



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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January 23, 2023

Dr. Terry Terhune  
Superintendent  
Greenwood Community School Corporation  
Sent via email only to [tterhune@gws.k12.in.us](mailto:tterhune@gws.k12.in.us)

Re: OCR Docket #05-22-1538

Dear Dr. Terhune:

This is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Greenwood Community School Corporation (Corporation). The complaint alleged that the Corporation discriminated against a student (Student A) at Greenwood Middle School (School) on the basis of disability when, in the 2021-2022 school year, the Corporation failed to timely evaluate whether Student A was a student with a disability in need of special education and related services.

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, 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 (FFA) from the Department, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of FFA from the Department and a public entity, the Corporation is subject to these laws.

As part of its investigation, OCR reviewed documentation provided by the Complainant and the Corporation. Prior to the completion of OCR's investigation, the Corporation expressed interest in resolving the complaint allegation and OCR determined it was appropriate to do so with an agreement pursuant to Section 302 of the *Case Processing Manual* (CPM).

### **Legal Standards**

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.

Pursuant to the Section 504 regulation, at 34 C.F.R. § 104.35, a recipient must conduct an evaluation of any student 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 student in regular or special education and any subsequent significant change in placement.

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

## **Facts**

During the 2021-2022 school year, Student A attended the School as a 7th grade student; she is currently in 8th grade.

On September 16, 2021, Student A's parent emailed the School's guidance counselor (Counselor) requesting additional details about the regular counseling sessions that the Corporation offered Student A and also asking about the procedure for obtaining a Section 504 plan. The following day, the Counselor emailed Student A's parent and provided information regarding counseling and other school-based supports for students. The Counselor also stated that the Corporation assesses the extent to which a student's medical condition impacts learning when considering whether to develop a Section 504 plan but did not provide any further details or information regarding the Corporation's Section 504 procedure.

On October 24, 2021, Student A's parent emailed the School's principal (Principal) summarizing several concerns with the School's failure to address Student A's needs and maintained that a parent who wants information on the procedure for obtaining a Section 504 plan should be provided with such information rather than having the request ignored. The next day, the Principal emailed Student A's parent stating, in part, that any decision to develop a Section 504 plan begins with a student who is "underperforming" and that Student A's current grades indicated that Student A was not underperforming. The Principal included a screenshot of Student A's grades at that time which showed that she was earning an A in every class. Student A's parent acknowledged to OCR that Student A receives good grades but stated that she believes grades alone should not preclude a student from consideration for a Section 504 plan.

On March 17, 2022, Student A's parent emailed the School's assistant principal (Assistant Principal) requesting information on the process for obtaining a Section 504 plan; this email acknowledged Student A's good grades but referenced additional "issues" Student A was facing and also said, "Voluntary accommodations are no longer sufficient and a written plan needs to be put into place so there [are] no questions as to what accommodations are being made and the guidelines for them." The Assistant Principal told Student A's parent to contact the Counselor regarding a potential Section 504 plan and indicated that the Counselor could explain the process. On the same day, Student A's parent emailed the School's student services advisor (the Advisor) reiterating her request for information about the procedure to obtain a Section 504 plan for Student A due to her "asynchronous development issues." According to Student A's parent, the Advisor also failed to provide the Section 504 procedure and instead responded that she would forward the request to the Counselor, who the parent said did not answer.

Student A's parent emailed the Principal again on June 21, 2022, stating that she had not received a response from the counseling office regarding the process for obtaining a Section 504 plan for Student A. The Principal replied that he would check with the Counselor but noted that she did not return to school until mid-July. The Principal also referenced Student A's grades and stated, "Her academics do not seem to be affected or limited but we would be more than happy to communicate with her doctor to see if we are missing something. I would suggest that you discuss this with her doctor and share with us his/her recommendations based on [Student A's]

diagnosed disability.” Student A’s parent indicated on the same day that she would work on obtaining medical documentation prior to the start of the 2022-2023 school year.

According to Student A’s parent, sometime in July 2022, she contacted the Superintendent to report her concerns regarding the School’s failure to respond to her requests for information about a possible Section 504 plan for Student A. Student A’s parent stated to OCR that the Superintendent replied that he would forward her request to the Section 504 Coordinator. Student A’s parent told OCR that she also submitted a written request to the Section 504 Coordinator that the Corporation consider Student A for a Section 504 plan at around the same time.

The Corporation evaluated Student A at the beginning of the 2022-2023 school year. On August 12, 2022, the Section 504 team met and determined that Student A was eligible for a Section 504 plan. In its response to OCR, the Corporation indicated that it did not require any medical documentation from the parent before developing the plan.

### **Analysis and Conclusion**

Based on the evidence collected to date, OCR has identified compliance concerns regarding the Corporation’s delay in responding to Student A’s parent’s requests for information about the Section 504 process. Student A’s parent contacted numerous Corporation personnel in the 2021-2022 school year and suggested that Student A needed a Section 504 plan, but an evaluation did not occur until August 2022, at which time Student A was determined eligible for a Section 504 plan.

In accordance with Section 302 of the CPM, a complaint may be resolved at any time when, prior to the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. Prior to the conclusion of OCR’s investigation, the Corporation expressed interest in resolving the complaint and signed the enclosed Agreement to resolve the issues raised in this complaint. OCR will monitor the Corporation’s implementation of the Agreement.

This concludes OCR’s complaint processing. 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.

It is also important for you to understand that the laws OCR enforces prohibit the Corporation from harassing, coercing, intimidating, or discriminating against any 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 Corporation with OCR 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.

I wish to thank you and your staff for the cooperation extended to OCR during the processing of this complaint. In particular, OCR appreciates the assistance of Ms. Amy A. Matthews, Counsel for the Corporation, in resolving this complaint. If you have any questions regarding this letter, please contact Salina Lopez, via email at [Salina.Lopez@ed.gov](mailto:Salina.Lopez@ed.gov) or by phone, at 312-730-1627.

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Amy A. Matthews, sent via email only to [amatthews@cchalaw.com](mailto:amatthews@cchalaw.com)