

Ms. Gail Kist-Kline  
Superintendent  
Mason City School District  
211 N. East Street  
Mason, Ohio 45040-1760

Re: OCR Docket #15-14-1290

Dear Ms. Kist-Kline:

This letter is to notify you of the disposition of a complaint filed on August 11, 2014, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR) against the Mason City School District (the District), alleging discrimination on the basis of disability. Specifically, the complaint alleged that the District xxxxx. The complaint also alleged that the District xxxxx.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. 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 school system, the District is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation into the following legal issues: whether the District failed to timely conduct evaluations of xxxxx, because of disability, need or were believed to need special education or related services, in accordance with the procedures set forth under the Section 504 implementing regulation at 34 C.F.R. § 104.35; and whether the District failed to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the bases of disability, in violation of the Title II implementing regulation at 28 C.F.R. § 35.130(b)(7).

### **OCR's Investigation to Date**

During its investigation of this complaint to date, OCR interviewed the Complainant and the District's assistant superintendent. OCR also reviewed data submitted by the Complainant and reviewed data submitted by the District.

The complaint involves xxxxx. The Complainant explained that Student A has a history of xxxxx.

- xxxxx

According to the Complainant, prior to the xxxxx, the District accommodated both xxxxx. The Complainant would request xxxxx from the xxxxx which would allow xxxxx. She said the xxxxx required the student's xxxxx that served as the basis for the absences to be identified, and the xxxxx. She said that the xxxxx could complete xxxxx school year. The Complainant explained that during this time period, although the District did not provide xxxxx, it did allow them time to make up missed work.

The Complainant explained that in xxxxx, the District stopped allowing her to obtain xxxxx and started requiring her to obtain xxxxx. Moreover, she stated that the District repeatedly xxxxx by the District. This xxxxx meant that the final xxxxx. According to the Complainant and emails she submitted to OCR, in those situations the District would xxxxx, resulting in the xxxxx, even if the Complainant was able to xxxxx.

X—paragraph deleted—X

The complainant explained that xxxxx school did work with xxxxx to address xxxxx and xxxxx.

The District provided OCR with a copy of the attendance policies and procedures in effect during the xxxxx school year, including copies of relevant forms. The District's policies, which include the "Warren County Schools Common Attendance Regulations xxxxx," set up a two-tiered system for excusing absences; some absences require only a parental note and other absences require physician documentation. A telephone call or note from a parent will excuse a student's first nine absences of the school year or up to five late arrivals. To excuse any subsequent absence or late arrival, the policy requires that within two days of the student's return to school following the absence, the District must be receive documentation from the student's treating physician, nurse practitioner, or medical assistant.

According to District policy, to excuse an absence, the physician documentation must include a medical excuse for each absence or period of absence, and that medical excuse will only be acceptable if it follows a personal, in-office, or hospital examination by a physician, nurse practitioner, or medical assistant. The District will only excuse the specific dates identified in the medical documentation as dates where the student was under the direct medical care of the physician, nurse practitioner, or medical assistant and medically unable to attend school.

The District's policies also state that the District may require a student to provide medical notes for all absences, including the first nine, if they believe it is in the best interests of the student, or because of current or prior attendance records for a particular student or the student's siblings. The District's policies allow students with chronic health conditions to request a waiver of the requirement that a student be seen by and obtain a doctor's note for each absence after the first nine absences. Students can request a chronic illness waiver from the school nurse and the waiver form must be completed by a physician. According to the District's xxxxx policies, the

physician can renew the form once during the school year. After one renewal, the superintendent or designee must approve any subsequent renewals. According to the xxxxx and an xxxxx, memo xxxxx disseminated to staff with attendance responsibilities, the health coordinator at the District approves chronic illness waivers submitted to her with the proper information provided by a physician.

X—paragraph deleted--X

X—paragraph deleted--X

X—paragraph deleted--X

- **xxxxx**

The Complainant advised OCR that she had done some research and learned that her children would be potentially eligible under Section 504 due to their xxxxx. Accordingly, in the xxxxx, the Complainant requested that the District conduct a Section 504 evaluation of xxxxx. According to the Complainant, the District told her xxxxx school year. The Complainant stated that in xxxxx, she was provided a Section 504 referral form to complete on behalf of her xxxxx, which she completed and turned into the District. At that time, she also provided the District with xxxxx.

On xxxxx, the District completed an evaluation of xxxxx. According to the parent, the District xxxxx. On xxxxx, the District held a meeting to discuss xxxxx. The parent stated that the District spent most of the time at the meeting discussing xxxxx. The Complainant said that once xxxxx eligible for a Section 504 plan, she xxxxx. The District provided the Complainant with procedural safeguards at these meetings. The Complainant said the District has continued to require her to xxxxx. To date, xxxxx has not been determined eligible as a Student with a disability entitled to services under Section 504.

### **Applicable Regulatory and Legal Standards**

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), prohibits recipient school districts from, on the basis of disability, excluding a qualified person with a disability from

participation in, denying her the benefits of, or otherwise subjecting her to discrimination under any program or activity. The Title II implementing regulation contains a similar provision at 28 C.F.R. § 35.130(a).

The Title II regulation, at 28 C.F.R. § 35.130(b)(7), requires public entities to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), requires recipients to provide a free appropriate public education (FAPE) to each qualified student with a disability who is in

the recipient's jurisdiction, regardless of the nature or severity of the disability. The provision of a free appropriate public education is 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 based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. Those services may include modifications to the regular education program, including adjustments to rules regarding absences when a student's absences are due to a disability. See "Questions and Answers on Disability Discrimination under Section 504 and Title II." (OCR, 11/17/05).

Section 504 defines a person with a disability, as one who (i) has a mental or physical impairment that substantially limits one or more major life activities; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment. Pursuant to Section 504 and Title II, as amended by the ADA Amendments Act of 2008, major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, working, and the operation of a major bodily function, including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulator, endocrine, and reproductive functions. An impairment need not prevent or severely or significantly restrict a major life activity to be considered substantially limiting. See "Questions and Answers on the ADA Amendments Act of 2008 for Students with Disabilities Attending Public Elementary and Secondary Schools" (OCR 1/19/12).

The Section 504 implementing regulation at 34 C.F.R. § 104.35(a), places an affirmative duty on the recipient to individually evaluate any student who, because of disability, needs or is believed to need special education or related services.

The Section 504 regulation, at 34 C.F.R. §104.35(c), provides that in interpreting evaluation data and in making placement decisions, the recipient must: (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) 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; and (4) ensure that the placement decision is made in conformity with 104.34.

The Section 504 regulation at 34 C.F.R. § 104.36, require recipient school districts to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the student to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure.

### **Voluntary Resolution and Conclusion**

Based on its investigation, OCR found that the District's Section 504 policy and procedure and the Section 504 Eligibility Form do not comport with the requirements of the Section 504 regulation. The District has signed the attached Resolution Agreement to resolve that portion of the investigation under Section 303 of the *Manual*.

As noted above, before OCR completed its investigation into whether the District had violated Section 504 and Title II, as alleged, the District expressed interest in resolving the complaint pursuant to Section 302 of the *Manual*. The *Manual* provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving the complaint. This does not constitute an admission of liability on the part of a recipient institution such as 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 are to be consistent with applicable regulations.

The District has signed the enclosed resolution agreement, which, once implemented, will fully address the allegations in the complaint in accordance with Section 504 and Title II. The agreement requires the District to:

- xxxxx
- xxxxx
- Develop a provision in the attendance policy for determining whether any student requesting xxxxx needs or may need special education and related aids and services, thus requiring a Section 504 evaluation.
- xxxxx
- Revise its Section 504 policies and procedures and related forms to bring them into compliance with Section 504 and Title II, disseminate them to staff, students and parents, and provide necessary staff training regarding the policies and procedures and the requirements of Section 504.

Based on the foregoing, OCR considers the allegations in the complaint to be 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 case and take appropriate action to ensure the District's full compliance with Section 504 and Title II.

This concludes OCR's investigation of 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 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 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, it 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 appreciate the cooperation of you and District staff during the resolution of this complaint. We look forward to receiving the District's first monitoring report. Please address any questions and your monitoring report to Mrs. Aubrie Wancata, who will be monitoring the District's implementation of this agreement. Mrs. Wancata can be reached at (216) xxx-xxxx, or at [Aubrie.Wancata@ed.gov](mailto:Aubrie.Wancata@ed.gov).

Sincerely,

/s/

Meena Morey Chandra  
Director

Enclosure