



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

R. Brent Minney, Esq.  
Pepple & Waggoner, Ltd.  
Crown Centre Building  
5005 Rockside Road, Suite 260  
Cleveland, OH 44131-6808

Re: OCR Docket #15-13-1379

Dear Mr. Minney:

This letter is to notify you of the disposition of a complaint filed with the U.S. Department of Education's Office for Civil Rights (OCR) on September 10, 2013, against the Fairview Park City School District (the District), alleging discrimination against a student (the Student) on the basis of disability. Specifically, the complaint alleged that the District discriminated against a student (the Student) on the basis of disability by failing to provide information about/an equal opportunity for the Student to participate in a trip involving students in the school xxxxx.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act, 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, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department) and by public entities, respectively. As a recipient of Federal financial assistance from the Department and as a public school system, the District is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following legal issues:

1. whether the District failed to ensure that a qualified student with a disability was not excluded from participation in, denied the benefits of, or otherwise subjected to discrimination involving any of the District's programs, activities, or services in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and the Title II implementing regulation at 28 C.F.R. § 35.130(a);
2. whether the District failed to afford a qualified student with a disability an equal opportunity to participate in or benefit from the District's programs, activities, aids, benefits, or services in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(ii) and the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii); and
3. whether the District failed to provide a qualified student with a disability an equal opportunity for participation in non-academic and extra-curricular services and

activities in violation of the Section 504 implementing regulation at 34 C.F.R. §104.37(a).

During OCR's investigation, OCR interviewed the Student's guardian and had multiple discussions with the District's Director of Pupil Services and the District's legal counsel. OCR also reviewed the District website, as well as the Fairview Park Music Association's (the Association's) website.

The Student is a member of the District's high school xxxxx. The Student's guardian told OCR that the Student is an individual with a disability who uses a xxxxxxxxxxxx xx xxxxx, xx xxxx xx x xxxxxx xxx x xxxxxxxxxxxx. The Student also uses a xxxxxxxxxxxx xxxxxxxxxxxx and is xxxxxxxxxxxx to school in a xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx provided by xxx xxxxxx. The Student has a xxxxx who assists her with her xxxxxxxxxxxx during the school day, and she requires assistance with her xxxxxxxxxxxx at xxxxx. The Student's guardian told OCR that the Student's disabilities make it difficult for her to travel without accommodations. In May 2013, the Student's guardian learned that a December 2013 trip to Florida was being planned for high school music students; the students were to take a chartered bus and sleep on the bus during the drive. The guardian stated that the Student would be unable to travel on the bus in this manner due to her disabilities but could take an accessible van or could fly.

According to the Student's guardian, she asked the Student's xxxxx instructor about whether the hotel in Florida where the group planned to stay would be able to accommodate the Student. The xxxxx instructor said that she would talk to the Director of Pupil Personnel. Later, the instructor told the Student's guardian that she would need to contact the Fairview Park Music Association, as it was planning the trip, and that she did not know the name of the hotel yet, because the details were being finalized. The Student's guardian did not pay the required trip deposit, because the deposit was nonrefundable and she was unsure at that time whether the Student would be able to go on the trip. The Student's guardian told OCR that she was willing to pay the same cost as all the other students, which was about \$900, but that she was unable to pay for any additional costs, such as airfare, that would be necessary due to the Student's disability.

OCR reviewed the Association's website. It stated that the Association is a group of volunteer parents who support the Fairview Park High School's (the high school's) music programs. The Association provides funds for awards, scholarships, student travel accounts, and other needs of the high school's bands, choirs, and orchestras.

OCR also located a letter on the District's website, dated May 2013; the letter was sent out by the directors of the high school bands, orchestra, and choirs and was addressed to choir, orchestra, band and drill team parents and students. The letterhead consisted of the District's name and logo, a link to the District's website, and the address and phone numbers for the high school. The letter stated that the high school music department would be traveling to Florida in December 2013 and that the trip would cost \$898. The letter indicated that payments were due on May 16, August 30, September 27, and October 25, 2013. The letter also stated that all payments were nonrefundable once made but that fundraising through the Association would be available to defray costs. The letter further stated that there would be a meeting on May 9 to give parents and students an itinerary and information concerning the trip, and it asked that

students and parents contact the directors if they had any questions. The directors' District email addresses were provided at the bottom of the letter.

OCR located another document on the District's website, entitled "Florida Trip Fairview High School," which stated that the cost of the trip covered the cost of hotels, a few meals, bus transportation, entrance fees to amusement parks, and the cost of a football game. The document contained an itinerary and information regarding emergency medical forms and student medication. The document stated, "Since this is a school-sponsored trip, all students and adults will follow all Fairview High School policies and procedures. . . . Please sign and return the Fairview High School Music Department's Code of Conduct Contract to the director. If you have any questions concerning the trip or information in this packet, please contact your director immediately." In addition, the document stated, "Since this is a school sponsored trip, school rules will apply to the dress code." The document asked parents of students interested in attending the trip to sign the form and return it to the student's director and also asked the parents to circle the group the student participated in: band, drill team, choir, or orchestra.

When OCR initially spoke to District staff about the complaint, a District staff member asserted that the trip to Florida was not a District trip and that it would be the Association's responsibility to accommodate the Student's disability, not the District's. The staff member stated that the trip was not approved by the District's Board of Education, that the Board was not managing the contracts, and that the music teachers were not authorized to accept deposit checks. When OCR asked the staff member about the May 2013 letter signed by the directors, she stated that staff members were not permitted to use District letterhead and that they might be subject to discipline for doing so. The District also stated that the Student's guardian had not attended a required meeting, completed a required form to indicate intent for the Student to participate in the trip, nor paid the required deposits.

On December 6, 2013, after discussions with OCR staff, the District contacted the Student's guardian and extended an invitation for the Student to attend the trip at the same cost as other students, with that cost to be paid the following week, as the trip was due to take place shortly thereafter. On December 7, the Student's guardian responded by email, declining the invitation and stating that the Student would be unable to attend due to financial and scheduling constraints involving doctor appointments for the Student.

### **Applicable Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) prohibits recipient institutions from excluding qualified students with disabilities from participation in, denying them the benefits of, or otherwise subjected them to discrimination under any of their programs or activities. Title II contains a similar provision relating to public entities at 28 C.F.R. § 35.130(a).

The Section 504 implementing regulation, at 34 C.F.R. §104.4(b)(1)(ii), and the Title II implementing regulation, at 28 C.F.R. § 35.130(b)(1)(ii), prohibit recipient institutions and public entities, respectively, from affording a qualified person with a disability an opportunity to participate in or benefit from the entity's aid, benefit, or service that is not equal to that afforded to others.

The Section 504 implementing regulation, at 34 C.F.R. § 104.37, also requires recipient institutions to provide non-academic and extracurricular services and activities in such a manner that students with disabilities are provided an equal opportunity to participate.

In addition, the Section 504 implementing regulation, at 34 C.F.R. § 104.4(b)(1)(v), and the Title II implementing regulation, at 28 C.F.R. § 35.130(b)(1)(v), also prohibit recipient institutions and public entities, respectively, from aiding or perpetuating discrimination against a qualified person with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to the beneficiaries of the recipients' programs. Appendix A of Section 504's implementing regulation also states that, to determine whether a recipient is providing significant assistance to an entity, OCR considers the substantiality of the relationship between the recipient and the other entity, including financial support by the recipient, and whether the other entity's activities relate so closely to the recipient's program or activity that they fairly should be considered activities of the recipient itself.

### **Voluntary Resolution**

Prior to the completion of this complaint investigation, the District asked to resolve this complaint under Section 302 of OCR's Case Processing Manual (CPM). The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

The District has signed the enclosed resolution agreement (Agreement), which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. The Agreement requires the District to either sever ties with the Association or take steps to ensure that the Association accommodates disability-related requests in the future. Specifically, the Agreement requires the District to notify the Association that it cannot exclude individuals from its services, programs, and activities on the basis of disability and must make reasonable modifications to its practices and procedures when doing so is necessary to avoid discriminating on the basis of disability, unless to do so would fundamentally alter the nature of its services, programs, and activities; the District is also required to notify the Association that it cannot place a surcharge on individuals with disabilities to cover the costs of measures, such as auxiliary aids and services, that are necessary to provide non-discriminatory treatment. The District is also required to assign a liaison to the Association who is knowledgeable about Section 504 and Title II to advise it about responding to disability-related accommodation requests. The liaison is required to ensure that the above requirements are met and that the Association has appropriately responded to requests for disability-related accommodations and complaints. Furthermore, the District is required to notify participants and beneficiaries, through

its publicity materials and its website, that anyone who wishes to request disability-related accommodations or who has a disability-related complaint should notify the liaison.

In light of the signed Agreement, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will reopen the complaint and resume its investigation of the complaint allegations.

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 complainant may file another complaint alleging such treatment. A complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate the cooperation of District during the preliminary investigation and resolution of this complaint. The OCR contact person for the monitoring of the Agreement is Tanya Williams Sample, who may be reached at (216) 522-4487 or at [Tanya.Sample@ed.gov](mailto:Tanya.Sample@ed.gov). We look forward to receiving the District's first monitoring report by June 1, 2014, and the report should be directed to Ms. Sample. If you have any questions about this letter or OCR's resolution of this case, please contact Ms. Sample using the contact information given above.

Sincerely,

/s/ Kelly M. Johnson

Kelly M. Johnson  
Team Leader

Enclosure