

Based on the complaint allegations, OCR investigated whether the Center denied a qualified student with a disability a free appropriate public education (FAPE) in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation, OCR interviewed the Student's parents and the Student, and reviewed documents provided by the parents. OCR also reviewed documents provided by the District and interviewed relevant District witnesses including teachers and administrators. Finally, OCR provided the Student's parents an opportunity to respond to the information submitted by the Center. Based on the evidence obtained during its investigation, OCR determined that the Center failed to implement two of the provisions of the Student's IEP: xxx xxxxxxxx xxxxx xxxxxxx xxx xxx xxxxxxxxxxxxxxx xxxxx xxxxx xxxxx xxxxxxxxxxxxxxxx OCR further found that that the denial of these IEP provisions resulted in a denial of FAPE for the Student from xxxxxxxx xxx xxxxxx xxxxxxxx xxxxxxxxxxx xxx xxxxxx the date on which he stopped attending the Center. The Center submitted an agreement to resolve the compliance issues. With regard to the rest of the allegations, OCR found that there is insufficient evidence to support a conclusion that the Center violated Section 504 as alleged. The reasons for OCR's determinations are explained below.

Summary of OCR's Investigation

- **Background**

This complaint investigation covered the incidents of alleged discriminatory conduct occurring between xxxxxxxx xxx xxxxxx which is 180 days prior to the date this complaint was originally filed with HHS, and xxxxxxxx xxx xxxxxx which was the last day that the Student attended the Center. At that time, the Student was 18 years old and the Student's mother was his legal guardian. According to the Student's parents, the Student's disabilities include: xxxxxxxx xxxxxxxxxxxxxxxx xxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxxxxx xxxxxxxx The Student's xxxxxxxx xxxxx xxx indicated his disability as xxxxxxxx

see how much was used. When provided the opportunity to respond to the information submitted by the Center, the Student's mother said she thought it was possible that tasks were divided in this manner. During his interview with OCR, the Student mentioned xxxxxxxx xxxxxx into cups, but only recalled making "no bakes" in the refrigerator.

With regard to xxxxxxxxxx xxxxxx the Student's IEP in effect for the xxxxxxxxxx school year provided for a xxxxx xxxxxxx xxxxx xxxxx xxxxx xxxxxxxxxxxxxxxxxxxx OCR reviewed charts provided by the Center showing only that the Student was given xxxxxxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxx xxxxxx for xxxxx days in January (January xx xxx xxx xxx xxxxx). However, the Center did not provide any charts showing that the Student was given a xxxxxxxxxxxxxx xxxxx xxxxx when xxxxxxxxxxxxxxxxxxxx during the time period at issue in this investigation -- xxxxxxxx xx xxxxxxxx xxxxxxxxxxxxxx xxx xxxxx. In addition, the charts appear to xxxxx xxxxxx and xxx xxxxx it took the Student to complete each task in xxxxxxxxxxxxxx xxxxxxxxxxxxxx. According to the teacher, the charts indicate xxx xxxxx xxxxxxx xxx xxxxxxxxxxxxxx xxxxxxxx xxxxxxxx xx xxxxxxx xxxxxxxxxxxxxx xxxxx xxxxxx. The purpose of the charts was to try xx xxx xxx xxxxxxxxxxxxxx xx xxxxx xxx xxxxx xxx in a timely manner. The teacher was uncertain whether the Student's xxxxxxxxxxxxxxxxxxxxxx used the charts every day.

When provided the opportunity to respond to information submitted by the Center, the Student's parents stated that they were not familiar with the charts. They stated that the xxxxxxxxxxxxxx xxxxx xxxxx xxx xxxxxxxxxxxxxxxxxxxx required by the Student's IEP was for the Student to be given time to xxxxxxxx xxxxxxxxxxxxxx xxx xxxxxxxxxxxxxx and that the Student xxxxxxxx xx xxxxxxxxxxxxxx xxxxx xxxxxxxx without xxxxxxx xxxxxx xxxxx xx xxxxxxxxxxxxxx xxxxxx.

During interviews of Center staff, OCR requested all of the Student's charts for xxxxxxxx xxx xxxxxxxxxxxxxx xxxxxx or other records showing that the Student was provided xxxxxxxxxxxxxx xxxxx xxxxxx when xxxxxxxxxxxxxxxxxxxx. The Center was not able to produce any further documentation to support the implementation of xxxxx xxxxxx during xxxxxxxxxxxxxx for the Student and stated that these records would likely be in the possession of the District.

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With regard to the xxx xx xxxxxxxxxxxxxx the Student's IEP stated xxxxx xx xxxxx xxxxxxx xxxxxxxxxxxxxx. There was no further explanation in the IEP of how this provision was to be implemented. The Student's parents alleged that the Student was not allowed to xxx xxxxxxxxxxxxxx to calm himself and that on one occasion, on xxxxxxxxxx xxx xxxxxx xxxxxxx Center staff members xxxxxxxxxx xxxxxxxxxxxxxx xxx xxxxxxxxxxxxxxxxxxxx from the Student while he was in the culinary lab. The parents described the episode as an xxxxxxxxxx and provided a video recording from a Center camera, which documents this event.

The Student's teacher and the secondary administrator stated that the Student was allowed to xxx xxxxxxxxxxxxxx except when he was in the culinary lab, because xxx xx xxxxxxxxxxxxxx would be a safety hazard in the lab. However, the Student was allowed to go to a different location, such as an office or conference room, to xxx xxx xxxxxxxxxxxxxx if he needed them.

OCR reviewed daily task schedules recorded by the Student's xxxx showing that the Student arrived at the Center daily at xxxxx xxxx and was told to put his xxxxxxxxxxx away at xxxxx xxxx. The remainder of the day he was in culinary lab, where he was not allowed to xxx xxx xxx xxxxxxx. The daily task schedules for xxxxxxx xx xxx xxxxxxx xxx xxx xxx xxx xxx xxxxxxx indicate that he was told to put away his xxx xxxxxxx while in the lab and warned that it was a safety hazard. The schedule for xxxxxxx xx noted that the Student was offered the opportunity to go to a different area to listen to his xxx xxxxxxx.

More than one witness from the Center stated that on xxxxxxx xx the Student was trying to use his xxx xxxxxxx in the lab and was also trying to xxx x xxxxxxx xxx xxx xxxxxxx both of which are considered safety hazards. Several staff tried first to speak with the Student and then eventually tried to take the xxx xxxxxxx away. The Student then started xxxxxxx the teacher. One staff member told OCR that he told the Student he could have his xxx xxxxxxx if he would leave the culinary lab and come to the office.

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According to the teacher, during the time period at issue in this investigation, the Student was in the culinary lab for most of the xxxxx xxxxx he spent each school day at the Center. The teacher said that it was hard to tell how often the Student needed to calm himself while in the culinary lab. xxxxx xx xxx xxxxxxx xx x xxxxxxx xx xxx xxxxxxxxx xx xxxxx xxxxxxx xx xxxxxxx xx xxxxx xxxxxxxxx xx xxxxxxx xxxxxxxxx xxxxx xxx xxxxxxx xxx xxx xxxxxxx. When asked how the Student was supposed to communicate his need to calm himself with xxxxxxxxxx the teacher responded that he could make that determination on his own or an xxxxx could prompt him. If he told the teacher or aide that he needed to xxxxx xxxxxxx while in the culinary lab, he would be directed to a different room. The teacher said that the Student's need to xxxxx xxxxxxx did not happen every day, but it sometimes occurred several times in one day. The Center did not maintain documentation of when the Student was told to xxx xxxxxxxxx.

When provided the opportunity to respond to the information from the Center, the Student's parents said that sometimes the Student was allowed to xxx xxx xxxxxxxxx but it was not consistent. The parents said that originally the Student's IEP stated that he could xxx xxxxxxxxx as a coping mechanism. However, at a meeting on xxxxxxx xxx xxxxx Center staff raised the concern that xxxxx xxxxxxxxx in the culinary lab was a safety issue. The Student's parents did not think xxxxx xxxxxxxxx would be a problem because the Student's xxxxx could follow him in the kitchen and they noted that in prior years there had been deaf children in cooking class. According to the Student's parents, the Student relied on an xxxxx to direct him to a xxxxx xxxxx for a xxxxx xxxxx xxxxxxx. The parents said that when the Student's behavior escalates xx xxxxxxx xxxxxxxxx xxx xxxxxxx xxxxxxxxx xxx xxxxxxx xxxxx xx xxxxx xx xxxxx xxxxx xxx xxx xxxxxxx.

implement a xxxxxxxx xxxx xxxxxxxx According to the Center's xxxxxxxx xxxxxxxxxx
xxxxxxxxxxxxx the District did not provide any information to the Center about a
xxxxxxxx xxxx xxxxxxx to be used under the IEP. Center staff assumed that the behavior
card system had been removed from the IEP, and that it only appeared on the IEP due to
a clerical error.

The coordinator noted that, prior to the Student's enrollment at the Center, she met with
his IEP team at the District's high school to develop a plan that could be implemented at
the Center. However, she and several other Center witnesses reported that they did not
know about or xxx xxxxxxxx xxxxxxx She advised that she contacted the District's high
school principal in xxxxxxxxxx xxxx by e-mail, and requested clarification about this
provision, but never received a response. One of the witnesses stated that the District's
xxxxxxxx xxxxxxxxxx xxxxxxxxxx informed him that that the xxxxxxxx xxxx provision was
from an old IEP and should have been removed. More than one of the Center's witnesses
acknowledged that no attempt was made by the Center to reconvene the Student's IEP
team to address this issue.

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According to the Student's parents, the Center failed to provide them with the xxxxxxxx
xxxxxxxx required by the IEP. OCR reviewed the Student's IEP and noted that it
provided for xxxxxxxxxx xxx xxxxxxxxxx xxxxxxxxxx xxxxxxxx xxxxxxxx xxxxxxxx xxxxx
xxxx xxxxx and via conferences. The Center provided interim and final report cards for
the Student for the first and second quarters, as well as an interim report issued in
xxxxxxxx xxxxx The xxxxxx xxxxxxxxxx xxxxxxx xxxxx noted that the Student was not
making adequate progress in IEP annual goal 1. The xxxxxxxx xxxxxxxx which was issued
xxxxxxxx xxx xxxxx again showed that the Student was not making adequate yearly
progress in goal 1. The Student's xxxxxxxx xxxxxxxxxx xxxxxxx xxxxx (dated xxxxxxxx xxx
xxxxx showed that the Student had an x and had xxxxx xxxxxxxxxx and xxxxxxxxxx In
addition, the xxxxxxxxxxxxxxxxxxx provided daily e-mails to the Student's parent with the
Student's xxxxxx xxxxxxxxxx In these reports, she also commented on his
xxxxxxxxxxxxxxxxxxxxx and xxxxxxxxxxxxxxxx each day. OCR also reviewed copies of daily log
entries made by the xxxxxxxxxxxxxxxxxxx documenting the Student's progress on IEP
goals provided by the Center, although it was not clear if these daily log entries were
communicated to the parents. Additionally, there was a xxxxxx xxxxxxxxxxxxxxxx
xxxxxxxx for Center communication with the Student's parents, but according to Center
staff that notebook is now in the parents' possession.

Applicable Legal and Policy Standards

The Section 504 regulation requires that recipient school districts provide a free
appropriate public education (FAPE) to qualified students with disabilities in their
jurisdictions. 34 C.F.R. § 104.33. An appropriate education for purposes of FAPE is
defined as the provision of regular or special education and related aids and services that
are designed to meet the individual educational needs of students with disabilities as
adequately as the needs of students without disabilities are met and that are developed in

accordance with the procedural requirements of the Section 504 implementing regulation at 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Improvement Act (IDEA) is one means of meeting these requirements.

If OCR finds that the placement, aids, and services identified by a district as necessary to meet a student's individual needs were not provided, OCR determines the district's reason for failing to do so and whether the failure to provide the services for the student resulted in a denial of a FAPE.

Analysis and Conclusion

In determining whether or not the Center failed to implement one or more of the provisions in the Student's IEP and, if so, whether such failure constituted a denial of FAPE for the Student, OCR first looked to see what placement, aids and services were identified by the Student's IEP team as necessary to meet his educational needs. The evidence shows that, during the xxxxxxxx school year, the Student was on an IEP, which was developed by Center and District staff and which placed the Student half-days at the Center. Based on a careful review of the evidence described above, OCR concluded that the Center failed to implement two of the provisions required by the Student's IEP. The Center witnesses admitted that the Center did not implement the xxxxxxxx xxxx xxxxxx for the Student during the time he attended the Center. OCR also concluded that the evidence obtained supports that, during the relevant time period, the Center did not provide the Student with a xxxxxxxxxxxx xxxx xxxx xxxxxxxxxxxxxxxx as required by his IEP. OCR finds that these failures to implement the Student's IEP by the Center resulted in a denial of FAPE for the Student from xxxxxxxx xxx xxxxx through xxxxxxxx xxx xxxxxx when he stopped attending the Center.

OCR further finds that the evidence is insufficient to support that the Center failed to implement the other provisions of the IEP as alleged in the complaint. The Center provided sufficient information to confirm that it implemented the portions of the Student's IEP requiring xxxxxx xxxxxxxxxxxxxxxx xxx xxxxxxxxxxxxxxxx x xxxxxxxx xx xxxxx xxx xxxx xxxxx xxx xxxxxxxxxxxxxxxx xxxxxxx xxxxxxxxxxxxxxxx xxxxxxx xxx xxxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxxx With regard to the xxx xx xxxxxxxxxxxx the evidence indicates that the Student was permitted to xxx xxxxxxxxxxxx while at the Center and that in order to xxx xxxxxxxxxxxx during the time the Student was in the culinary lab the Student was required to go to a xxxxxxxxxxxx xxxxx xxx xxxxxxx xxxxxxxxxxxx This requirement is not inconsistent with the IEP as written. However, OCR recommends that, as a best practice, the Center write detailed provisions in future IEPs to address how particular services should be implemented in its program, clearly communicate to relevant Center staff what disability-related aids and services individual students with disabilities require, and determine how students' IEPs or Section 504 plans will be implemented in the Center's program. Finally, OCR finds that the evidence is insufficient to support a conclusion that the Center failed to implement the provision of the IEP requiring xxxxxxxxxxxx xxxxxxxxxxxxxxxx The teacher's description of what was required and provided under the IEP was

consistent with the IEP as written and the evidence did not indicate that this provision was not followed at the Center.

To resolve the violations concerning the xxxxxxxx xxxx xxxxxx and xxxxxxxxxxxx xxxxxxxxxxxx times, the Center voluntarily submitted the enclosed agreement on May 28, 2014. The agreement requires the Center to provide the Student's parents with a written offer to reconvene the Student's Section 504 team to determine the compensatory education services necessary to address the District's failure to provide the Student with a FAPE for the period of time from xxxxxxxx xx xxxxxxxx xxxxxxxx xxx xxxx, and to consider whether any discipline given during that time resulted from the Center's failure to implement portions of the Student's IEP. Additionally, the agreement requires the Center to provide training to its culinary arts program teachers, administrative staff, and special education coordinator on the general requirements of Section 504 and Title II, concerning the identification, evaluation, and placement of students with disabilities, including the Center's obligation to implement a student's IEP or Section 504 plan as written and to reconvene the IEP or Section 504 team prior to making significant changes to a student's placement or services, and the need to plan for how a student's IEP or Section 504 plan will be implemented in the Center's programs. The training will also include the Vocational Education Nondiscrimination Guidelines of the regulation implementing Title VI of the Civil Rights Act of 1964, at 34 C.F.R. Part 100, Appendix B, as they apply to disability discrimination. Further, the agreement requires the Center to develop written procedures for actions to be taken by Center staff when a student with a disability transfers to the Center, including obtaining any necessary information from the student's sending district about the student's IEP or Section 504 plan, communicating to relevant Center staff what disability-related aids and services the student requires, and determining how the student's IEP or Section 504 plan will be implemented in the Center's program. The procedure will require the Center to reconvene a student's IEP or Section 504 team if modifications to the IEP or Section 504 plan are needed to tailor the plan to the Center's program.

OCR will monitor the implementation of the agreement. If the Center does not fully implement the agreement, OCR will reopen the investigation and take appropriate action. This concludes OCR's investigation of the complaint and should not be interpreted to address the Center'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. The complainant may have the right to file a private suit in federal court, whether or not OCR finds a violation.

Please be advised that the Center 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 harmed 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.

We look forward to receiving the Center's first monitoring report by June 30, 2014. The report should be directed to xxxxxx xx xxxxxx, who will be monitoring the Center's implementation of the agreement. xxx xxxxxx may be reached at xxxxxxxxxxxxx@ed.gov or at (216)522-xxxxx Thank you for the cooperation of Center staff during OCR's investigation and resolution of this complaint. If you have questions about this letter, you may contact xxxxxx xx xxxxxx Acting Supervisory Attorney/Team Leader for this case, at the number listed above.

Sincerely,

/s/

Meena Morey Chandra
Acting Director

Enclosure