



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

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**REGION V**  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

September 30, 2015

Mr. Forrest Claypool  
Chief Executive Officer  
Chicago Public Schools District #299  
42 West Madison Street  
Chicago, IL 60602

Re: OCR #05-15-1143

Dear Mr. Claypool:

This is to notify you of the disposition of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) on February 12, 2015 against the Chicago Public Schools District #299 (District) and the Chicago International Charter School – XXXXXX Campus (School) alleging discrimination on the basis of disability (XXXXXXX).

The Complainant alleged that 1) the School informally suspended Student A on multiple occasions during the fall of the XXXXX school year; and 2) the District and the School failed to provide Student A with educational services from about XXXX through the second week of XXXX.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134 (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in educational programs or activities that receive Federal financial assistance and by public entities, respectively. As a recipient of Federal financial assistance and a public entity, the District and School are subject to these laws.

In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of the investigation. Prior to the conclusion of OCR's investigation, the District and School requested to resolve the complaint. Subsequent discussions with the District and the School resulted in the District and School signing the enclosed agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint. The provisions of the Agreement are aligned with the complaint allegations and the information obtained during OCR's investigation and are consistent with the applicable regulations.

**Applicable Legal Standards**

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

In an educational setting, Section 504 and its implementing regulation generally provide the same or greater protection than Title II and its implementing regulation. Where, as in this case, Title II does not offer greater protection than Section 504, OCR applies Section 504 standards.

### *Discrimination Generally*

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

### *FAPE*

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation at 34 C.F.R. § 104.33(b)(1) defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. The development and implementation of an Individualized Education Program (IEP) is one means by which FAPE may be provided.

### **Allegation #1 - Facts**

During the XXXXX school year, Student A, was a XXXXX-grade student with an IEP enrolled at the School. The Complainant asserts that the School, particularly the Dean, would call the Complainant in the late mornings explaining that Student A was having a rough day and letting her know what was going on with Student A at School that day. The Complainant explained that during these telephone calls, the Dean routinely requested that she come to the School to pick up Student A for disrupting class. The Complainant reported that she received at least ten phone calls from the Dean during the fall of XXXX requesting that she pick up Student A. According to the Complainant, the Dean characterized the ensuing absences as “off-the-record suspensions” for Student A. The Complainant further clarified that on each occasion when she was asked to come to the School to pick up Student A, she was not required to sign him out of School or sign

any type of attendance record. According to the Complainant, Student A would simply be waiting for her at the front office.

The District provided OCR with Student A's discipline records, which showed that Student A was issued 9 out-of-school suspensions between XXXXXX, for behaviors such as threatening a teacher, being disrespectful to an adult, running away from a teacher, and fighting. The School contacted the Complainant each time Student A was suspended, and provided her with a written notice of each suspension. Student A's discipline records do not indicate off-the-record suspensions, nor do they indicate that the School requested that the Complainant pick up Student A from School without issuing a suspension on other occasions.

### **Allegation #2 – Facts**

The Complainant alleges that the District and the School failed to provide Student A with educational services from about XXXXX, through the second week of XXXX. Specifically, she alleges that after the District changed Student A's placement from the School to a therapeutic day school setting during a XXXXX IEP meeting, Student A could not attend any District school until XXXXX because of the District's failure to secure a placement for Student A.

The Complainant explained that during the XXXX IEP meeting at which she was present, the IEP team agreed that the School was not the most appropriate setting for Student A, and agreed that he should attend a therapeutic day school, School B. The Complainant said that the School sent home a letter dated XXXXX, explaining that Student A was being placed at School B effective immediately.<sup>1</sup> The Complainant explained that when it came time to transfer Student A to School B, School B told her that there were no spots available for Student A, that no one from the District contacted them about availability for Student A, and that he could not attend School B at that time. The Complainant reported to OCR that she contacted several people at School A and the District to secure a placement for Student A, ultimately finding a spot for him at School C where he began his enrollment in the second week of XXXXX.

The District provided OCR with enrollment information on Student A, which showed that Student A was formally enrolled at the School until XXXX, when he transferred to School B. The data then shows that he was enrolled at School B for only one day – XXXXX – after which he transferred to a different therapeutic day school (School C) on XXXXX, and where he is currently still enrolled.

Although the enrollment data shows a seamless transition from one school to the next, Student A's attendance records as provided by the District show a different timeline. The attendance records show that Student A stopped attending School A on XXXX, but was not considered a

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<sup>1</sup> Neither the Complainant nor the District provided OCR with a copy of the XXXX letter.

“member” of School C until XXXX. Excluding winter break and extra days for snow emergencies, the data indicates that Student A did not attend any school for 21 school days.

Prior to the conclusion of OCR’s investigation of this complaint, and before OCR could obtain sufficient information to make a compliance determination, the District and the School agreed to resolve this complaint. On September 30, 2015, the District and the School voluntarily executed the enclosed Resolution Agreement which, when fully implemented, will resolve the issues raised in the complaint. Under the terms of the Agreement, the District and the School will, among other things:

- Provide training to all School administrators, teachers, and non-certified staff on the Section 504 regulation at 34 C.F.R. § 104.33, which requires the School to provide a FAPE and on the Section 504 regulation at 34 C.F.R. § 104.35 with respect to the evaluation and placement of a student who is believed to need special education or related services. Specifically, the training will focus on the steps needed to ensure that a student for whom a change in placement is made by an IEP team, is transitioned to the new placement without missing instructional time.
- Provide training to all District central office staff who participate in the process through which District students are placed in private, therapeutic schools. Specifically, the training will focus on the steps needed to ensure that a student for whom a change in placement is made by an IEP team, is transitioned to the new placement without missing instructional time.
- Conduct an investigation to determine whether School officials informally suspended Student A during the XXXXX school year, notify Student A’s parent of the outcome of the investigation, and inform School staff, if it is determined that informal suspensions occurred, that they may not informally suspend students.
- Convene a group of persons knowledgeable about Student A, including Student A’s parent or guardian, to conduct an IEP meeting to determine whether compensatory services and/or remedial measures are warranted, and if so, to develop a plan for providing compensatory services and/or remedial measures to Student A.

OCR will monitor the District and the School’s implementation of the Agreement until the District and the School are in compliance with the statutes and regulations at issue in this case. OCR looks forward to receiving the first monitoring report from the District and the School, which is due on November 16, 2015.

Please be advised that the District and School 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. The complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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.

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.

We appreciate the cooperation you and your staff extended to OCR during the course of the processing of this complaint. Specifically, OCR appreciates the assistance of Senior Assistant General Counsel Kathleen Gibbons and Alan Cutler, EOCO Investigator. If you have any questions, please contact Lara Vaive at 312-730-1612 or by email at [Lara.Vaive@ed.gov](mailto:Lara.Vaive@ed.gov).

Sincerely,

Aleeza Strubel  
Supervisory Attorney

Enclosure

cc: Kathleen Gibbons, Senior Assistant General Counsel  
Alan Cutler, EOCO Investigator