



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CHICAGO, IL 60604

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August 30, 2023

Tim Veiseth
Interim Superintendent
North Mahaska Community School District

Sent via email only to: (redacted content)

RE: OCR Case No. 05-21-1195

Dear Mr. Veiseth:

This letter is to inform you of the disposition of the complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) against the North Mahaska Community School District (District) alleging discrimination based on disability.

Specifically, the Complainant alleges that the District discriminated against Student A, an (redacted content) student, based on disability (redacted content) when:

- (1) Beginning on (redacted content), and continuing in the spring (redacted content), Teacher A harassed Student A based on disability, the District was aware of the harassment and failed to respond appropriately; and
- (2) On (redacted content), the District denied Student A a free appropriate public education when it inappropriately restrained and secluded Student A.

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 from the Department. 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 from the Department, the District is subject to the requirements of Section 504 and Title II.

Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint. Discussions between OCR and the District resulted in the District's signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the allegations and issues raised in the complaint.

Legal Standards

Definitions

For purposes of this investigation, “physical restraint” or “restraint” is a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching or holding of the hand, wrist, arm, shoulder or back for the purpose of inducing a student who is acting out to walk to a safe location.

“Seclusion” is defined as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. The term does not include a timeout, which is a behavior management technique that: (a) is part of an approved program; (b) involves the monitored separation of the student in a non-locked setting; and (c) is implemented for the purpose of calming.

Section 504 and Title II

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 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.

Harassment

Harassment based on disability can constitute a form of discrimination prohibited by Section 504 and Title II. Disability harassment is intimidation or abusive behavior toward a student based on disability that interferes with or denies a student’s participation in or receipt of benefits, services, or opportunities in the institution’s program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Harassment of a student by an employee can be discrimination in violation of Section 504 and Title II. The extent of a recipient’s responsibilities when an employee harasses a student is determined by whether or not the harassment occurred in the context of the employee’s provision of aids, benefits, or services to students. OCR will consider a variety of factors in determining whether or not the harassment has taken place in this context including the type and degree of

responsibility given to the employee to provide aids, benefits, or services to students, to direct and control student conduct, or to discipline students generally; the degree of influence the employee has over the particular student involved, including in the circumstances in which the harassment took place; where and when the harassment occurred; the age and educational level of the student involved; and as applicable, whether, in light of the student's age and educational level and the way the institution is run, it would be reasonable for the student to believe that the employee was in a position of responsibility over the student, even if the employee was not.

FAPE

The Section 504 regulation at 34 C.F.R. § 104.33 requires school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met and are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that a district shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. The regulation at 34 C.F.R. § 104.35(b) provides that a district shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services.¹

Moreover, the Section 504 regulation at 34 C.F.R. § 104.35(c) provides that in interpreting evaluation data and in making placement decisions, a district shall (1) draw upon information from a variety of sources, including physical condition and adaptive behavior;² (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the

¹The procedures must ensure that: (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). 34 C.F.R. § 104.35(b)(1)-(3).

²The regulation at 34 C.F.R. § 104.35(c)(1) also lists the following possible sources: aptitude and achievement tests, teacher recommendations and social or cultural background.

placement options; and (4) ensure that the placement decision is made in conformity with § 104.34 which requires placement in the regular educational environment to the maximum extent appropriate.

When a student exhibits behavior that interferes with the student's education or the education of other students in a manner that would reasonably cause a teacher or other school personnel to suspect that the student has a disability, as defined under Section 504, the school district must evaluate the student to determine if the student has a disability and needs special education or related services because of that disability. For a student who has already been identified as a student with a disability, a school's repeated use of restraint or seclusion may suggest that the student's current array of regular or special education and related aids and services is not sufficient to provide FAPE.

As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

Relevant District Policies and Procedures

The District's Physical Restraint and Seclusion of Students Policy (R&S Policy) provides that "physical restraint or seclusion is reasonable or necessary only under the following circumstances:

- To prevent or terminate an imminent threat of bodily injury to the student or others; or to prevent serious damage to property of significant monetary value or significant nonmonetary value or importance; or
- When the student's actions seriously disrupt the learning environment or when physical restraint or seclusion is necessary to ensure the safety of the student or others; and
- When the less restrictive alternatives to seclusion or physical restraint would not be effective, would not be feasible under the circumstances, or have failed in preventing or terminating the imminent threat or behavior; and
- When the physical restraint or seclusion complies with all applicable laws."

The District's Use of Physical Restraint and Seclusion Policy (R&S Use Policy) states that "the seclusion or physical restraint is used only for as long as necessary." The R&S Use Policy states that the area of seclusion will be a designated seclusion room and sets forth a protocol if a seclusion exceeds 15 minutes.

Background

In the 2020-21 school year, Student A was an (redacted content) student at (redacted content) (School). The District identified Student A as a student with a disability and Student A received services under an IEP and a Behavioral Intervention Plan (BIP).

Student A's (redacted content) BIP provides that, in response to disruptive behavior, the Administrator or School staff should utilize the following techniques: verbal or gestural redirects and cues; ignoring/removal of attention; and brief walks or breaks. The BIP further states that, if (redacted content) intervention strategies to deescalate the behavior, including the following: remove work demand/materials; cue Student A to go to a designated area of the office; provide adult escort; indicate verbally and visually how long he will remain in the office until a check-in will occur; at check-in, give direction of desired behavior; and contact the parent.

Facts

Alleged Harassment

Student A's Parent said that, on Friday, (redacted content), Student A's Special Education Teacher (Teacher A) harassed Student A in the hallway of the School and physically assaulted him. Student A told OCR that he was on his way back to his classroom after getting a face mask in the office when he encountered Teacher A in the hallway. He described his behavior toward Teacher as being a "smart-aleck." Student A said Teacher A told him to go to the office. Student A said that he did not want to go to the office, so he disregarded the instruction and stood still. Student A said he stood in the hallway with Teacher A for over 2 hours.

Student A told OCR that, at one point when he tried to get away, Teacher A (redacted content). He said that another time, Teacher A (redacted content) for approximately 10 seconds, which left a (redacted content). The Parent provided OCR a copy of pictures of Student A's (redacted content); she did not provide any picture of a (redacted content).

Student A also told OCR that, while in the hallway, Teacher A harassed him by making the following statements to him: 1) "what are you going do, go call your mommy;" 2) "you just hate talking to people smarter than you;" and 3) "this is the reason kids have IEP's nowadays."

Teacher A denied that he harassed or assaulted Student A. Teacher A told OCR that, on (redacted content), the classroom teacher asked him and the Dean to meet Student A in the hallway after Student A left his classroom without permission for the second time. The Dean said they asked Student A to go to the office on several occasions, but Student A refused and became agitated. He said they followed Student A's IEP and BIP by giving Student A multiple redirects and asking him to go to the office for a break and ignoring his verbal outbursts. Teacher A said that, because he did not want Student A to return to the classroom and disrupt other students, he blocked Student A from leaving the hallway to return to the classroom. He said he called the Parent, but Student A would not listen to her, so he asked the Parent to come pick-up Student A from school (at the end of the school day).

Teacher A denied that he (redacted content) Student A's (redacted content) or (redacted content) during this encounter. He said that, when they were at the end of a hallway near a brick wall, Student A tried to get past him on the side of the brick wall and that Student A may have (redacted content) while Teacher A was attempting to block Student A's movement with his

body. The District provided OCR a copy of one video (without audio) of the incident in the hallway. The video did not show Teacher A (redacted content) or (redacted content) Student A's (redacted content). The video shows Student A attempting to get past Teacher A, first on Teacher A's left side then quickly back between the exposed brick wall and Teacher A's right side. The video shows Teacher A blocking Student A's path between himself and the exposed brick wall, stopping Student A's forward progress while Student A's body is up against the wall for about 2-3 seconds.

Teacher A denied saying, "what are you going to do, go call your mommy," but said that he may have said, "you need to go call your mom," and did not say it in a disrespectful tone. Regarding the second alleged statement, Teacher A explained he may have said something similar, such as "You don't like it when you are talking to people smarter than you." Teacher A explained that Student A has a habit of twisting words, and this was not intended to be a putdown. Regarding the third alleged statement, Teacher A said that he may have made a similar comment about IEPs to another staff member, but does not recall saying anything about IEPs directly to Student A. He denied laughing at or mocking Student A during the incident.

Alleged Restraint and Seclusion

Student A said that, after over 2 hours in the hallway, Teacher A "grabbed [him] by the arm, dragged [him] to the conference room, and threw [him] in a chair," causing him to bruise his left arm. He said that he hit Teacher A in the back when Teacher A threw him in the chair. Student A said he tried to leave the conference room multiple times, but the Instructional Coach was outside blocking the door. He said he was in the conference room until the end of the school day, which he believes was approximately 30 minutes.

Teacher A said that, based on his experience with Student A, he realized the situation in the hallway was escalating and he felt that, for the safety of others and himself, he needed to remove Student A from the hallway and place him into the office. Teacher A said Student A yelled and cursed at staff; forcefully swung his bag around his shoulders, such that the bag hit Teacher A in the groin, causing him pain and discomfort; and shoved him in the chest. He said he used a restraint hold, which he learned through Crisis Intervention Training he received from the District, placing one hand on Student A's elbow and one hand on his shoulder and moved Student A 20 feet to the conference room. Teacher A said that, once he released Student A, Student A made a large roundhouse swing at him with his fist, and that Student A's forearm hit the teacher's shoulder and his fist hit the teacher's back. Teacher A said he then took Student A by the arms and placed him in a chair. He denied throwing Student A in the chair. He said that he raised his voice at Student A, telling him that he could not hit a teacher, and then left the conference room. He said that the restraint and moving of Student A into the conference room and placing him in the chair lasted approximately 10 seconds.

Teacher A denied that Student A was secluded. He said that the door was shut, and the Instructional Coach was at the door, but he was not blocking egress.³ He said he did not see

³ The Instructional Coach is no longer employed by the District and was not available to interview.

Student A attempt to leave the conference room or hear Student A ask to leave the conference room. The District told OCR that there is no video camera recording the conference room area or interior.

The Science Teacher told OCR that she witnessed the interaction in the hallway between Teacher A and Student A. She said she saw Teacher A holding Student A's arms behind his back, bring him into the office, and "shove" him into the chair. She said she heard Student A yelling at Teacher A and using foul language. She said the Instructional Coach stood by the door with it shut while Student A yelled and screamed. She said she heard Student A throw a chair in the conference room.

The Instructional Coach said in a written statement that "[Teacher A] grabbed [Student A] from behind placing his hands on the back of Student A's arms and took him to the office and placed him in our conference room. As [Teacher A] was getting [Student A] in the office/conference room, [Student A] threw a punch at [Teacher A] in the upper-right side of the back. [Teacher A] got [Student A] into a chair in the conference room, then [Teacher A] closed the door and asked me to make sure he stayed in the room."

The Secretary said in a written statement that she saw Teacher A "holding Student A's arms behind his back" and Teacher A said, "you cannot hit me." She said that "[Teacher A] took [Student A] into the conference room and set him down in a chair. When [Teacher A] let go of [Student A's] arms[,] [Student A] hit [Teacher A] in the shoulder area and used the f--- you remarks many times." She also said that "[the Instructional Coach] held the door shut so [Student A] could not get out. [Student A] yelled several times and banged on the door many times."

Documentation and Consequences of (redacted content) Incidents

According to the Principal and Dean, they called the Parent to come to the school to pick up Student A when he was in the conference room. Teacher A said that Student A left the School with his Parent at around 3:30 p.m., which was at the end of the school day, and the incidents in the hallway and conference room together lasted approximately 2 hours and 45 minutes. Teacher A completed a report per the District's policy regarding documentation of restraints. According to Teacher A, when the Parent arrived, Teacher A met the Parent at her vehicle and discussed the incidents. Specifically, Teacher A told her that he used a restraint hold on Student A in the hallway to move him to the conference room and Student A (redacted content) on a wall. According to the Dean, later that day, he and the Principal followed up with the Parent by telephone to further discuss the incidents and informed her that Student A would be (redacted content). The Dean told OCR that the decision (redacted content) was made in collaboration with the Principal, and that they used a discipline matrix and reviewed Student A's discipline history to determine (redacted content). The District also provided the "Notification of Occurrence of Physical Restraint" to the Parent dated (redacted content), which stated that Teacher A restrained Student A in the hallway for less than 10 seconds to move him approximately 20 feet into the office because of "disruption of learning environment; physical aggression; escalated behavior."

The Parent said that this is the first notice of restraint she has received and does not believe Student A has been restrained or secluded before this incident or since.

The Parent said that the School (redacted content) because Student A (redacted content). The Parent said that, when Student A went to school before the incidents, Teacher A mocked him by loudly announcing his presence whenever the two were close; however, Student A told OCR that Teacher A has not said or done anything after the incident to upset him. The Parent said that she complained to the Principal about Teacher A when Student A returned to School, but the District did “nothing in response” except the School assigned Student A to a different Special Education Teacher and kept Student A and Teacher A separated for the remainder of the School year.

The Principal told OCR that she discussed with Teacher A the alleged remarks he made to Student A in the (redacted content) hallway incident, and he denied making the alleged harassing statements. She said the Parent did not complain to her about the third alleged statement, so she did not ask Teacher A about that statement. She said she asked for written statements from Student B and Student C because they said they witnessed the incident in the hallway. Student B’s statement stated that he was walking down the hallway and “heard [Student A] ask [Teacher A] why he was laughing. [Teacher A] did not say anything but then proceeded to shove [Student A] towards the office.” The Principal said that she watched the video and saw Student B was 25-35 yards away from Student A and Teacher A and, therefore, did not think Student B was a credible witness. She said Student C said he heard Teacher A and Student A arguing but did not see anything physical happen between them.

The Principal said the team held an IEP meeting on (redacted content), to discuss the events that occurred on (redacted content), and review Student A’s IEP and BIP to ensure they do not happen again. The Principal said that she tried to discuss her findings concerning the alleged remarks the Parent had reported and the context, but the Parent indicated that she did not want to hear an explanation. The Principal did not indicate whether the IEP team discussed whether Student A should receive any compensatory education or services for the time he was out of school on (redacted content) and during his suspension. She said that the team decided to assign Student A to a different special education teacher because Student A was not comfortable with Teacher A. The Principal said that the Parent complained about Teacher A speaking to Student A after Student A returned to School from his suspension and, therefore, she asked Teacher A to stay away from Student A.

The Principal said that the District retained an independent investigator to conduct a Level 2 Investigation, which Iowa state law requires anytime there is physical contact between a student and a staff member. The Level 2 Investigator told OCR that the purpose of her investigation was to determine if there was physical harm or physical harassment. She said that, during her investigation, she reviewed witness statements, interviewed witnesses, and watched videos. She said she did not see Teacher A push, shove, or grab Student A or (redacted content). The Level 2 Report states that the (redacted content) Student A’s (redacted content) occurred when he tried to go between Teacher A and the wall. The Level 2 Report further states that the situation was escalating, and the investigator notes that in the video, she saw Teacher A put his left hand under

Student A's left elbow and his right hand on Student A's right upper arm and move him to the office. The Level 2 Report states that Student A's feet were on the ground and Teacher A "put [Student A] into a chair. The Level 2 Investigator concluded that Teacher A used reasonable and necessary force to move Student A into the office. The Level 2 Investigator said she did not make a determination as to whether Student A was secluded in the conference room or whether Student A was subjected to harassment based on disability.

Analysis and Conclusion

In accordance with Section 302 of OCR's CPM, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. The District expressed interest in resolving the allegations, and OCR determined that it is appropriate to resolve the allegations under Section 302 of the CPM to address compliance concerns. On August 29, 2023, the District executed the enclosed Agreement, which when fully implemented, will address OCR's compliance concerns regarding the allegations. Specifically, OCR is concerned that Teacher A's treatment of Student A and comments to him over the course of two hours on (redacted content), while Student A was in a dysregulated state, may have constituted harassment based on disability. OCR also has concerns that Student A may have been subjected to improper restraint and seclusion when being escorted to and placed in the conference room that day, resulting in a denial of FAPE, and that the District further discriminated against Student A based on disability when (redacted content). OCR notes that, while the District took some action that was appropriate in the aftermath of this incident, like assigning Student A to a different special education teacher and keeping him separated from Teacher A, it is not clear whether the IEP team discussed whether Student A should receive any compensatory education or services for (redacted content). The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

Overall Conclusion

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 one OCR case. This letter is not a formal statement of OCR policy and should not be relied on, 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.

It is also important for you to understand that the laws OCR enforces also prohibit the District from harassing, coercing, intimidating, or discriminating against any individual because the

individual has filed a complaint or participated in the complaint resolution process. If this happens, that individual may file a 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. If 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.

OCR would like to thank the District for the courtesy and cooperation extended to OCR during the investigation. In particular, OCR would like to thank Ms. Carrie Weber, Counsel for the District. OCR looks forward to working with the District during the monitoring of the Resolution Agreement. If you have any questions, please contact Sunita Kini-Tandon, Senior Attorney, at 3120730-1452, or by email at Sunita.Kini-Tandon@ed.gov; or Christopher Farrelly, Attorney, at 312-730-1629 or by email at Christopher.Farrelly@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure

cc: (redacted content)