



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

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

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March 31, 2017

Dr. Kathy J. Hinz
Superintendent
Crystal Lake Elementary District # 47
300 Commerce Dr.
Crystal Lake, IL 60014

RE: OCR # 05-17-7002

Dear Dr. Hinz:

This is to advise you of the resolution of investigation of the above-referenced complaint against Crystal Lake School District # 47 (District) alleging discrimination on the basis of disability. The complaint alleged that the District discriminates against sixth, seventh, and eighth grade students with disabilities in the Alternative Learning Class (ALC) at XXXXXXXX (School) by excluding them from participation in grade-wide field trips.

OCR is responsible for enforcing section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. § 794, *et seq.*, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities of recipients of federal financial assistance. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131, *et seq.*, and its implementing regulations at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs, services, and activities of public entities. As a recipient of federal financial assistance from the Department and as a public entity, the District is subject to OCR's jurisdiction under Section 504 and Title II.

This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the investigation was resolved.

Legal Authority

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.

Section 504 and Title II provide that no qualified persons with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination by recipients of federal financial assistance or by public entities.¹

¹ 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.

Free and Appropriate Public Education (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 based on the adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36. The implementation of a Section 504 Plan is one means of providing FAPE.

Educational Setting

The Section 504 implementing regulation at 34 C.F.R. § 104.34(a) requires recipients to educate, or provide for the education of, each qualified person with a disability who is in the recipient's jurisdiction with persons without disabilities to the maximum extent appropriate to the needs of the person with a disability. A recipient shall place a person with a disability in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person 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 34 C.F.R. § 104.34(a), it shall take into account the proximity of the alternate setting to the person's home.

The Section 504 implementing regulation at 34 C.F.R. § 104.34(b) states that, in providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the nonacademic activities set forth in 34 C.F.R. § 104.37(a)(2), a recipient shall ensure that persons with disabilities participate with persons without disabilities in such activities and services to the maximum extent appropriate to the needs of the person with a disability in question.

Nonacademic Services

The Section 504 implementing regulation at 34 C.F.R. § 104.37 states that a recipient shall provide nonacademic 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.

Factual Information

The District stated that the Adjusted Learning Middle School Program (Program) serves students in sixth through eighth grades with intellectual disabilities. The District explained

that because the class has students in multiple grades and students may remain in the Program for multiple years as determined by their individualized education program (IEP) teams, the curriculum for the Program rotates through a three-year cycle. Therefore, the Program's units of study do not align directly with the general education curriculum for any grade. The Program includes a life skills component which incorporates field trips that Program students take every six to eight weeks.

At the time OCR received the instant complaint, the District's position was that having all Program students attend all of the field trips of each grade would result in too much time out of the classroom for Program students. Further, the District stated that the field trips taken by the general education students do not align with the curriculum of Program students. In determining whether Program students would attend the field trips taken by general education students, the Program teachers would review the field trips to determine whether the Program students as a group would attend. Although the District acknowledged that it did not make individualized determinations for each Program student as to whether the field trip would have been appropriate for the student's participation, it denied categorically excluding students in the Program from field trips taken by their general education peers. Rather, the District noted that Program staff attempt to "strike[] a balance between focusing on each student's individual goals and being a class with its own curriculum and trips." Further, to the extent that some Program students' IEP teams have placed them with their general education peers for a portion of the day, those ALC students participate in field trips that relate to their participation in the general education classroom. OCR obtained some evidence indicating that students in the ALC Program did not attend some curriculum-based and non-curriculum based field trips with their general education peers.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving the allegation. In order to conclude OCR's investigation of this allegation, OCR would have had to conduct interviews and review documents, including the IEPs of each Program student for the past several school years.

In light of the District's willingness to address the allegation without further investigation, OCR determined entering into a voluntary resolution agreement was appropriate.

To resolve the allegation, the District submitted a signed resolution agreement (Agreement) to OCR on March 31, 2017. The District committed to take actions such as: (1) revising its middle school field trip guidelines, (2) training the District's ALC teachers and staff as well as middle school principals on the revised middle school field trip guidelines, and (3) offering parents of students in the ALC an opportunity to convene an IEP team meeting if they have any concerns about their child's participation in prior middle school field trips.

This concludes OCR's investigation of the complaint. These findings 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. OCR will monitor the District's implementation of the Agreement. When OCR concludes that the District has fully

implemented the terms of the Agreement and is in compliance with the statutes and regulations at issue in the case, OCR will terminate its monitoring and close the case. If the District fails to implement the Agreement, OCR may seek compliance with the federal civil rights laws through any means authorized by law, including by enforcing the specific terms of the Agreement.

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.

Please be advised that the District may not harass, coerce, intimidate, discriminate or otherwise retaliate against any individual because he or she asserted a right or privilege under a law enforced by OCR or filed a complaint, testified, or participated in the complaint resolution process. If this happens, the individual may file a retaliation complaint with OCR.

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, OCR will seek to protect, to the extent provided by law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released.

Thank you for the assistance that the District and its outside counsel, Kendra Yoch, extended to OCR in resolving this complaint. We look forward to receiving the District's first report about its implementation of the Agreement by June 30, 2017. If you have any questions, please contact Lauren Lowe at Lauren.Lowe@ed.gov or (312) 730-1584.

Sincerely,

Aleeza M. Strubel
Supervisory Attorney

Enclosure

cc: Kendra Yoch