



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

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

**REGION V**  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

March 10, 2023

Dr. Mark D. Daniel  
Superintendent  
Fort Wayne Community Schools  
Sent via electronic mail only to: [superintendent@fwcs.k12.in.us](mailto:superintendent@fwcs.k12.in.us)

Re: OCR Docket #05-22-1583

Dear Dr. Daniel:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its complaint resolution activities for the above-referenced complaint against Fort Wayne Community Schools (District), alleging discrimination on the basis of disability.

Specifically, the complaint alleges that the District subjected a high school student (Student A) to discrimination based on disability on August 24, 2022, when the District failed to implement provisions of Student A's Individualized Education Program (IEP) requiring testing modifications when Student A was taking a test for possible inclusion in the District's Youth Life Skills Program (YLS).

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. OCR is also responsible for enforcing 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 from the Department, 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.

During its investigation, OCR reviewed information provided by Student A's parent and the District and interviewed the parent and the Principal/Director of YLS. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM) and signed the enclosed Resolution Agreement (Agreement). This letter summarizes the applicable legal standards, the information gathered during the investigation, and how the complaint was resolved.

### **Legal Standards**

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

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 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, 104.35 and 104.36. The implementation of an IEP is one means by which FAPE may be provided.

### **Facts**

In the 2022-2023 school year, Student A's assigned home school is South Side High School (SSHS) but he is placed in a homebound setting pursuant to his IEP. Student A's IEP provides, in relevant part, that Student A is to receive extended time (1.5 times) on tests, have tests read aloud to him, receive individual testing, and have access to a calculator to assist him in demonstrating what he knows on assessments.

The District informed OCR that the YLS program is operated by the District and is open to all high school students for consideration. The program is designed to prevent at-risk students from dropping out of school before graduating and provides smaller classrooms and a higher level of individualized attention than the traditional high school setting. According to the District, if a student is interested in the program, the student's guidance counselor can provide a referral to YLS. Following YLS receiving a referral form, the student takes the Test of Adult Basic Education (TABE) and must score at least 7.0 to be admitted into YLS, although some students may be admitted with a score as low as 6.5. The District stated that if a student has an IEP and needs any modification on the TABE, this information is to be included in the submitted referral. According to the District, a student who does not obtain the required minimum score may re-take the TABE.

The District informed OCR a student may elect to take the TABE without being referred to YLS by a school guidance counselor, but that in such cases a student is required to obtain a referral form from their counselor following the test in order to be considered for YLS.

Student A's parent said she learned about YLS from friends and then spoke with the Director of Special Education. She said that she believed YLS would be effective for Student A to obtain enough credits to graduate. The parent stated that she was working with the SSHS guidance counselor and believed that he was putting a package together for a referral to YLS.

Student A took the TABE on August 24, 2022. Student A's parent said Student A did not receive the testing modifications required by his IEP on the TABE. Student A scored a 3.7.

The Director of YLS told OCR that YLS had not received a referral for Student A prior to August 24 and that the only information YLS had about Student A on that date was on the information sheet Student A completed on the day of the test. He said neither Student A nor the

parent ever informed him or anyone else involved in the TABE that Student A needed modifications on the test.

The Director maintains that if an IEP was presented to YLS or if Student A verbally informed personnel administering the test about his need for testing modifications, they would have determined what Student A needed in order to take the TABE.

The Director told OCR that after the initial test, Student A was offered the opportunity to retake the test on the next scheduled date of August 31, 2022, but did not retake the test. Student A's parent confirmed to OCR that District personnel informed her that Student A could retake the test but said she did not see a reason for Student A to retake the test without being provided his testing modifications.

Student A's parent told OCR that she told an individual at YLS who she did not identify that Student A has an IEP and needed testing modifications.

### **Analysis and Conclusion**

Based on a review of the information gathered during OCR's investigation, OCR has concerns regarding the lack of testing modifications provided to Student A, despite the requirements of his IEP. OCR has concerns about the absence of a process to ensure that a student who registers independently for YLS testing without a referral from the school guidance counselor receives necessary modifications.

Prior to the conclusion of the investigation, the District expressed an interest in resolving the allegation and OCR determined that it is appropriate to resolve the allegation. The District subsequently signed the enclosed Agreement, which, when fully implemented, will resolve the concerns OCR identified. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's resolution activities with regard to 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the 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. 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.

The Complainant may file a private suit in federal court whether or not OCR finds a violation.

OCR would like to thank the District for the cooperation and courtesy extended to OCR during our investigation. In particular, we wish to thank Mr. David Amen, District Counsel. If you have any questions regarding this letter, please contact Sherry Rosenblum, Equal Opportunity Specialist, at (312) 730-1601 or by email at [Sherry.Rosenblum@ed.gov](mailto:Sherry.Rosenblum@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Mr. David Amen (sent via email only to [david.amen@fwcs.k12.in.us](mailto:david.amen@fwcs.k12.in.us))