation of Allegation #2, Allegation #3, and the remaining portion of Allegation #4, in accordance with Section 302 of OCR's *Case Processing Manual* (CPM), PCES expressed interest in resolving these allegations. On July 24, 2017, PCES signed the enclosed Resolution Agreement, which, when fully implemented, will resolve the issues raised in these allegations. The reasons for OCR's determinations are set forth below.

Background Information

The School, located in Valparaiso, Indiana, enrolls approximately 300 disabled students, ranging in age from 3 to 21, who reside in one of the seven school corporations in Porter County: Valparaiso Community Schools, Portage Township Schools, Duneland School Corporation, Union Township Schools, Metropolitan School District of Boone Township, East Porter County Schools, and Porter Township Schools (Participating School Corporations). Each Participating School Corporation provides bus transportation to and from the School for its students placed there.

The School provides instruction to students in the following disability classifications: Multiple Disability (MD); Orthopedic Impairment (OI); Blind/Low Vision (BLV); Deaf/Hard of Hearing (DHH); Emotional Disability (ED); Specific Learning Disability (SLD); Developmental Delay (DD); Language/Speech (LSI) Impairment; Mild Cognitive Disability (MICD); Moderate Cognitive Disability (MOCD); Severe Cognitive Disability (SCD); Autism (AUT); and Other Health Impairment (OHI). The therapeutic day program for students with emotional disabilities is known as the SUCCESS program.

Student A, who has a primary disability of ED, began his enrollment in the School's SUCCESS program during his kindergarten year and was in fourth grade in the SUCCESS program in 2014-2015. Student A was subsequently placed in residential placements on two occasions. Student A's parent said that in the 2016-17 school year, Student A attended his local middle school and still has an individualized education program (IEP) in place.

PCES' nondiscrimination statement, found in PCES Policy 2260, states that it does not discriminate on the basis of disability and further indicates: "The Executive Director shall appoint and publicize the name of the compliance officer whose responsibility it will be to ensure that Federal and State regulations are complied with and that any inquiries or complaints regarding discrimination or equal access are dealt with promptly in accordance with law." PCES' grievance procedures, which are found in Anti-Harassment Policy 5517, contain both

informal and formal grievance procedures for complaints of discrimination on the basis of disability. Policy 5517 is available on the PCES website, as are its special education policies.¹

Allegation #1 - In fall 2013, PCES failed to conduct a timely re-evaluation of Student A.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a recipient that operates a public elementary or secondary education program to conduct an evaluation in accordance with the requirements of 34 C.F.R. § 104.35(b) of any person 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 person in regular or special education and any subsequent significant change in placement. The Section 504 regulation, at 34 C.F.R. § 104.35(d), requires a recipient to establish procedures, in accordance with 34 C.F.R. § 104.35(b), for periodic re-evaluation of students who have been provided special education and related services.

Under 34 C.F.R. § 104.33(b)(2), implementation of an IEP developed in accordance with the Individuals With Disabilities Education Act (IDEA) is one means of meeting the above standards. Under the IDEA regulations, at 34 C.F.R. § 300.303, a re-evaluation is required every three years unless the parent and school district agree otherwise.

Facts

Student A's initial evaluation for special education was conducted in the fall of 2010. Student A's home school, Flint Lake Elementary, convened a case conference committee (CCC) to discuss his placement. The Complainant, the student's home district and PCES agreed to a placement in the School's SUCCESS program later that fall.

The CCC met with the Complainant on October 7, 2013, as part of the annual review process, to develop an IEP. The IEP states, "The [CCC] has determined that there is sufficient data to plan appropriately for [Student A]. Therefore, re-evaluation is not required at this time for the purposes of considering eligibility or providing additional information regarding [Student A's] special education and related service needs." The Complainant provided consent to the proposed IEP and signed it the day of the meeting. She was provided notice of her right to challenge the decision to continue Student A's placement in SUCCESS without conducting a re-evaluation, but did not do so.

On September 29, 2014, when Student A was at a residential facility, PCES personnel conducted a re-evaluation; according to the School's Principal, the re-evaluation occurred within required time frames, which in Indiana is 50 school days from the date of parental consent. Student A returned to the School on October 12, 2014.

¹ <http://www.pces.k12.in.us/Page/77>

Analysis and Conclusion

The evidence revealed that PCES did not re-evaluate Student A in the third year following his initial IEP. However, the evidence established that the CCC determined that a re-evaluation was not necessary and that the Parent signed the IEP containing this conclusion. As indicated above, under 34 C.F.R. § 104.33(b)(2), implementation of an IEP developed in accordance with IDEA is one means of meeting applicable standards. Under the IDEA regulations, at 34 C.F.R. § 300.303, a re-evaluation is required every three years unless the parent and school district agree otherwise. Here the parent and the school district agreed that a re-evaluation was not necessary. Accordingly, there is insufficient evidence to establish a violation of the applicable regulations with regard to Allegation #1.

Allegation #2 - PCES fails to provide Student A and other students with disabilities placed at the School an academic setting that includes nondisabled peers to the maximum extent appropriate to meet the needs of each student with disabilities.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.34(a), states that a recipient to which this subpart applies shall educate, or shall provide for the education of, each qualified disabled student in its jurisdiction with students who are not disabled to the maximum extent appropriate to the needs of the disabled student. A recipient shall place a disabled student in the regular education environment operated by the recipient 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 a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the student's home.²

Facts

The Complainant expressed concern to OCR that Student A was placed in a separate facility for students with disabilities where he did not interact on a regular basis with nondisabled peers. As a matter of policy, OCR does not resolve educational determinations regarding individual students. In this case, OCR therefore investigated whether PCES implements policies and procedures that place students in the least restrictive environment to the maximum extent appropriate to the needs of the student.

PCES operates not only the School but also employs the special education teachers who serve students in schools operated by Participating School Corporations. The Executive Director, who has been employed by PCES for over 40 years, said that when the School was built in 1971, it was a “repository” for disabled students, but that over time a shift had occurred such that most

² For the similar IDEA regulations that also govern PCES' least restrictive environment policies and procedures, see 34 C.F.R. §§ 300.114 through 300.120.

students with disabilities are placed in schools that also serve non-disabled students. In the 2015-16 school year, the School served students in the following disability categories and grade levels:

Disability	K	1	2	3	4	5	6	7	8	9	10	11	12	TOTAL
MD	2	1	3		2				1		1	1	3	14
OI	1													1
BLV														
DHH														
ED		1	1	3	3	1	2	3	1	2	1	3	4	25
SLD	8													8
DD														
LSI	1													1
MICD	4									1			1	6
MOCD	3							1	3					7
SCD	1	1	3		1	1	1		1		1	2	3	15
AUT	22	4	2	1	1	3	2	3	4	2	1	1		46
OHI	4			1							2		1	8
TOTAL	46	7	9	5	7	5	5	7	10	5	6	7	12	131

In order to ensure that students with disabilities are placed in the least restrictive environment to the maximum extent appropriate, school districts are required to establish a continuum of alternative placements (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) and provide supplementary aids and services when necessary to enable students’ IEPs to be implemented in such settings.³ The PCES Executive Director stated that PCES provides a continuum of alternative placements; however, OCR did not review the specific programs provided in regular schools in the Participating School Corporations.

According to PCES, placement at the School, which is determined by the CCC with parental consent, is due to the complex, profound, or otherwise unique needs of the student. OCR’s file review confirmed parent approval for placement. The teachers interviewed by OCR maintained that all students at the School are placed in the least restrictive environment appropriate for their needs. According to teachers, the lack of school bells and not having to change classes or go to a school cafeteria is calming for some students. Because of their autism, students struggle with noise and several wear noise reduction headphones, and sensory difficulties are triggers for “meltdowns.” PCES also pointed to certain services needed by some students that could not be provided in regular schools, such as a full-time mental health specialist funded by a community mental health agency; a full time nurse with expertise in serious health issues such as seizures, brittle bones, and unusual medical syndromes; and a service dog that can be used as a prevention strategy to calm a student in distress.

OCR reviewed a random sample of 41 student files, excerpts of which were provided by PCES. OCR noted that a few of the files presented violent or uncontrollable behavior as the justification

³ See 34 C.F.R. § 300.115.

for placement. However, OCR noted that, in some instances, the file excerpts provided by PCES did not include up to date information that demonstrated that the student could not be educated in a less restrictive environment. Also, the documentation provided did not identify the specific alternative placements that were considered and rejected (other than a regular class in the student's home school), and some of the reasons given for placement at the School might not preclude placement in a less restrictive environment depending on the alternative placements available in regular schools. Because the files did not address the availability of programs and services in regular schools (other than regular classes in the student's home school), OCR could not determine, for example, whether PCES had considered placing younger students in a developmental kindergarten class or offering services needed by autistic students in a regular school.

Analysis and Conclusion

OCR has determined that it is appropriate to resolve this allegation via a resolution agreement prior to making compliance findings. In order to make a compliance finding regarding this issue further information would be needed regarding the programs and services available in regular schools as well as more extensive file reviews and detailed information about the needs of particular students and the reasons for their placement at the School. However, PCES agreed to take steps that, when implemented, will resolve OCR's concerns.

Allegation #3 - PCES fails to provide Student A and other students with disabilities placed at the School with non-academic and extracurricular services and activities in settings that include nondisabled peers to the maximum extent appropriate to meet the needs of each disabled student.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.34(b), states that in providing or arranging for the provision of non-academic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2) (counseling services, physical recreational athletics, transportation, health services, recreational activities or clubs, and special interest groups), a recipient shall ensure that students with disabilities participate with students without disabilities to the maximum extent appropriate to the needs of the disabled student in question. The regulation implementing Section 504, at 34 C.F.R. §104.37(a)-(c), requires, in relevant part, that a recipient that operates or sponsors non-academic and extracurricular services and activities, shall provide to qualified students with disabilities an equal opportunity for participation. In implementing these nondiscrimination obligations, a recipient may not operate on generalizations or assumptions about disability, and must allow students with a disability an equal opportunity to participate in nonacademic and extracurricular services and activities, including athletics, in the most integrated setting appropriate.

With respect to physical education, 34 C.F.R. § 104.37(c)(1) and (2) specifically provides:

(1) In providing physical education courses and athletics and similar aid [*sic*], benefits or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of [disability]. A recipient that offers physical education courses or that operates or sponsors an interscholastic club or intramural athletics shall provide qualified ... students [with disabilities] an equal opportunity for participation.

(2) A recipient may offer to ... students [with disabilities] physical education and athletic activities that are separate or different from those offered to ... [non-disabled] students only if separation or differentiation is consistent with the requirements of § 104.34 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

Facts

The Complainant expressed concern about the lack of extracurricular activities at the School. The Complainant approached the principal of Student A's home school to inquire specifically about basketball only to learn that elementary schools in Student A's home district do not sponsor athletic teams. Instead, opportunities exist with local park districts and organizations such as the YMCA. The Executive Director explained that any student from the School can participate in an extracurricular activity, e.g., varsity football or school play, offered at his/her home school with nondisabled peers because the Participating School Corporation provides bus transportation. While the Complainant was unable to identify an extracurricular activity at Student A's home school in which she believed he could participate but was not permitted to do so, OCR looked at whether PCES' procedures ensured that the students placed at the School are provided opportunities to participate with nondisabled students in nonacademic and extracurricular activities to the maximum extent appropriate.

Students placed at the School generally do not participate in nonacademic services or activities with nondisabled students, although a few students are placed for a half day at their home school as preparation for a later placement at the home school. Art, music, and physical education are provided at the School. Interviews with staff indicated that the School provides some extracurricular activities during the school day, including dances, talent shows, and a prom. Some regular education high school students who are enrolled in a child care course work with younger students, and also engaged with students their own age in a prom and talent show at the School.

According to the PCES Executive Director, students placed at the School may participate in extracurricular activities offered by their home district. According to this administrator, the home district provides transportation, suggesting that the student could return to the home district

to participate in extracurricular activities. This individual also mentioned that at least one student had played on the football team for his home school.

OCR found that the IEPs of some students stated that the student will be able to participate in all non-educational and extracurricular programs and activities that are made available to non-disabled students. However, OCR did not obtain evidence regarding whether or not each such student's home district provided the student or parents with notice regarding available after school activities, and none of the files documented discussion of possible supplementary aids and services or modifications in order for the student to participate in such activities.

The documentation for School students also does not indicate that PCES discussed and determined whether each student could benefit from interaction with nondisabled students, and identified such opportunities where appropriate. In some instances, IEPs stated that students could not participate in nonacademic and extracurricular activities because the student attended a separate school.

Analysis and Conclusion

OCR has determined that it is appropriate to resolve this allegation via a resolution agreement prior to making compliance findings. OCR does not, at this point, have sufficient information regarding whether nonacademic and extracurricular activities could be made available to students at the School who could benefit from them with supplementary aids and services. Further, OCR lacks evidence as to whether all students at the School are notified of activities at their home school. Evidence is also incomplete as to the extent of extracurricular activities offered at the School. OCR would need to obtain this information through file reviews and interviews in order to make a finding. However, PCES has submitted an agreement, which, when implemented, will resolve OCR's concerns.

Allegation #4 - PCES fails to provide disabled students placed at the School with comparable resources, such as appropriately certified staff and comparable instructional materials, to those provided to nondisabled students.

Legal Standards

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 which receives or benefits from Federal financial assistance from the Department. Under the Section 504 regulation, at 34 C.F.R. §104.34(c), if a recipient operates a facility that is identifiable as being for persons with disabilities, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

Facts

The complaint alleged that PCES fails to provide disabled students placed at the School with comparable resources, such as appropriately certified staff and comparable instructional materials, to those provided to nondisabled students. The Complainant articulated numerous concerns with resources at the School, including a lack of textbooks and computers in Student A's class and that the School lacked teachers with specialized certifications for non-core subjects. The Complainant did not assert that the failure to provide textbooks, classroom computers or teachers without certain credentials led to Student A's IEP not being properly implemented. His IEP does not specify that textbooks are required, although an IEP developed after the OCR complaint was filed indicated that Student A "will have access to a device with the development of academic skills by utilizing various apps that will provide support with spelling, vocabulary, and word processing."

Textbooks. The Complainant expressed concern about the fact that, instead of textbooks, workbooks were used in Student A's class during the 2014-15 school year. Student A's classroom teacher (Teacher A) confirmed that she did not use textbooks. She explained she eschews textbooks as they are "boring." The class, she explained, used a variety of educational materials including workbooks, assignments she created herself to differentiate the curriculum to meet the individual needs of her students, and educational materials found at Khan Academy, a free, online learning environment. Regarding the latter, Teacher A said she would link her laptop to a projector that would place various lesson plans onto a large screen.

Teacher A took another teaching position at the School in the 2015-16 school year. Her replacement (Teacher B) advised OCR that he too does not use textbooks as the SUCCESS students could use the books to strike a classmate or employee or rip out pages. Instead, he relied on workbooks and placed copied pages matched to the students' educational level on their desks because he did not want students to rip the workbooks.

Other teachers averred they did use textbooks, and OCR noticed textbooks on bookshelves that covered numerous subjects in the high school SUCCESS room. Regardless of whether a teacher did or did not use textbooks for instruction, each teacher interviewed by OCR explained that they had sufficient instructional materials to fully implement every student's IEP.

Computers. Although the Complainant expressed concern about the lack of computers, every teacher interviewed by OCR said they had either a desktop computer or laptop and that students had access to iPad minis that could be used as assistive technology. In fact, Student A had an iPad mini. One teacher said she had five laptops for her class of eight students and another stated she had four iPads for her 11 students. Teacher C explained her nonverbal students could use a "touchboard" to communicate. The School's computer lab had eight desktop computers. Each teacher interviewed by OCR explained they had sufficient technology to fully implement every student's IEP.

PCES provided OCR with an inventory of equipment and supplies ordered at the beginning of the 2016-17 school year; included in this inventory was an invoice that documented the purchase of 30 iPad minis and 15 Lenovo Chromebooks.

Other equipment and supplies. OCR observed that the Library has over 1,000 books with content for readers at different reading levels, seven tables, magazines, a television, and VHS tapes. Teacher C said that even though her students do not read, they could look at magazine pictures and practice fine motor skills by turning pages.

Overall, teachers explained to OCR that they were “spoiled” because they had “lots of stuff” and no teacher could recall being denied a request for educational resources or supplies. During a November 2015 site visit, OCR observed students using a variety of manipulatives, games, and toys. Situated between certain classrooms were storage facilities with an extensive number of manipulatives, games, toys, assistive technology, art supplies, and other objects. The occupational and physical therapy room contained exercise balls, a stair set, a swing, disc seats, and manipulatives. Teacher C’s classroom had a separate room that contained a device that lifted students who use a wheelchair onto a changing table to meet their toileting needs. Finally, the School has a swimming pool with a lift that allows students with mobility impairments to enter the pool.

Teacher Certifications/Credentials. The Complainant expressed concern about teacher credentials in the non-core subjects of art, music, physical education, and library; she said that when Student A’s class went to the library, there was no librarian, and when the class went to the gymnasium for physical education, there was no physical education teacher. Instead, Teacher A assumed the position of librarian and physical education teacher. Teacher A also served as the students’ teacher for art and music.

Indiana has established licensure standards for teachers of art, music, and physical education and school librarians.⁴ Indiana has also established academic standards for what students are expected to learn in these subjects.⁵ Generalist elementary education teachers may teach physical education, art and music in grades k-6; however, at grades 7-12, physical education, art and music teachers are required to meet the licensure standards applicable to their field.⁶ These subjects are credit courses at the secondary school level; one year of physical education is required for a regular high school diploma.

Indiana rules do not specifically allow special education teachers in grades k-6 to teach physical education, art and music, to special education students but an attorney for the Indiana Department of Education indicated to OCR that this is the case. However, special education students in grades 7-12 taking physical education, art and music for credit must be taught by teachers

⁴ For licensure standards for physical education, fine arts (including visual arts, music, theater, etc.) and school librarian, see <http://www.doe.in.gov/licensing/repa-educator-standards>. Note that the physical education standards include expertise in working with special education students.

⁵ See <http://www.doe.in.gov/licensing/repa-educator-standards-for-physical-education-standards-and> http://www.doe.in.gov/sites/default/files/standards/fine-arts-dance-music-theatre-visual-arts/2010_in_visual_arts_standards.pdf in art and music.

⁶ <http://www.doe.in.gov/sites/default/files/licensing/2016-assignment-codes-all-jan-26-2016.pdf>.

licensed in that subject area. There is no exception for separate facilities for students with disabilities as such, but severely cognitively disabled students in grades 7-12, who are enrolled in a non-diploma alternative education program may receive physical education, art and music in courses termed “Basic Skills Development.” Basic Skills Development courses may be taught by any teacher.

OCR reviewed the licensure of all teachers at the School, excluding those leading pre-school classrooms, by visiting an IDOE website.⁷ All classroom teachers are credentialed in the area of special education and have at least a Bachelor’s degree. OCR did not determine whether there were School students in grades 7-12 that, under Indiana rules, were taking courses that should be taught by specially certified staff.

PCES stated that physical education, art and music are taught at the School by special education teachers because PCES believes that special education teachers have the appropriate expertise to teach their students. School teachers consistently explained that due to the low class size and their ability to build relationships and interact with students at the individual level, they can modify and adapt these subjects to meet the needs of the individual student.

Teachers also stated, and the evidence confirmed, that they employed a wide variety of activities in the gymnasium and have access to the outdoor playground. Similarly, teachers stated, and OCR observed, that there are a wide variety of art supplies from which to draw. Teachers explained they adapted music to connect with the students in a variety of ways and they gave numerous examples.

Review of the sample files indicate that some students’ IEPs say that they can participate in general physical education. However, most of the IEPs say that students will not participate in general physical education because they are in a separate school but will have access to “physical activities both outside and in the [School] gym.”

Analysis and Conclusion

OCR determined that students at the School received comparable resources with respect to academic materials. Teachers consistently reported to OCR that they had sufficient access to resources and educational materials to fully implement students IEPs. OCR’s examination of the quality, quantity, and availability of educational resources, coupled by anecdotal information and a visual inspection of the building, did not establish concerns about resource inequity based on disability.

With respect to the qualifications of teachers who teach physical education, art and music to students at the School, special education teachers have the necessary teaching certifications to instruct School students in grades k-6 per IDOE requirements, and OCR heard testimony of teachers that they have the ability and experience to modify and adapt such subjects to the students they teach.

⁷ <https://licenselookup.doe.in.gov>

However, OCR does not have sufficient information to determine whether there are School students in grades 7-12 enrolled in regular diploma programs who are required to be served by licensed physical education, music or art teachers under state rules. The agreement submitted by PCES addresses this issue.

Overall Conclusion

As indicated above, OCR determined that the evidence was insufficient to establish that PCES violated Section 504/Title II with respect to Allegation #1 and part of Allegation #4. OCR further determined that a Resolution Agreement is appropriate to resolve Allegation #2, Allegation #3 and the remaining part of Allegation #4. The enclosed Resolution Agreement, when fully implemented, will address these issues. The provisions of the Resolution Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Resolution Agreement until information submitted by PCES indicates implementation of the Resolution Agreement in compliance with Section 504/Title II.

This concludes OCR's investigation of the complaint and should not be interpreted to address PCES' 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 PCES 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 individual may file another 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 file a private suit in federal court whether or not OCR finds a violation.

OCR would like to thank you and your colleagues, especially Ms. Sandy Bondar, Principal, and Ms. Monica Conrad, Counsel, for the courtesy and cooperation extended to OCR during its

investigation. If you have any questions, please contact Mark Erickson at 312-730-1574 or by email at mark.erickson@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Monica Conrad, Counsel