



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
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CHICAGO, IL 60604

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August 29, 2023

Mr. Doug Eccarius
Superintendent
Community Consolidated School District 89
Sent by email only to deccarius@ccsd89.org

Re: OCR Docket #05-23-1307

Dear Mr. Eccarius:

This letter is to inform you of the disposition of the above-referenced complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against Community Consolidated School District 89 (District), alleging discrimination on the basis of XXXXXXXX. Specifically, the complaint alleged the following:

1. During the XXXXXXXX school year, the District discriminated against a XXXXXXXX-grade student (Student A) at XXXXXXXX School (School) on the basis of XXXXXXXX when it failed to implement her Individualized Education Program (IEP); and
2. During the XXXXXXXX school year, the District discriminated against Student A on the basis of XXXXXXXX when it failed to provide Student A assistance in managing her XXXXXXXX during after school activities.

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, which prohibit discrimination on the basis of XXXXXXXX by recipients of federal financial assistance, and Title II of the Americans with XXXXXXXX Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation at 28 C.F.R. Part 35, which prohibits discrimination on the basis of XXXXXXXX by public entities. As a recipient of federal financial assistance from the Department and a public entity, the District is subject to these laws.

During its investigation, OCR reviewed data provided by Student A's parent and the District and interviewed Student A's parent and relevant District personnel. 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). OCR determined that it is appropriate to resolve the complaint through the enclosed Resolution Agreement (Agreement). The basis for OCR's determination is explained below.

Applicable Legal 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.

Discrimination Generally

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a XXXXXXXX shall, on the basis of XXXXXXXX, 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. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a XXXXXXXX shall, on the basis of XXXXXXXX, 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 public entity.

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 the complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, the relevant Section 504 standards apply in analyzing the Title II issues raised in the allegation.

Free and Appropriate Public Education (FAPE)

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 and appropriate public education (FAPE) to each qualified person with a XXXXXXXX who is in the recipient's jurisdiction, regardless of the nature or severity of the person's XXXXXXXX. 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 educational needs of disabled persons as adequately as the needs of non-disabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. The implementation of an Individualized Education Plan (IEP) is one means by which FAPE may be provided.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that a school district shall conduct an evaluation of any person who, because of a XXXXXXXX, needs or is believed to need special education or related aids and services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. Moreover, the Section 504 implementing 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 implementing 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.

Nonacademic Services (Extracurricular Activities)

In general, OCR would view a school district's failure to address participation or requests for participation in extracurricular activities for a qualified student with a XXXXXXXX with an IEP in a manner consistent with IDEA requirements as a failure to ensure Section 504 FAPE and an equal opportunity for participation. OCR notes that the regulation implementing IDEA, at 34 C.F.R. §

300.320(a)(4)(ii), includes the requirement that a student's IEP address special education, related services, supplementary aids and services, program modifications, and supports for school personnel to be provided to enable the student to, among other things, participate in extracurricular and other nonacademic activities.¹

In addition, the Section 504 regulation at 34 C.F.R. § 104.37 requires school districts to provide students with XXXXXXXX an equal opportunity to participate in nonacademic and extracurricular services and activities. This means that, to comply with Section 504, a school district must make reasonable modifications that are necessary to ensure a student with a XXXXXXXX has an equal opportunity to participate, unless the school district can show that doing so would be a fundamental alteration to its program. A school district must also provide a qualified student with a XXXXXXXX with needed aids and services, if the failure to do so would deny that student an equal opportunity for participation in extracurricular activities in an integrated manner to the maximum extent appropriate to the needs of the student.²

Facts

During the XXXXXXXX school year, Student A was enrolled in XXXXXXXX grade at XXXXXXXX School (School). Student A receives XXXXXXXX through an Individualized Education Plan (IEP) for a XXXXXXXX. Student A is also XXXXXXXX with XXXXXXXX. She has a XXXXXXXX from her treating physician, which the District incorporated into her IEP. Over the course of the XXXXXXXX school year, Student A's parent provided the school team with four XXXXXXXXs dated XXXXXXXX.

Student A's parent asserts that, during the XXXXXXXX school year, the School failed to implement a provision of Student A's IEP which requires that Student A be XXXXXXXX to the Nurse's office when she was symptomatic in class. Further, Student A's parent asserts that the School's nurse (Nurse), who provides Student A with XXXXXXXX daily, failed to follow Student A's XXXXXXXX in several respects, including when she manually calculated XXXXXXXX dosages, failed to supervise Student A, and did not communicate with Student A's parent as required by the XXXXXXXX. She further asserts the District failed to provide Student A necessary XXXXXXXX during after school activities.

Student A's IEP: An Escort to the Nurse's Office

Student A's IEP dated XXXXXXXX provides that "[Student A] should be escorted to the nurse's office if symptomatic in class." Student A's parent told OCR that she understands this IEP provision to mean that Student A should be escorted to the Nurse's office when her XXXXXXXX was too high (XXXXXXX) or low (XXXXXXX). Further, Student A's parent told OCR that, when Student A does not respond to her XXXXXXXX because her XXXXXXXX was too high or low during class, she should be escorted to the Nurse's office. She explained to OCR that when Student A's XXXXXXXX, she is not in the XXXXXXXX and is therefore unable to manage her XXXXXXXX.

¹ OCR also notes that the IEP team must not make placement decisions based on available resources, including budgetary considerations and the ability of the school system to hire and recruit qualified staff, *see* 71 Fed Reg. 46539, 46588 (comments to the IDEA regulation at 34 C.F.R. §§ 300.115-116).

² *See* 34 C.F.R. § 104.37(a), (c); 34 C.F.R. § 104.34(b); 34 C.F.R. § 104.4(b)(1)(ii).

Consequently, if Student A was not going to the Nurse's office, then someone needed to get to her to treat the XXXXXXXX, which was the reason for the escort provision.

The Director of Student Services, Student A's teacher (Teacher A), and the Nurse told OCR that this IEP provision required an escort only when Student A exhibited XXXXXXXX. The Nurse referenced the XXXXXXXX for the definition of symptomatic, which states, "[i]f XXXXXXXX [high XXXXXXXX] is accompanied by XXXXXXXX" then the parent should be "immediately contacted" because Student A may need immediate XXXXXXXX attention. The District Nurse, who supervises nursing services for the District and attends Student A's IEP meetings, told OCR that, when Student A's XXXXXXXX is beeping, this means Student A is experiencing XXXXXXXX, but this does not mean that Student A is symptomatic as that term is used in the IEP and thus would not require an escort. The District Nurse stated, however, that staff may not know if Student A is symptomatic if her symptoms are not visible or if Student A does not report her symptoms.

The Nurse told OCR that she would receive an alert through an application on her iPad that allowed her to follow Student A's XXXXXXXX levels in real time. If the alarm sounded for high or low XXXXXXXX, and Student A did not respond, the Nurse said she would either come to Student A's classroom or call the teacher to ask if Student A was "able" to come to her. She said that, by XXXXXXXX, she knew Student A was sometimes resistant to coming to her office for XXXXXXXX. Student A's parent told OCR that Student A was experiencing "XXXXXXX burnout," meaning she was frustrated with frequently missing class or other activities to manage her XXXXXXXX. On XXXXXXXX, the Nurse emailed Student A's parent that she "understand[s] that [Student A] is frustrated when [the Nurse has] to come into [Student A's] class or have her come to the [N]urse's office but my job is to make sure she is ok." The Nurse told OCR that she talked to Student A about the importance of coming to the Nurse's office for treatment.

OCR interviewed multiple witnesses who agreed that Student A had difficulty coming to the Nurse's office of her own accord for XXXXXXXX in the XXXXXXXX. The Director told OCR that Student A was supposed to visit the Nurse twice a day for lunch and gym, or if her alarm was beeping due to high or low XXXXXXXX though Student A experienced "behavioral challenges" with coming to the Nurse's office. Teacher A told OCR that Student A started to ignore her alarms for high or low XXXXXXXX so she would either nudge Student A to leave or the Nurse would knock on the classroom door to retrieve Student A. The Case Manager said that, if the Nurse called the teacher, Student A would not want to leave; however, if the Nurse came to the classroom, then Student A would leave for the Nurse's office to receive appropriate XXXXXXXX. The Nurse told OCR that, by XXXXXXXX, Student A was regularly having issues with coming to her office and exhibited a "XXXXXXX" to coming to the Nurse to manage her XXXXXXXX.

The District convened the IEP team meeting on XXXXXXXX, to discuss, among other things, Student A's reluctance to go to the Nurse's office for assistance in managing her XXXXXXXX. The notes from the XXXXXXXX IEP meeting state that the Case Manager described Student A's XXXXXXXX response to going to the Nurse's office, and asked what more could be done to support her. The team revised Student A's IEP to include a XXXXXXXX goal and added XXXXXXXX services to assist Student A with managing her XXXXXXXX so that she could be more independent in managing her XXXXXXXX "in the next 1.5 years." The IEP meeting minutes also indicate that the Nurse was to meet with Student A to have a restorative conversation with Student A. The Nurse told OCR that she did not attend the IEP meeting and did not receive a copy of the revised IEP, and so she did not have the restorative conversation with Student A per the XXXXXXXX IEP.

Failure to Follow the XXXXXXXX

Student A's parent alleges the Nurse failed to follow Student A's XXXXXXXX with respect to the calculation of XXXXXXXX as well as the supervision of Student A's XXXXXXXX administration and other XXXXXXXX. Student A's parent also asserts the Nurse did not always communicate with her in accordance with the parent-communication provisions of the XXXXXXXX.

Manual Calculations

Student A's parent told OCR the Nurse failed to follow Student A's XXXXXXXX when she regularly used her own manual calculations rather than the XXXXXXXX calculations for XXXXXXXX throughout the XXXXXXXX school year. The XXXXXXXX in effect at the time stated that, "[i]f using [an] XXXXXXXX, follow XXXXXXXX recommendations made by the XXXXXXXX." The XXXXXXXXs further provided that only the Parent was authorized to increase or decrease a XXXXXXXX.

Student A's parent explained that the Nurse should not override the XXXXXXXX with manual calculations because the manual calculation was not taking into account XXXXXXXX or other factors. The Nurse denied to OCR that she used manual calculations of XXXXXXXX beyond what was permitted in the XXXXXXXX. She explained that she only "like[d] to do manual calculations" to compare it to the XXXXXXXX readings and "make sure it's in the right ballpark." She said she also needed to do this because Student A sometimes reported her XXXXXXXX and then what she actually ate was "not remotely close" to what she previously reported to eat. Otherwise, the Nurse said, she was not changing or doing manual calculations; she was only adding the XXXXXXXX that Student A would eat and then input that amount. Student A's parent told OCR that, while the Nurse is correct that XXXXXXXX must be manually input, any unreported XXXXXXXX should be corrected by the XXXXXXXX as part of high XXXXXXXX; she said the Nurse should not "go back and add XXXXXXXX after the fact into the XXXXXXXX" to adjust the insulin amount as doing so would result in giving Student A too much XXXXXXXX.

Contacting Student A's Parent

Student A's parent further told OCR that she should be contacted when Student A's XXXXXXXX was too high (XXXXXXX) or low (XXXXXXX). The XXXXXXXXs from August and October 2022 state that Student A's parent should be contacted "[i]f XXXXXXXX [high XXXXXXXX] is accompanied by XXXXXXXX" because "the child may need immediate XXXXXXXX attention." Later, in XXXXXXXX, the XXXXXXXX was modified to add the following provision: "Call parent/guardian [w]hen XXXXXXXX is less than XXXXXXXX or if XXXXXXXX is persistently greater than XXXXXXXX hours[.]" Further, per the XXXXXXXX, if Student A was going to XXXXXXXX that were not planned for, the Nurse should contact Student A's parent to authorize the increase or decrease "within + or - 3 units of XXXXXXXX."

Student A's parent asserts that the Nurse failed to contact her on numerous occasions throughout the XXXXXXXX school year when Student A's XXXXXXXX was too XXXXXXXX as well as when Student A XXXXXXXX than reported and an XXXXXXXX adjustment was necessary. Student A's parent noted one incident on XXXXXXXX, in which Student A's XXXXXXXX went so high that it exceeded XXXXXXXX, and the Nurse failed to communicate this to Student A's parent. On that day,

the Nurse's log indicated that Student A's XXXXXXXX was XXXXXXXX. Student A's parent explained that when the XXXXXXXX , that means Student A's XXXXXXXX has exceeded XXXXXXXX and the XXXXXXXX shuts off. The Nurse told OCR that, because of the XXXXXXXX reading, she XXXXXXXX. Despite Student A's high XXXXXXXX levels, the Nurse evaluated Student A's lack of XXXXXXXX, and determined she was fit to go to XXXXXXXX class even though a provision in Student A's XXXXXXXX states physical activity should be avoided when XXXXXXXX is greater than XXXXXXXX. The Nurse's log reflects, and the Nurse confirmed, that Student A's parent was not contacted by telephone or email that day.

Both the District personnel and Student A's parent noted that from XXXXXXXX through XXXXXXXX, Student A's parent's phone mistakenly blocked the School's phone number, making it challenging for the Nurse to communicate when issues arose, though Student A's parent was still available via email.

Supervision

Student A's parent asserts the Nurse failed to supervise the XXXXXXXX throughout the XXXXXXXX school year. Student A's parent told OCR that, on XXXXXXXX, the Nurse failed to supervise Student A's XXXXXXXX, including the insertion of Student A's XXXXXXXX. The XXXXXXXX states that Student A is "able to participate in [the] task" of XXXXXXXX "but should be monitored by trained school personnel." Student A's parent said that on XXXXXXXX, the cannula was not attached to Student A's skin that afternoon, so she was not receiving XXXXXXXX, which made Student A vulnerable to having XXXXXXXX issues by the end of the school day.

OCR reviewed the Nurse's log from that day, which stated that Student A's "needle has come out" so the Nurse changed the pump site. The Nurse told OCR that she drew up Student A's XXXXXXXX on XXXXXXXX, not Student A. Once the pump paired with the XXXXXXXX, the Nurse recalled pressing the XXXXXXXX to Student A's XXXXXXXX until it made an audible sound as the XXXXXXXX. The Nurse denied that she did not supervise the XXXXXXXX of Student A's XXXXXXXX on XXXXXXXX nor otherwise mismanaged Student A's XXXXXXXX.

After School Activities

Student A participated in extracurriculars in the XXXXXXXX school year, including XXXXXXXX in XXXXXXXX and the School's XXXXXXXX, which had auditions, XXXXXXXXs, and performances between XXXXXXXX, through XXXXXXXX. Student A's parent said she would occasionally volunteer at XXXXXXXX XXXXXXXXs, but typically Student A attended XXXXXXXXs after school from XXXXXXXX p.m. without anyone present who was trained to XXXXXXXX. Student A's parent told OCR she had not requested XXXXXXXX for extracurricular activities from the IEP team because the prior Nurse would stay after school as needed, and Student A's parent did not realize that was no longer the case in the XXXXXXXX school year.

Student A's parent told OCR that, on XXXXXXXX, Student A attended XXXXXXXX tryouts when her XXXXXXXX was too high; both the Nurse and Student A's parent agreed that Student A should not have been allowed to participate but the Nurse told OCR she was unaware that Student A was planning to attend XXXXXXXX tryouts. Student A's parent told OCR that there were no staff present after school who were trained to XXXXXXXX. Student A's parent spoke to the Principal on XXXXXXXX, about after school XXXXXXXX and her concern that the Nurse was not following the

XXXXXXX. The Principal said she told Student A's parent that the Nurse's day contractually ended between 2:35 and 2:45, and the School would need time to hire someone because staying later was not part of the Nurse's job expectations.

On XXXXXXX, Student A attended a XXXXXXX XXXXXXX after school at XXXXXXX p.m. when her XXXXXXX had been too high earlier that day. Student A's parent told OCR that, when she arrived at the XXXXXXX XXXXXXX, Student A's XXXXXXX was not inserted, and she was not receiving XXXXXXX because the Nurse had not properly supervised Student A. She explained that Student A wanted to stay for the XXXXXXX, so they remained and tried to bring her XXXXXXX down. Thereafter, when they arrived home at 5:30 p.m., Student A XXXXXXX, and her XXXXXXX remained XXXXXXX, so she took Student A to the XXXXXXX. The District told OCR that the two XXXXXXX teachers who were present for the XXXXXXX were trained in basic XXXXXXX, but the District Nurse told OCR that the teachers lacked training to XXXXXXX.

The following day, Student A's parent exchanged emails with the Principal requesting an IEP meeting and wrote that, with moving the meeting to the following Monday when the team was available, she "would like to request that either [the District Nurse] or a sub nurse oversees [Student A's] XXXXXXX and remains in the building while Student A is attending XXXXXXX for the XXXXXXX." Because a nurse was not provided for the remaining 2.5 weeks of the School's XXXXXXX, Student A's parent attended instead.

The IEP team convened on XXXXXXX, to discuss Student A's XXXXXXX and the events that led to her XXXXXXX after the XXXXXXX XXXXXXX the prior week. The "Notes" section of the XXXXXXX IEP states that Student A's parent relayed that she felt the School "need[ed] more nurses at School and cited ADA law regarding nurses after school." The IEP team revised Student A's IEP to add a "check-in" at the end of the day with the Nurse if Student A was staying for after school activities. The District's witnesses said that no other alternatives were considered. The Case Manager also told OCR that, although Student A's parent expressed a concern about after school XXXXXXX, the IEP team did not consider providing after-school services for Student A as that was a "staffing issue" that she had no control over.

Conclusion

During the course of the investigation, OCR identified concerns regarding the District's implementation of Student A's IEP and XXXXXXX in addition to the provision of XXXXXXX during after school activities.

The evidence is unclear as to whether the District failed to provide Student A with an XXXXXXX to the Nurse's office as required by her IEP given the parties differing interpretations of "symptomatic," and whether the Nurse failed to follow the XXXXXXX such that Student A was denied a FAPE. However, OCR is concerned the District failed to timely reconvene an IEP meeting with a group of persons knowledgeable about Student A's individualized needs to consider whether various provisions of Student A's IEP Plan and XXXXXXX were properly implemented or required modification. While Student A's IEP indicated that Student A would be escorted to the Nurse's office when "symptomatic," arguably meaning high or low XXXXXXX accompanied by other XXXXXXX, multiple witnesses from the District said they were aware of Student A's reluctance to go to the Nurse's office of her own accord by the XXXXXXX, but the District did not reconvene the IEP team until XXXXXXX to clarify the IEP Plan or XXXXXXX, or consider alternatives to

address the concern that Student A is reluctant to report her symptoms or seek appropriate assistance from the Nurse when she was symptomatic or when her XXXXXXXX was too high or too low. Further, OCR is concerned that the IEP team for both meetings held in the XXXXXXXX school year included only the District Nurse, and not the Nurse who is primarily responsible for XXXXXXXX Student A's XXXXXXXX. OCR notes that the IEP team failed to provide the Nurse with a copy of the revised XXXXXXXX IEP and meeting minutes, which required her to have a restorative conversation with Student A and, consequently, that conversation never occurred.

OCR also identified a concern regarding the District's failure to provide Student A with assistance in managing her XXXXXXXX after school. While Student A's parent did not specifically request XXXXXXXX services for extracurricular activities during the IEP meeting at the beginning of the XXXXXXXX school year, she raised the issue of after school nursing services in some manner, even if indirectly, after Student A experienced high XXXXXXXX while participating in after school activities on two occasions: first, during her conversation with the Principal in XXXXXXXX wherein she expressed concern about Student A attending basketball tryouts with high XXXXXXXX; and second, when she emailed the Principal in early XXXXXXXX regarding her request that the District Nurse or a substitute nurse remain in the building while Student A attended XXXXXXXX for the musical. Further, the notes from the XXXXXXXX, IEP team meeting indicate that Student A's parent stated the District "need[ed] more nurses at School and cited ADA law regarding nurses after school." The IEP team members told OCR that the team provided for an additional check-in with the Nurse at end of the school day if Student A planned to attend after school activities but did not consider whether Student A required nursing or other XXXXXXXX for after school activities for her to have an equal opportunity to participate in extracurricular activities.

Prior to OCR completing its investigation, the District requested to resolve the complaint under Section 302 of OCR's CPM. The District executed the enclosed Agreement that, when fully implemented, will address the evidence obtained and resolve all the issues raised in this OCR investigation. OCR will monitor its implementation until the District is in compliance with the terms of the resolution agreement and the statute(s) and regulation(s) at issue. Upon determining the District's compliance, OCR will close the case.

This concludes OCR's complaint resolution activities 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 one OCR case. This letter is not a formal statement of OCR policy and should not be relied on, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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. 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.

OCR would like to thank the District for the cooperation and courtesy extended to OCR during our investigation. In particular, OCR would like to thank XXXXXXXX counsel for the District. If you have questions regarding this letter, you may contact Elisabeth Gusfa, Civil Rights Attorney, at (312) 730-1621 or by email at Elisabeth.Gusfa@ed.gov.

Sincerely,

Melissa Howard
Supervisory Attorney

cc: XXXXXXXXXX