



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

230 SOUTH DEARBORN ST., 37TH FLOOR
CHICAGO, IL 60604

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MINNESOTA
NORTH DAKOTA
WISCONSIN

December 3, 2021

XXXXXX

Superintendent

Mount Pleasant Community School District

VIA E-MAIL ONLY to: XXXXXXXX

Re: OCR Docket No. 05-21-1321

Dear XXXXXXX:

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

Specifically, the complaint alleges that, between XXXXXXXX, the District discriminated against a 9th grade student (Student A) based on disability (XXXXXX), when it failed to implement her Individualized Education Program (IEP) by:

1. not providing her access to a paraprofessional for 420 minutes per day;
2. not providing her 42 minutes a day of specialized instruction in the areas of social/behavior/leisure skills;
3. not providing her 49 minutes a day of specialized instruction for computers in the special education classroom; and
4. not modifying her physical education (P.E.) activities to support her physical needs.

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 – 121342, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance 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.

During OCR's investigation, OCR interviewed the Complainant and District personnel, including Student A's Special Education Teacher, P.E. Teacher, and three paraprofessionals who worked with Student A during the 2020-2021 school year. OCR also reviewed documents provided by the Complainant and the District. Prior to OCR concluding its investigation, the District expressed an interest in resolving Allegation #1 under Section 302 of OCR's *Case Processing Manual* (CPM) and OCR determined that it was appropriate to resolve the allegation with an agreement. On November 23, 2021, the District signed the enclosed Resolution Agreement, which, when fully implemented, will resolve Allegation #1 of the complaint. Regarding Allegations #2 through #4, OCR has determined, based on a

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

preponderance of the evidence, that there is insufficient evidence to establish that the District discriminated against Student A as alleged. The bases for these conclusions are explained below.

Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.4(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 recipient, or be subjected to discrimination by a recipient of Federal financial assistance.¹

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 development and implementation of an IEP created in accordance with the Individuals with Disabilities Education Improvement Act (IDEA) is one means of providing FAPE.

Facts

Between XXXXXX, and XXXXXX, Student A was enrolled as a Freshman at the District's Mt. Pleasant High School (School). Student A has XXXXXX. Due to her physical disability, Student A cannot XXXXXXXX. On XXXXXX, Student A withdrew from the School.

Student A's IEP

On October 7, 2020, the District finalized an IEP for Student A. Relevant to Complainant's allegations, Student A's IEP required the District to provide Student A with the following special education and related services:

1. 420 minutes/day of "access to a paraprofessional whose primary responsibilities consist of the following (but not limited to): assist and supervise [Student A] at all times during the school day, including in the gen.ed. classroom, during specials, recess, lunch, etc.;"
2. 42 minutes/day of "1-1 and small group instruction in the areas of social/behavior/leisure skills" in the special education setting;

¹ 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 and has therefore applied the relevant Section 504 standards in making its determination.

3. 49 minutes/day of “specially designed instruction for computers in the special education classroom to address needs in the area of reading and written expression” in the special education setting; and
4. modified P.E. activities “to support [Student A]’s physical health needs associated with her balance and reaction times.

Implementation of Student A’s IEP

According to documentation provided by the District, Student A was enrolled in three general education classes (History, Art, and Biology), three classes in the special education classroom (Math, Reading, and Content Based Reading (CBR)). Student A’s P.E. class was a “Community” class which was a special P.E. class for students with special needs.

Paraprofessional Support

Student A’s IEP requires the District to provide Student A “access to a paraprofessional” at all times during the school day, including lunch/recess, and an additional 20 minutes “monitoring” for the bus and during the morning meal. The District told OCR that it did not interpret Student A’s IEP to require a one-to-one paraprofessional assigned exclusively to Student A, but rather that it make a paraprofessional available to Student A during her class periods. Some of the paraprofessionals told OCR that they did not receive a copy of Student A’s IEP, but provided her specialized assistance when needed. The District told OCR that it provided Student A access to several paraprofessionals in her classes as follows:

1. History and Biology: Student A had a specific paraprofessional attend class with her each day;
2. P.E. Class: Student A did not have a specific paraprofessional assigned to her, but there were three paraprofessionals she had access to in the room;
3. Special education classroom classes: Student A did not have a specific paraprofessional assigned to her, but one or two paraprofessionals were always in the special education classroom (sometimes assigned to other students on a 1-on-1 basis). The paraprofessionals told OCR that they would assist Student A in the special education classroom as necessary; and
4. Art: Student A did not have a paraprofessional assigned to her and most often Student A chose not to have a paraprofessional with her in that class.

Small Group Instruction in Social/Behavior/Leisure Skills

The Complainant told OCR that, based on the report card Student A received in February 2021, she does not believe that Student A received any of the one-to-one or small group instruction minutes required by the IEP. Specifically, the Complainant indicated that Student A’s report card did not expressly state which of Student A’s classes were in the general education or special education setting, and she assumed Student A primarily was in general education classes where she was not receiving any one-to-one or small group instruction.

The District denied it failed to provide Student A 42 minutes a day of one-to-one or small group instruction in the areas of social/behavior/leisure skills. According to Student A’s Special Education Teacher, she primarily provided Student A this instruction during Student

A's CBR class, which was in the special education setting. The Special Education Teacher stated that she also worked with Student A on these skills on an as-needed basis, meaning Student A received at least 42 minutes of skills training a day but would receive more minutes if Student A was, for instance, having a bad week.

Computer Instruction in Reading/Written Expression

The Special Education Teacher told OCR that Student A received this instruction during her English class (period 4 of her schedule). She stated that Student A used several programs that were computer based during this class. The District provided documents indicating that Student A used the Lexia (a personalized reading computer program) and Quill (a personalized writing program) computer software during her English class.

Modified P.E. Activities

Student A's P.E. Teacher informed OCR that Student A was enrolled in Community P.E. class, which is an adaptive P.E. class. Community P.E. class is designed for students with special needs or physical impairments. According to the P.E. Teacher, Student A's class of 5-7 students met every day, and there were 3 paraprofessionals in addition to the P.E. Teacher present in the class. The P.E. Teacher also stated that, although Community P.E. took place in a traditional P.E. setting, the activities were "pared back" (i.e., modified) depending on the abilities of each student. For example, while one student only would dribble during basketball activities, another student would dribble and run during basketball. The P.E. Teacher stated that she typically spoke with each student individually to tailor exercises for each student, but also told students to "do what they could do" in class.

The P.E. Teacher described the following modifications that Student A received in her P.E. class:

- warmups – Student A walked instead of ran around the gym;
- volleyball – Student A used a beach ball instead of a volleyball;
- walking – the P.E. Teacher made sure Student A avoided certain gaps in the parking lot;
- kites – the P.E. Teacher would get the kite off the ground for Student A because she could not do it herself; and
- basketball – Student A would dribble and walk but could not dribble and run.

The P.E. Teacher informed OCR that she did not recall any instances in which Student A was required to perform an activity that was outside of her abilities and should have been modified.

Analysis and Conclusions

Allegation #1

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 an interest in resolving the complaint, and OCR determined that it is appropriate to resolve the allegations in this case prior to making a finding. OCR has concerns about whether the District provided a copy of Student A's IEP to all of her teachers and paraprofessionals, and consistently provided Student A access to a paraprofessional at all times during the school day, as required by her IEP.

On November 23, 2021, the District executed the enclosed Agreement, which when fully implemented, will address the concerns regarding this allegation. 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 District's implementation of the Resolution Agreement.

Allegations #2 through #4

In making a determination regarding compliance, OCR must often weigh conflicting evidence and determine whether the preponderance of the evidence substantiates the allegations. Regarding Allegations #2 through #4, OCR determined that the evidence was insufficient to establish a violation of Section 504 or Title II as alleged.

Notwithstanding Complainant's belief to the contrary, the preponderance of the evidence established that Student A's teachers provided Student A the required minutes of specialized instruction in the areas of social/behavior/leisure skills and on the computer. Specifically, the evidence showed that Student A received one-on-one or small group instruction daily in her CBR class and at other times as needed, and she received her required minutes of specialized instruction on the computer in her English class. The evidence also established that Student A's P.E. Teacher modified Student A's P.E. activities to support her physical needs, as required by her IEP. The P.E. Teacher provided OCR several examples of such modifications.

Based on the above, the evidence is insufficient to establish that the District denied a FAPE to Student A by failing to implement the specific provisions of Student A's IEP that the Complainant identified in Allegations #2 through #4. Accordingly, OCR determined that the evidence is insufficient to establish a violation of the applicable regulations with regard to these allegations in the complaint.

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.

With regards to Allegations #2 through #4, the complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the

complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 an individual because the individual filed a complaint or participated in the 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. 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.

We wish to thank you and District personnel and especially XXXXXX, District counsel, for the cooperation and courtesy extended to OCR during its investigation. If you have any questions or concerns about this letter, you may contact Long Truong, Attorney, at (312) 730-1631 or long.truong@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure