

August 5, 2019

Dr. Janice Jackson  
Chief Executive Officer  
Chicago Public Schools District #299  
42 West Madison Street  
Chicago, IL 60602  
*Via electronic mail only:* [CEDO-Jackson@cps.edu](mailto:CEDO-Jackson@cps.edu)

Re: OCR # 05-19-1179  
XXXXXXXXXXXXXX

Dear Dr. Jackson:

This is to advise you of the resolution of the above-referenced complaint filed against the Chicago Public Schools District #299 (District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleges that the District discriminated against Student A on the basis of disability XXXXXXXXXXXXXXXXXXXX by denying the Complainant's XXXXXXXXXXXX request to modify the District's admissions criteria applicable to the XXXXXXXXXXXXXXXXXXXX.

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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, 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, which prohibit discrimination on the basis of disability by public entities. The District receives Federal financial assistance from the Department and is a public entity. Accordingly, the District is subject to the requirements of Section 504 and Title II, and OCR has jurisdiction over this complaint.

During the investigation, OCR reviewed information provided by the Complainant and the District. Prior to the conclusion of OCR's investigation, the District requested to resolve the complaint allegation voluntarily pursuant to Section 302 of OCR's *Case Processing Manual* (CPM).

### **Legal Standards**

The regulation implementing Title II 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 such entity. The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides, in relevant part, that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity that receives Federal financial assistance from the Department.<sup>1</sup>

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<sup>1</sup> When both Section 504 and Title II are applicable, OCR applies the law providing the greater protection of the individual with disabilities.

With respect to elementary and secondary educational services, the Section 504 implementing regulation defines a person with a disability as any person who (1) has a physical or mental impairment which substantially limits one of more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. 34 C.F.R. § 104.3(j)(1). “Major life activities” include caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. 34 C.F.R. § 104.3(j)(2)(ii). The regulations identify “qualified” as a person (1) of an age during which persons without disabilities are provided such services, (2) of any age during which it is mandatory under state law to provide such services to persons with disabilities, or (3) to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA). 34 C.F.R. § 104.3(l)(2). The regulation implementing Title II at 28 C.F.R. § 35.130(b)(7) requires a public entity to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

In determining whether a reasonable modification is legally required, the recipient/public entity must first engage in an individualized inquiry to determine whether the modification is necessary. If the modification is necessary, the recipient/public entity must allow it unless doing so would fundamentally alter the nature of the service, program, or activity. Even if a specific modification would constitute a fundamental alteration, the recipient/public entity is still required to determine if other modifications might be available. However, a recipient/public entity is not required to make modifications that would result in an undue administrative or financial burden.

### **Facts**

The Complainant, the parent of an XXXXXX grade student at XXXXXXXXXX (School) during the XXXXXXXXXXXX, Student A, alleges that the District discriminated against Student A on the basis of disability by denying the Complainant’s XXXXXXXXX request to modify the District’s policy regarding admission to XXXXXXXXX based on her son’s disability. Specifically, the Complainant asked the District to modify the requirement that her son, as a student who receives special education and related services pursuant to an Individualized Educational Program (IEP), to earn a minimum combined mathematics and reading score of 48 on the Northwest Evaluation Assessment (MAP test) in order to qualify to apply to XXXXXXXX.<sup>2</sup>

According to the Complainant, Student A was otherwise qualified to apply to XXXXXXXX but was not able to meet the required minimum MAP test score due to his disability. Student A earned a combined score of XX on the MAP test. The Complainant asserts that staff at XXXXXXXX informed her that under the School’s prior admissions policy, the School admitted several students who did not meet the MAP test score requirement based solely on an interview/audition.

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<sup>2</sup> The Complainant’s complaint also asserted that she requested a modification for the MAP test score requirement to enable her son to apply to the XXXXXXXXXXXXXXXX. However, the documentation that she provided to OCR and the information that she communicated to the District indicated that she only requested a modification to enable her son to apply to ChiArts. The documentation provided by the District confirms that the Complainant did not request a modification of the minimum MAP score to permit Student A to apply to XXXXXXXX.

Documentation provided by both the Complainant and the District shows that the Complainant reached out to the Communications Manager at the District's Office of Access and Enrollment (OAE Manager) on XXXXXXXX via email to inform her that the GoCPS portal<sup>3</sup> showed that Student A was not eligible to apply to XXXXXXXX because of his MAP test scores, which was his "top and only choice," and to ask about the process that allowed students who did not meet the minimum required MAP test scores to interview at XXXXXXXX to explain their scores and show their work. In her email, the Complainant stated to the OAE Manager that she learned about this alternative process through XXXXXXXX website and that she confirmed the existence of this process from a tour guide at XXXXXXXX. The OAE Manager responded that same day to the Complainant and informed her that the process she described was part of the previous school year's application process, but that it was no longer an option during the XXXXXXXXXX school year for students who were interested in applying to XXXXXXXX but did not meet the minimum eligibility requirements. In another email the OAE Manager sent to the Complainant that day she also explained that XXXXXXXX established separate minimum eligibility requirements for students with an IEP, like Student A, to ensure that these students are not denied access to the XXXXXXXX's programs, but stressed that students with IEPs are required to meet these minimum requirements and that no other high school in the District allows students to be considered for programs if the student does not meet the minimum eligibility requirements established by the school.

On XXXXXXXXXXXX, the Complainant also contacted the Principal at XXXXXXXX to request that Student A be allowed the opportunity to interview for admission to XXXXXXXX. In response, the Principal stated to the Complainant that since the previous school year, the District began to control the admissions process through its GoCPS portal, and that in late XXXXXXXXXXXX the District informed XXXXXXXX it could no longer consider applicants who did not meet the minimum eligibility as the School had done in the past. The Principal also stated that XXXXXX had been working with the District's Office of Innovation and Incubation to contest the District's decision to eliminate consideration of other applicants, but that the school's efforts had not been successful in changing the District's policy.

On XXXXXXXXXXXX, the District's GoCPS Manager contacted the Complainant to reiterate the information the OAE Manager had provided to the Complainant on XXXXXXXXXXXX regarding the minimum eligibility requirements established by XXXXXXXX and other schools for students with IEPs, and to inform her that she could contact XXXXXXXX during Student A's freshman year in high school to inquire about transfer opportunities during his sophomore year. The Complainant responded to the GoCPS Manager that same day by stating that the separate eligibility requirement for students with IEPs is not equitable because it puts all students with IEPs in one category for admissions, and that the only process that provided equity to students like Student A, whom the Complainant asserted could not score well on standardized tests due his disability, was the alternative process that XXXXXXXX had followed in some cases prior to the XXXXXXXXXXXX school year. In another email, the Complainant also questioned why a minimum test score for incoming freshman was necessary when transfer requirements for XXXXXXXX do not include such a requirement.

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<sup>3</sup> GoCPS is the District's online portal that allows families to research and apply to District and charter schools/programs, schedule admissions screenings, and receive and accept offers from multiple schools/programs with just one online application and one deadline.

On XXXXXXXXXXXX, the GoCPS Manager contacted the Complainant again by email to inform her that the District had met with the administration at XXXXXX to discuss her request to modify the minimum eligibility requirements for Student A. The GoCPS Manager stated that although they were able to lower the attendance requirement from 92% to 90%, a modification the Complainant had not requested for Student A, he was required to meet the minimum MAP scores in order to apply for admission. The GoCPS Manager again encouraged the Complainant to contact XXXXXX to inquire about transfer opportunities during Student A's sophomore year. The Complainant responded that this modification was not helpful because Student A already met the attendance requirement. The District did not provide OCR with an explanation of the basis for the GoCPS Manager and XXXXXX administrators' decision to deny the Complainant's request to modify the MAP score requirements.

### **Conclusion**

The District expressed an interest in resolving this complaint prior to the conclusion of OCR's investigation. OCR determined that it is appropriate to resolve the complaint with an agreement because OCR's investigation has not proceeded to a point where it is ready to issue a final determination. To resolve the allegation, the District has agreed to (1) consider the Complainant's request to modify the minimum required MAP test scores for Student A to apply to XXXXXX; and (2) in the event the District makes an individualized determination to deny the Complainant's request because the District determines that either (a) the modification requested by the Complainant is not necessary, or (b) the modification would fundamentally alter the nature of the District's GoCPS admissions program, the District must provide data supporting its determination.

OCR will monitor the implementation of the Agreement and looks forward to receiving the District's monitoring submission by October 15, 2019.

This concludes OCR's investigation of the complaint and 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.

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 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 appreciates the assistance of your staff throughout our investigation of this complaint. If you have any questions regarding this matter, please do not hesitate to contact Alonzo Rivas at 312-730-1684 or by email at [Alonzo.Rivas@ed.gov](mailto:Alonzo.Rivas@ed.gov).

Sincerely,

Aleeza M. Strubel  
Supervisory Attorney

cc: XXXXXXXX  
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