



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 20, 2021

Dr. Richard Jancek
Superintendent
Dwight Common School District #232
801 S. Columbia Street
Dwight, IL 60420

Sent by email only to: jancekr@dwightk12.org

OCR Case No. 05-21-1178

Dear Dr. Jancek:

On April 12, 2021, the U.S. Department of Education (Department), Office for Civil Rights (OCR), receive a complaint against the Dwight Common School District #232 (District) alleging discrimination on the basis of disability (XXXXX). Specifically, the complaint alleges the District discriminated against a XXXXX (Student A) based on disability when from XXXXX, Student A was denied a free appropriate public education (FAPE) when the District failed to implement Student A's "Section 504 Plan."

OCR enforces 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces 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. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance and a public entity, the District is subject to the requirements of Section 504 and Title II. OCR therefore has jurisdiction over this complaint.

OCR investigated the complaint by reviewing documents provided by the Complainant and the District, and interviewing the Complainant and three District staff members. Prior to the completion of OCR's investigation, the District requested to resolve the complaint under Section 302 of OCR's *Case Processing Manual*. OCR determined that a 302 agreement is appropriate in this case. A summary of OCR's investigation to date and the 302 agreement follows.

Applicable Legal Standard

The regulation implementing Section 504 at 34 C.F.R. §104.33 requires that a recipient that operates a public elementary or secondary education program provide a free appropriate public education to each student with a disability. A free appropriate public education is defined as

regular or special education and related services that are designed to meet the student's individual needs as adequately as the needs of non-disabled students are met.

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 allegation in this complaint do not provide greater protection than the applicable Section 504 regulations in this case, and has therefore applied the relevant Section 504 standards in making its determination.

Facts

During the 2020-21 school year, Student A was a XXXXX in the District. During the relevant time, from XXXXX, Student A attended school either fully remotely or on a "hybrid" schedule in which he attended school in-person every other day and remotely on the days that he did not attend in-person. During hybrid learning, Student A was in XXXXX and attended school in-person with approximately ten other students. When Student A participated remotely during the hybrid schedule, he received online instruction simultaneously with students who were attending school in-person. One of Student A's teachers (Teacher A) teaches XXXXX students at Student A's school. Another XXXXX teacher (Teacher B) teaches XXXXX students at Student A's school.

Student A is a student with a disability that the District has determined to be eligible for services under Section 504. On XXXXX, the District convened an annual meeting to review Student A's eligibility for services and/or accommodations under Section 504 (504 Team Meeting). The Complainant, Principal, Teacher A, Teacher B, school nurse, and Program Manager from the Livingston County Special Services Unit (LCSSU) attended the 504 Team Meeting, during which a written "Section 504 Plan" (504 Plan) was developed for Student A.

The complaint alleges that the District denied Student A FAPE by failing to implement the following provision of Student A's 504 Plan:

XXXXX

The Complainant and the District staff members interviewed by OCR provided conflicting information about what the District provided to Student A, how the District was to implement the specific provisions in Student A's 504 Plan at issue in the complaint, and what is necessary for Student A to receive FAPE.

According to the District, Teacher A and Teacher B provided Student A with accommodations and supports identified in his 504 Plan related to XXXXX. Teacher A and Teacher B acknowledged that they did not provide Student A with some of the accommodations and supports while Student A participated remotely, but to the extent the District failed to provide Student A with some of the provisions, the District stated that either the provision was not applicable to remote learning, the teacher determined that providing it would call unnecessary attention to Student A's disability, and that any alleged failure to provide the provision did not impact Student A's ability to learn or deny him FAPE.

The Complainant, however, asserts that the District failed to meet its obligations to Student A under Section 504, disagrees with the District's position that what they provided to Student A

was consistent with the accommodations and supports identified in his Section 504 Plan, and believes the District did not provide Student A with FAPE. Although District staff identified specific steps that they took to implement each provision of Student A's 504 Plan at issue in this complaint, the Complainant disagrees that the steps identified by the District were sufficient to meet its obligations under the 504 Plan. For example, regarding the provision of XXXXX, Teacher A told OCR that she provided Student A with an XXXXX, as she did with all her students. She also utilized an XXXXX. The Complainant believes the provision XXXXX required the District not only to provide Student A with an XXXXX, but to XXXXX. With respect to the provisions that teachers would XXXXX, Teacher A and Teacher B both told OCR that they XXXXX. The Complainant believes, however, that the term XXXXX meant that Teacher A and Teacher B were to XXXXX.

District staff interviewed by OCR generally reported that during the XXXXX meeting, the 504 Team did not focus on how the District was to implement Student A's 504 Plan, which is consistent with the information provided by the Complainant. Additionally, District staff indicated to OCR that some provisions were included in Student A's 504 Plan because they had been included in his prior plans or because the Complainant requested the provision, instead of based on a determination by the 504 Team that the accommodation or support was necessary to provide Student A with FAPE due to his disability. Furthermore, both the District and the Complainant agree that the 504 Team did not discuss whether the 504 Plan applied to remote learning or any differences in how the plan would be implemented in the remote setting at the 504 Team Meeting.

Conclusion and Resolution Agreement

OCR has concerns with the conflicting testimony regarding the implementation of Student A's 504 Plan, the methodology used by the District in developing Student A's 504 Plan, and the vaguely worded provisions included in Student A's 504 Plan resulting in a lack of clarity regarding what is necessary for Student A to receive FAPE. OCR determined that a resolution agreement with the District is appropriate under the circumstances presented by this case.

The attached Resolution Agreement is fully aligned with the complaint allegations. It requires the District to provide appropriate training to District teachers and administrators on the requirements of Section 504 and Title II and the District's responsibility to educate students with disabilities under these laws by providing FAPE to each qualified student with a disability in the District's jurisdiction regardless of the nature or severity of the disability, and to convene a 504 Team meeting to determine and clearly identify the services necessary to provide Student A with FAPE. OCR will monitor the implementation of the Resolution 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.

OCR would like to make you aware that individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be aware that the laws OCR enforces also prohibit the District from harassing, coercing, intimidating, or discriminating against an individual because the individual filed a complaint or participated in OCR's complaint resolution process. If this happens, the individual may file a complaint against the District 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, 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 privacy.

OCR would like to thank the District for the courtesy and cooperation extended to OCR during the investigation. OCR looks forward to working with the District during the monitoring of the Resolution Agreement. If you have any questions or need assistance, you may contact Ms. Catherine Martin, Equal Opportunity Specialist, at (312) 730-1592 or catherine.martin@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure