



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

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NORTH DAKOTA
WISCONSIN

October 23, 2015

Mr. Michael Sutton
Superintendent
Highland Community Unit
School District #5
400 Broadway
Highland, Illinois 62249

Re: OCR Docket # 05-15-1236

Dear Mr. Sutton:

This is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation with respect to the complaint filed against the Highland Community Unit School District #5 (District) alleging discrimination on the basis of disability XXXXXXXXXX.

Specifically, the complaint alleged that during the 2014-15 school year, the District discriminated against a student (Student A) at the Highland Middle School (School) on the basis of her disability when the District (1) failed to implement Student A's individualized education program (IEP) and (2) when Student A was treated differently than other students when she was not allowed to participate in School activities offered to other students at her grade level. In addition, the complaint alleged disabled students at the School received a shortened school day because of their disabilities.

OCR is responsible for enforcing 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 and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and public entities, respectively. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws.

Legal Standard

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), states 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. The Title II

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

implementing regulation provides, at 28 C.F.R. § 35.130(a), that no qualified individual with a disability may, 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 subjected to discrimination by any public entity.

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 issues raised in this complaint do not provide greater protection than the applicable Section 504 regulations. OCR has therefore applied the relevant Section 504 standards in analyzing the issues raised in this complaint.

The regulation implementing Section 504, at 34 C.F.R. § 104.33(a), provides that a recipient that operates a public elementary education program or activity shall provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 implementing regulation further states, at 34 C.F.R. § 104.33(b), that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of disabled students as adequately as the needs of non-disabled students are met, and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34 – 104.36. The development and implementation of a Section 504 Plan or IEP is one means by which FAPE may be provided.

Policies and Procedures

District Board policy 6:120, Education of Children with Disabilities, provides that the District "shall provide a free appropriate public education in the least restrictive environment and necessary related services to all children with disabilities enrolled in the District, as required by the Individuals With Disabilities Education Act (IDEA) and implementing provisions of the School Code, Section 504 of the Rehabilitation Act of 1973, and the Americans With Disabilities Act." This policy also recognizes that the District has a legal obligation to ensure that students with disabilities are identified, evaluated and provided with appropriate education services. The policy also notifies the public of procedural safeguards under Section 504.

District Board policy 7:10, Equal Education Opportunities, provides that equal educational and extracurricular activities shall be available for all students without regard, in part, to physical or mental disability. Also, the policy stipulates that any student may file a discrimination grievance by using Board policy 2:260, Uniform Grievance Procedure.

go to either XXXXXXXXXXXX physical education class and she was allowed to attend any art class to accommodate her schedule. Teacher A stated that in the afternoons Student A would XXXXXXXXXXXXXXXXXXXX in her classroom and miss choir, which occurred during the last class period of the day at 2:00 p.m. Teacher A stated that Student A would also miss other general education classes or leave classes early or be removed from the classes when XXXXXXXXXXXXXXXXXXXX. Teacher A said, occasionally, Student A missed physical education classes because she did not bring the right shoes to wear in the physical education class.

During a December 17, 2014 IEP team meeting, the Complainant voiced concerns that Student A was XXXXXXXX choir and removed from choir due to behavior, and did not have an opportunity to transition to choir because she had only been there twice. In addition, the Complainant said she was concerned about Student A missing general education classes.

The IEP team discussed the XXXXXX that Student A engaged in and asked the Complainant if she would prefer for them XXXXXXXX Student A. The team also expressed concern at the meeting that Student A would XXXXXX after lunch until after 2:00 p.m. The IEP team determined that staff would XXXX Student A at 1:30 p.m. which would allow Student A thirty minutes XXXXXXXXXXXX transition to go to choir at 2:00 p.m. Also, the team discussed the Complainant's concern that Student A was missing art and physical education XXXXXXXXXXXXXXXX.

Analysis

The Complainant alleges the District failed to implement Student A's IEP Plan during the 2014–15 school year when it did not provide XXXXXXXXXXXX for Student A and it did not allow Student A to regularly attend art, physical education, and choir. The evidence established that although the IEP team discussed Student A's possible need for XXXXXXXXXXXX, the IEP in place at the beginning of the school year did not address the provision of XXXXXXXXXXXXXXXX.

The development of Student A's XXXXXXXX did not occur until after the April 29, 2015 IEP meeting. At the April meeting the Complainant agreed to finalize Student A's XXXXXXXX and the evidence established that the District provided Student A with a XXXXXXXXXXXX starting in May of 2015. OCR's investigation found that Student A's IEP did not require a plan for providing XXXXXXXXXXXX until after the April 29, 2015 IEP meeting. OCR found no documentary evidence indicating that the District did not implement this provision of the IEP.

With regard to Student A's attendance in art, physical education and choir, the evidence established that the District implemented these provisions of Student A's IEPs throughout the 2014-15 school year. Teacher A and the Director averred that Student A attended classes in accordance with the IEP. The IEP clearly stated that Student A needed XXXXXXXX regularly in

the afternoons and when the staff believed that XXXXXXXXX in the afternoon interfered with Student A's attendance at choir, they changed the IEP to allow staff XXXXX Student A from XXXX so she could attend choir. Also, the IEP indicated that Student A at times experienced XXXXXXXXXXXX. The IEP stated that if this occurred, the Aide should provide redirection and time-outs. The District asserted that this may have resulted in Student A missing parts of art and physical education classes. However, the evidence established this practice was in compliance with the IEP.

With regard to this allegation, the preponderance of the evidence does not support the Complainant's allegation that the District did not implement the provisions of Student A's IEPs. OCR notes that the Complainant did not identify dates or describe specific examples when the various services of the IEP were not implemented and OCR found no documentation to contradict the evidence established that the IEP was implemented as required. Upon consideration of all the information provided by the Complainant and the District, OCR determined that there is insufficient evidence to establish that the District denied Student A FAPE as alleged in violation of Section 504 and Title II.

Allegations #2 and #3

School activities

The Complainant alleged that Student A was treated differently than non-disabled students when she was not allowed to participate in School activities offered to other students at her grade level. Specifically, the Complainant said Student A was not allowed to participate in the December holiday concert and a March bowling party.

The Complainant said on December 3, 2014, she sent a note to school in Student A's daily agenda book asking for the date of the annual December holiday concert (concert). The Complainant received no response to her note but later learned the concert was held on December 3 in the evening at the School, the same day she sent the note in the agenda book. Student A did not attend the concert. The Complainant said School staff refused to explain to her why she was not provided notice of the concert and why Student A was not allowed to attend the concert.

The District said information about the concert was available to all parents on the District's website. In addition, the District indicated that Student A's Aide called the Complainant to inform her about the date of the concert and that XXXXXXXXXXXX Student A at the concert. OCR was unable to confirm this information because XXXXXXXXX is no longer employed by the District. The District confirmed that Student A did not attend the concert.

The District convened an IEP meeting on December 17, 2014 to discuss the Complainant's concern about communication about the concert. During the meeting, the team told the Complainant that for the concert they had arranged for XXXXXXXXXXXX to assist Student A

at the concert and left a telephone message for her to that effect. The Complainant responded that she never received the telephone message because she could not access voicemail. The team said it would send home paper copies of notices every day. The Complainant said she was not receiving paper communications sent home by the School in Student A's backpack. The team said it would continue to send home paper communications daily and contact the bus company and arrange for the bus driver to hold Student A's backpack until she exited the bus each day. Also, the Complainant informed the team that in the case of an emergency, the team should continue to call her by telephone, until the team reached her.

The Complainant alleged that Student A was denied participation in a March 2015 "VIP Bowling Party" for XXXXXXXX grade students. The Complainant learned about the party after it was held. The Complainant said Teacher A told her that Student A was not allowed to attend the bowling party because it was an earned event for XXXXXXXX students and Student A was not eligible; however, Teacher A refused to explain to her how students "earned" this event.

The District acknowledged that that Student A was excluded from the bowling party. The District stated that the School hosts a special field trip to a bowling alley for students that meet the School's VIP requirements. The requirements include no disciplinary referrals to the Directed Study Room, meeting at least 50% of the student's accelerated reader goal by mid-term, and no more than five late assignments. Students must satisfy all three requirements to participate in the VIP Bowling Party field trip.

Teacher A determined that Student A did not meet the qualifications for the VIP field trip. According to District procedure, a District administrator should have been notified prior to the teacher unilaterally deciding Student A would not be eligible for the field trip. Teacher A did not contact the administration about her decision that Student A did not qualify for the trip. According to the District, the District's practice is to allow a student with an IEP to participate in a field trip unless there is a documented safety concern and Teacher A did not comply with this procedure. Shortly after, the School Principal found out that Student A did not participate in the field trip, he addressed this issue with Teacher A and they discussed District procedures for field trips that affect disabled students.

On April 10, 2015, the District convened an IEP team meeting at the Complainant's request. The Complainant raised concerns that Student A was not included in school activities. The team discussed three upcoming field trips and end of the year activities, including an evening concert and a movie day, and what assistance Student A would need in order for Student A to participate in these activities. The District said that Student A participated in all of the remaining field trips and end of the year School activities.

Shortened School Day

The Complainant alleges that during the 2014-15 school year, the District discriminated against disabled students by requiring them to leave school early to be transported home.

According to the Complainant, during most of the 2014-15 school year, Student A left school 10 to 15 minutes early, before the end of the school day, to board the school bus that transported her home. The Complainant said in late April 2015, she met with the Superintendent and expressed her concern that each day when Student A and other disabled students leave school early the District is discriminating against the students due to their disabilities. The Complainant told OCR that after she met with the Superintendent in April, Student A was allowed to remain in school until the end of the school day.

The District documented that during the 2014-15 school year, certain disabled students were dismissed from class early to board buses prior to other students being released from class. The District asserted that this practice was to ensure that students were able to safely and consistently board buses prior to the release of the other students. According to the District, this decision was made at the Middle School level and District administrators were not aware that the School had implemented this procedure until the Complainant complained about the practice to the Superintendent. The Superintendent took action to correct this practice and met with the Principal and middle school staff to ensure the practice was stopped.

Prior to the conclusion of OCR's investigation of these allegations, and before OCR could obtain sufficient information to make a compliance determination, the District agreed to resolve allegations #2 and #3. In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint and OCR determines it is appropriate to resolve the allegations with an agreement. On October 23, 2015, the District voluntarily executed the enclosed Resolution Agreement which, when fully implemented, will resolve the issues pertaining to allegations #2 and #3 raised in the complaint. The provisions of the agreement are aligned with the complaint allegations and the information obtained during OCR's investigation, and consistent with the application regulations. OCR will monitor the District's implementation of the agreement until the District is in compliance with Section 504 and Title II and their implementing regulations at issue in this case.

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. 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

Page 9 – Mr. Sutton
OCR Docket 05-15-1236

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. We particularly appreciate the cooperation of the District's legal counsel, Ms. Stephanie Jones. If you have any questions, please contact Ms. Catherine Martin, Equal Opportunity Specialist, at 312-730-1592 or by email at Catherine.Martin@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure
cc: Ms. Stephanie Jones
Attorney