



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

230 SOUTH DEARBORN ST., 37<sup>TH</sup> FLOOR  
CHICAGO, IL 60604

**REGION V**  
ILLINOIS  
INDIANA  
IOWA  
MINNESOTA  
NORTH DAKOTA  
WISCONSIN

January 26, 2022

Dr. Anthony Palmisano  
Superintendent  
School District 45  
Sent via electronic mail only to [apalmisano@d45.org](mailto:apalmisano@d45.org)

RE: OCR Docket #05-21-2274

Dear Dr. Palmisano:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its complaint resolution activities in the above-referenced complaint filed against School District 45 (District), alleging discrimination based on disability. Specifically, the complaint alleged the District discriminated against Student A, a XXXXXXXXXXXX student at Westmore Elementary School (School), based on disability XXXXXXXXXXXX in XXXXXXXXXXXX when the District failed to follow procedures required by Section 504 of the Rehabilitation Act of 1973 (Section 504) in denying XXX parent's request to allow Student A to attend school remotely for the XXXXXXXXXXXX school year.

OCR is responsible for enforcing Section 504, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to the provisions of Section 504 and Title II.

OCR reviewed information provided by the District and Student A's parent (Parent A) and interviewed Parent A and District personnel. Prior to OCR making a finding in this case, the District agreed to the enclosed Resolution Agreement (Agreement) to resolve the complaint. The basis for OCR's determination that the Agreement is appropriate is set forth below.

**Legal Standards**

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 Federal financial assistance. The Title II implementing regulation, at 28 C.F.R. § 35.130(a), contains a similar prohibition.

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

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.

The Section 504 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 appropriate public education (FAPE) to each qualified disabled person 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 the individual education needs of disabled persons as adequately as the needs of non-disabled persons are met and are based upon adherence to the procedures that satisfy the requirements of §§ 104.34, 104.35 and 104.36. The development and implementation of a Section 504 Plan is one means by which FAPE may be provided.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires recipients to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to any significant change in placement. To implement a significant change in placement, a recipient must first conduct a reevaluation of the student in accordance with the provisions of 34 C.F.R. § 104.35. Pursuant to the Section 504 regulation, at 34 C.F.R. § 104.35(c)(3), in interpreting evaluation data and in making placement decisions, a recipient shall ensure that the placement decision is made by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

### **Facts**

Student A was diagnosed with XXXXXXXXXXXXXXXXXXXX, and soon thereafter the District evaluated Student A and developed a Section 504 plan to address XXX XXXXXXXX needs. Student A's most recent Section 504 plan, which was developed in XXXXXXXXXXXXXXX prior to the District's return to in-person learning during the COVID-19 pandemic, includes a XXXXXXXXXXXX.

During the XXXXXXXXXXXX school year, the District offered a choice of in-person or remote learning. Student A and her XXXX sibling attended school remotely throughout the entire XXXXXXXXXXXX school year. Parent A told OCR she did not feel it was safe for her children to resume in-person learning during the XXXXXXXXXXXX school year because Student A's XXXXXXXX places her at an increased risk for severe illness from COVID-19.

In XXXXXXXXXXXX, Parent A contacted the District Nurse (Nurse) to inquire about a remote learning option for the XXXXXXXXXXXX school year. According to Parent A, the Nurse told her that that the District's "lawyers were working on the verbiage" and she did not know what medical conditions would qualify a student for a remote option or whether the policy would include siblings of students with high-risk conditions. The Nurse said she would update Parent A when she had more information.

During the XXXXXXXXXXXXXXX, the District determined it would return to in-person learning for the XXXXXXXXXXXXXXX school year, with an exception for students required to quarantine because of a positive COVID-19 test or exposure to COVID-19. The District's Assistant Superintendent for Curriculum and Instruction (Assistant Superintendent) told OCR that this decision was in accordance with the Illinois State Board of Education (ISBE) declaration issued on XXXXXXXXXXXXXXX, which stated:

Beginning with the XXXXXXXX school year, all schools must resume fully in-person learning for all student attendance days, provided that, pursuant to 105 ILCS 5/10-30 and 105 ILCS 5/34-18.66, remote instruction be made available for students who have not received a COVID-19 vaccine or who are not eligible for a COVID-19 vaccine, only while they are under quarantine consistent with guidance or requirements from a local public health department or the Illinois Department of Public Health.

The District decided to offer Homebound Instruction to students with medical conditions that place them at increased risk of severe illness from COVID-19. The Assistant Superintendent told OCR that the Homebound Instruction program offers a “dedicated tutor” to provide instruction based on a student’s individualized needs for 5 or more hours per week. The Assistant Superintendent said that, although she had not received any disability or Section 504 training in the past three years, she directly supervised the Director of Student Services (Director) who would operate the Homebound Instruction program for the District. The Director expressed to OCR familiarity with the special education evaluation process but said she was not familiar with the process for developing Section 504 plans.

On XXXXXXXXXXXXXXX, Parent A sent an email to the School’s Principal, who is also the School’s Section 504 Coordinator, asking him for “any information on a remote learning option” for “high[-]risk children and siblings.” The Principal responded by email later that day stating that a June communication from the Superintendent was the most up to date information.

The next day, Parent A emailed the Superintendent. In her email, she stated she was “writing in hopes of getting more clarification regarding a remote option for high[-]risk children and their siblings,” explaining that her XXXXXXXXXXXXXXX and that she and her husband also have high risk conditions. The Superintendent responded, asking for time to analyze her “situation” while the District worked through the details of the new guidelines. The Superintendent responded on XXXXXXXXXXXXXXX, saying that, “at this time, there is no option for remote learning for your situation.”

On XXXXXXXXXXXXXXX, after consulting with the Assistant Superintendent, the Nurse emailed Parent A to inform her that Homebound Instruction would be the District’s “option for students who are medically compromised.” Specifically, the Nurse’s email stated:

Given the ISBE Declaration to return to in-person learning, the District will support medically compromised students through our Homebound/Hospital Instruction policy. Students would be assigned a teacher of record at his or her home school, and a highly qualified teacher/tutor would provide direct instruction and/or support.

Homebound/Hospital Instruction [will be provided] to a student when a physician certifies that 10+ days of school will be missed due to a medical condition. Homebound/Hospital Instruction requires 5+ hours per week of instruction unless the physician certifies a need for less.

Parent A responded that same day, saying, in part, “This is not a proper substitute for a full day of in school education. This is not comparable to a remote learning program.” The Nurse, at the Direction of the Assistant Superintendent, responded that the next step for Parent A was to contact the Superintendent to discuss her concern. Neither the Nurse nor the Assistant Superintendent sought to clarify Parent A’s concerns or offered to answer any questions she may have had about Homebound Instruction.

Parent A emailed the Superintendent the same day and inquired about the inclusion of e-learning on the agenda for a School Board meeting and whether this meant the District was reconsidering remote learning options. In her email, she stated that she found the District’s lack of a remote learning option for high-risk families to be discriminatory; however, she did not share her concern about Homebound Instruction not meeting Student A’s needs. In his last communication with Parent A, an email on XXXXXXXXXXXXX, the Superintendent said “the e-learning discussion is not related to COVID.”

The Director informed OCR that Homebound Instruction for a specific student could have exceeded the 5-hour minimum identified in the policy. Parent A did not submit Homebound Instruction forms to the District. She told OCR that she assumed Student A’s doctor would not sign them since those forms required Student A to miss “10+ days of school,” which might not occur.

On XXXXXXXXXXXXXXXX, Parent A contacted the Principal for the last time to ask about a remote learning option. During their phone call, the Principal reiterated that, with the exception of students in quarantine, remote learning was not available as an option. The Principal told OCR he asked Parent A to “get a doctor’s note” so it could potentially be used to recommend remote learning for Student A. The Principal said he did not discuss Homebound Instruction with Parent A because he was not aware at the time that this was an option.

Parent A denied that the Principal advised her to obtain a doctor’s note reflecting Student A’s medical need for remote instruction. Parent A said that, although the Principal was kind and understanding throughout the phone call, he did not offer to convene a Section 504 meeting to discuss Student A’s educational needs, even though he knew Student A had a Section 504 plan in place because he was involved in the plan’s development.

At no time during summer XXXX did the District offer to convene a Section 504 meeting to discuss Student A’s needs. Parent A also did not request such a meeting. XXXXXX X XXXXXXXXXXXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXXXXXXX, to homeschool them throughout the XXXXXXXXXX school year.

### **Analysis and Conclusion**

Based on the evidence collected to date, OCR has identified concerns regarding the District's response in summer XXXX when Parent A requested a remote learning option for the XXXXXXXXXX school year. In her communications, Parent A asked about a remote learning option because of Student A's medical condition. Parent A escalated her request from the Nurse to the Principal to the Superintendent. When District personnel identified to Parent A that Homebound Instruction was an option, Parent A responded in writing that she felt this option was not a proper substitute for a full day of school and thus would not meet Student A's needs. OCR is concerned that, in responding to these communications, the District failed to convene a Section 504 meeting with a group of persons knowledgeable about Student A's needs to consider the appropriate educational placement and services for Student A. Additionally, OCR identified concerns regarding the Section 504 training of administrators and personnel responsible for assuring compliance with Section 504.

Prior to OCR completing its investigation, the District requested to resolve the complaint under Section 302 of OCR's *Case Processing Manual*. OCR determined that an Agreement with the District is appropriate under the circumstances presented by this case.

The enclosed Agreement, when fully implemented, will resolve all the issues raised in this OCR complaint investigation.

This concludes OCR's resolution actions with regard to the complaint and should not be interpreted to address the District's compliance with any other regulatory provision nor 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.

OCR would also like to make you aware that the Complainant may have a 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, or discriminate against any individual because the individual 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.

OCR would like to thank the District, and particularly counsel Laura Sinars, for its cooperation in this matter and looks forward to receiving the District's first monitoring report. If you have any questions, please contact Elisabeth Gusfa at 312-730-1621 or [elisabeth.gusfa@ed.gov](mailto:elisabeth.gusfa@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Laura Sinars, Esq. (sent via email only to [lsinars@robbins-schwartz.com](mailto:lsinars@robbins-schwartz.com))  
Megan L. Baker (sent via email only to [mlbaker@robbins-schwartz.com](mailto:mlbaker@robbins-schwartz.com))