



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 28, 2023

Dr. Brain Strusz
Superintendent
Pleasant Valley Community School District

VIA E-MAIL only to: [redacted content]

Re: OCR Docket #05-23-1142

Dear Dr. Strusz:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) the against Pleasant Valley Community School District (District). OCR investigated whether in [redacted content], the District discriminated against a [redacted content] student (Student A) based on disability when it failed to timely evaluate Student A to determine if he was eligible for special education or related aids and services, or modification to regular education, under Section 504 of the Rehabilitation Act of 1973.

OCR enforces 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, which prohibit discrimination on the basis of disability by recipients of federal financial assistance, 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, which prohibit 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 these laws.

OCR investigated the complaint by reviewing information submitted by the Complainant and the District and interviewing relevant District staff. Prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint under Section 302 of OCR's *Case Processing Manual*. OCR determined that a Section 302 agreement is appropriate in this case because OCR's investigation has identified concerns that can be addressed through a resolution agreement. Below is a summary of the applicable legal standards and OCR's investigation to date.

Applicable Legal Standards

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.

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 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 Section 504 regulation, at 34 C.F.R. § 104.4(b)(1)(i), (ii) and (iv), provides in relevant part that a recipient shall not deny a qualified individual with a disability an aid, benefit, or service or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual's disability.

The Section 504 regulation at 34 C.F.R. § 104.33 requires school districts to provide a free and 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. The implementation of an individual education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of providing an appropriate education under Section 504.

The Section 504 regulation, at 34 C.F.R. § 104.35(c), states that, in interpreting evaluation data and making placement decisions, the recipient must draw upon information from a variety of sources, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and 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 placement options. The Section 504 regulation, at 34 C.F.R. § 104.36, sets forth procedural safeguards the District is required to have in place in connection with the development of educational plans, including the opportunity for an impartial hearing. A due process procedure consistent with the IDEA is one means of meeting the Section 504 requirements related to evaluation and procedural safeguards.

Facts

During the 2022-2023 school year, Student A was [redacted content] student enrolled in the District's [redacted content] school. The Complainant told OCR that, in [redacted content] while Student A was in [redacted content], he [redacted content] but Student A did not have a Section 504 Plan or an IEP in place during his enrollment in the District.

2021-2022 School Year

The Complainant, Student A's Guidance Counselor (Counselor) and the Assistant Principal uniformly agreed that Student A had increasing attendance problems during the 2021-2022 school year. The Counselor and Assistant Principal told OCR that in [redacted content] 2021, school staff worked with his family to provide Student A incentives to attend school, such as in [redacted content] 2021, they told Student A if he attended an entire week of school, [redacted content]; and in [redacted content] 2021, the Director of Secondary Education (DSE) met with Student A about participating in the Industrial Arts/Welding program, [redacted content].

The Complainant told OCR that, in [redacted content] 2022, she asked the Counselor to evaluate Student A for a Section 504 Plan because [redacted content] was affecting his ability to attend or stay at school consistently. She said that the District did not convene a Section 504 Plan meeting, nor did it provide her a written denial of her request for evaluation or written notice of procedural safeguards. District administrators and staff interviewed by OCR indicated they were not aware of the existence of a system of procedural safeguards to challenge placement determinations under Section 504 as opposed to IDEA.¹ The Complainant told OCR that Student A's [redacted content] prevented him from attending school regularly and, by the end of the 2021-2022 school year, he had [redacted content].

Student A's Counselor, who said he is responsible for Section 504 Plans at the [redacted content] school, concurred that on or around [redacted content] 2022, the Complainant and Student A's doctor formally requested an evaluation of Student A for a Section 504 Plan. On [redacted content] 2022, the Complainant provided the District Student A's medical documentation and a completed Section 504 Plan request form. The Counselor and Dean told OCR that, while they did not convene a Section 504 Plan meeting, in response to the Complainant's request they agreed to a meeting among the Counselor, Dean, Assistant Principal, Student A and the Complainant where they all decided that teachers and school staff would collect data on Student A based on interventions in place through Student Support Services (SSS) and reconvene to discuss what interventions worked and what did not work. The Counselor said everyone agreed to this approach in lieu of a Section 504 Plan, including the Complainant. The Complainant agreed with OCR that a meeting was held with these individuals to discuss interventions for Student A but told OCR that she was told in this meeting that a Section 504 Plan was not necessary as the District was willing to put interventions in place that were similar to what would be in a Section 504 Plan. However, during [redacted content] 2022, the Complainant said Student A experienced severe problems with school attendance, skipped class, or left class due to [redacted content], which resulted in Student A [redacted content] at the end of the 2022-2023 school year.

2022-2023 School Year

The Counselor and Associate Principal told OCR that, in the 2022-2023 school year, Student A was on the Student Assistance Services Team's (STAT) weekly list as a student who was "at risk" due to [redacted content]. They said the STAT reviews the student's status in these areas and provides the student tailored interventions and supports. The Associate Principal said that the STAT's meetings, discussions, and interventions are a separate process than the Section 504 Plan (504 Plan) or IEP processes and are specifically for general education students. He said Student A was placed in [redacted content], which is a course for general education students that provides the student an opportunity to check in with a teacher who helps the student prioritize and organize work to be completed. The AP said this was one way staff attempted to help Student A get caught up with his schoolwork in response to his absences.

¹ The District uses the Iowa Department of Education's system of procedural safeguards for decisions made pursuant to IDEA; that process does not accept disputes under Section 504. See <https://educateiowa.gov/sites/default/files/2022-08/ProceduralSafeguardsManualAges3-21-Aug2022v2.pdf>.

The Complainant told OCR that, [redacted content] the 2022-2023 school year, Student A immediately began leaving class early. The Complainant said because she did not want Student A to have the same experience in [redacted content] as he had in [redacted content] regarding chronic absenteeism and leaving class, on [redacted content], 2023, she emailed the Counselor asking about a Section 504 evaluation. On the same date, the Counselor forwarded the request to another Associate Principal (AP2) who works with 1[redacted content], who in response sent an email to the Complainant indicating she needed to provide medical documentation and the specific accommodations requested for Student A. He also explained that staff would gather information from teachers on Student A's barriers in class and then convene a meeting to discuss whether Student A was eligible for a Section 504 Plan. Additionally, AP2 told the Complainant that Student A [redacted content], his frustrations in class would "continue to mount" and he would not understand the material due to lack of instruction. The AP2 wrote, "There are zero accommodations we can provide that can assist his poor attendance, and I will not be able to continue allowing [Student A] to remain on his schedule if he is unwilling to come (and stay) in school." The Complainant responded that all of Student A's medical records are with the Counselor because she submitted them last school year. The Complainant also stated, "At no point did I ask for provisions based on bad attendance, but child find is the responsibility of the school district."

The Complainant said on or around [redacted content], 2022, the AP2 met with Student A and told Student A he is a "voluntary student" and did not need to be enrolled in school. The AP2 told OCR that, during Student A's [redacted content], he [redacted content]. However, because they did not want Student A to drop out of school, school staff continued to search for ways to make school attractive to Student A so he would come to school.

On [redacted content], 2022, the AP2 sent the Complainant a copy of the Section 504 Plan request form and informed the Complainant she had to complete the request form and provide medical documentation to pursue a Section 504 evaluation. The AP2 told the Complainant that a parent can make a referral, but with respect to Student A, "there has not been school personnel that knows and/or suspects [Student A's] medical condition substantially limits his ability to access our educational programming at the same level as his peers." The AP2 also stated school staff would gather teacher input and look at Student A's academic and attendance records to provide the Section 504 Plan team a clear understanding of Student A's eligibility and to determine his accommodations, if he was determined eligible. The AP2 said during the process staff will continue to provide Student A support through their everyday teaching and tiered support strategies and indicated Student A should attend [redacted content] with his teachers in classes he is struggling. The AP2 told OCR he was not aware of the Complainant's request for Section 504 evaluation in [redacted content] at time he wrote this email.

However, the AP2 said that, later that day, he located the Complainant's request form and medical documentation submitted in [redacted content] 2022 and told the Complainant he wanted to set up a meeting to discuss the Section 504 Plan process and asked for Student A to attend the meeting to discuss the steps Student A believes had already been taken to access his education. The AP2 informed the Complainant the information would be used to determine eligibility for a Section 504 Plan and, if applicable, the areas where accommodations were needed. On [redacted content] 2022, the Complainant requested to postpone the meeting to the

following week so she could gather resources, initial evaluations, and recommendations from Student A's doctor.

On [redacted content] 2022, the Complainant sent an email to the AP2, the Principal, and the Counselor requesting a meeting on [redacted content] 2022, and also requesting the District conduct a comprehensive special education evaluation, including in the areas of cognitive, adaptive, social, achievement, speech, and occupational therapy. The Complainant also requested a functional behavioral assessment and intervention plan and said she will sign the evaluation consent form at the meeting. The AP2 responded by email that same day, informing the Complainant that the full special education evaluation is different than a Section 504 Plan evaluation and that he would forward the request to the Mississippi Bend Area Educational Agency Consultant (Consultant) who would conduct the special education evaluation and work with the Complainant through that process. The AP2 said he did not tell the Complainant that the District was not pursuing her [redacted content] 2022 request for a Section 504 Plan after she requested a full special education evaluation. On [redacted content], the Consultant provided the physical therapist and speech language therapist and others involved in the evaluation notice of the parental request for evaluation.

On [redacted content] 2022, and the Complainant, Director of Student Services (DSS), the Consultant and the Counselor met for a disability suspect meeting and determined to move forward with an evaluation in the areas of reading and math. The Complainant said at that meeting the team only discussed interventions in reading and math, a check-in and check-out person identified as the Dean, and the staff conducting assessments in reading and math but not the full case study evaluation she requested. On the same day the Complainant provided a signed consent for evaluation of Student A.

In the weeks after [redacted content] 2022, the Complainant, District staff and the Consultant exchanged multiple emails regarding Student A. The gist of these emails involved the inability of District staff to evaluate Student A because he was not attending school. In some of her emails, the Complainant explained that Student A felt "targeted" by school administrators when he was at school, which caused [redacted content] to heighten, and he missed more school. One example the Complainant gave was during the week of the [redacted content] meeting, when Student A attended school and the AP2 told him he would not be able to a school dance because Student A had not served detentions the school issued him for absences, nor had he completed service hours required in [redacted content]. District staff told OCR that they did not consider modifications to these kinds of requirements for Student A during any of the meetings they had to discuss supports for Student A and incentives for Student A to attend school.

On [redacted content] 2022, the Consultant sent an email informing the Complainant that Student A had not been checking in and out with the Dean as agreed in the [redacted content] meeting and asked the Complainant to remind Student A to do so. On [redacted content] 2022, the Complainant agreed to meet with staff and the meeting was scheduled for [redacted content], 2022. On [redacted content], 2022, the Consultant sent the Complainant an email informing her that, in addition to not checking in and out with the Dean, Student A was not meeting with the math teacher for interventions. The Consultant also indicated that she tried to meet with him for her part of the evaluation, but he was not at school. The Consultant told the Complainant that

they were three weeks into the evaluation period and had collected no data due to Student A not being present at school. The Consultant told the Complainant that there was still time to complete the evaluation process, but Student A needed to be in school consistently to do so. The Complainant responded by email, stating that Student A was [redacted content] about [redacted content] due to the administrators focusing on his struggles and she offered to bring Student A to the Consultant if the Consultant told her what date and time to bring him. The Consultant responded that, if there was no intervention data, even with the Consultant's testing, "we can't find him eligible for special education services." The Consultant said Student A has to be in school for the evaluation to continue. The Complainant responded that the District "continues to ignore [redacted content] and continue to not meet his needs for accommodations."

On [redacted content] 2022, the Complainant sent an email to the Consultant and copied the AEA Social Worker, AP2, and the Director of Student Services (DSS) stating that, because the District was not providing Student A the support he needed and he felt targeted by School administrators, neither she nor Student A would attend the meeting the Consultant scheduled for [redacted content] 2022.

District staff informed OCR that they met without the Complainant and Student A on [redacted content] 2022, after which the DDS sent an email to the Complainant on [redacted content] 2022, informing her that the team discussed what had been offered to Student A already and how to help Student A work [redacted content]. The Complainant said the District's offers were the same they had offered previously in [redacted content] 2022 and they did not consider accommodations or modifications designed to help Student A [redacted content] to attend and remain in school successfully. The Complainant said Student A was also directed to complete [redacted content] making completion difficult for him. District staff told OCR that Student A could have worked with [redacted content] teacher on the credit recovery, but conceded they did not consider alternatives to in-person support for Student A even though they were aware Student A's disabilities were affecting his ability to attend school in the first place.

On October 9, 2022, the Complainant sent the DDS an email stating that she would return Student A's Chromebook and unenroll Student A from the District. On [redacted content] 2022, the District informed the Complainant Student A was withdrawn from the District.

All District staff interviewed by OCR said that they did not participate in District training relating to the identification, evaluation, and educational placement of students pursuant to Section 504 in the past two to three school years.

Conclusion and Resolution Agreement

Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving the complaint, and OCR determined that it is appropriate to resolve the allegation in this case prior to making a finding. OCR has concerns regarding whether the District failed to timely evaluate Student A for a Section 504 Plan when it had information suggesting that Student A's disabilities were affecting his ability to attend school, and whether they considered modifications to its discipline practices and prerequisites for extracurricular activities when Student A's disabilities affected his ability to attend school. In addition, OCR has concerns whether the District has a

system of procedural safeguards that applies to District actions regarding the identification, evaluation, and educational placement of students who, because of a disability, need, or whom the District and/or a parent or legal guardian believes to need, special instruction or related services.

The enclosed Resolution Agreement is fully aligned with the complaint allegations, the evidence obtained to date, and OCR's compliance concerns. It requires the District to:

- Develop a system of procedural safeguards that applies to District actions regarding the identification, evaluation, and educational placement of students who, because of a disability, need, or whom the District and/or a parent or legal guardian believes to need, special instruction or related services.
- Adopt and disseminate the due process procedures to all District employees, post the due process procedures on the District's website and in each District school in an area accessible to students and parents, and make copies available of the Section 504 due process procedures in each District school to disseminate to parents or legal guardians at Section 504 meetings.
- Provide specialized training regarding the due process procedures to its designated Section 504 coordinator and all other District administrators and staff responsible for drafting, implementing, and making decisions regarding the Section 504 due process procedures and eligibility.
- Provide training to all District administrators and staff responsible for the identification, evaluation, and educational placement of students who, because of a disability, need, or whom the District believes to need, special instruction or related services.
- Make an offer in writing to the parent(s) of Student A that, should Student A re-enroll in the District, it will convene a group of persons knowledgeable about Student A to consider whether Student A is a student with a disability in need of regular or special education and related aids and services, and to determine whether Student A is in need of compensatory services because the District did not convene the team to consider Student A's needs for the 2022-2023 school year. If Student A reenrolls, perform those actions.

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. The 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 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 he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment. A complainant may file an action in court whether or not OCR finds a violation.

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, OCR 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 privacy.

OCR wishes to thank District staff and District counsel, [redacted content] for their cooperation and courtesy during OCR's investigation. If you have any questions, please contact Sandra Garcia, Senior Equal Opportunity Specialist by email at Sandra.L.Garcia@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervising Attorney

cc: [redacted content]