

Mr. Andy Culp
Superintendent
Grandview Heights City School District
1587 West 3rd Avenue
Columbus, Ohio 43212

Re: OCR Docket #15-14-1294 and 15-15-1046

Dear Mr. Culp:

This letter is to notify you of the disposition of the above-referenced complaints filed against the Grandview Heights City School District (the District), which the U.S. Department of Education's Office for Civil Rights (OCR) received on August 14, 2014 and October 31, 2014, respectively. The complaints alleged that the District discriminated against a student (the Student) on the basis of disability (xxxxxxx xxxxxxxxxxxx). Specifically, complaint #15-14-1294 alleged that in xxxxxx xxxx, the Student attended xxx events in the high school's auditorium that were inaccessible to xxx due to xxx disability, because xxx could not xxxx the programs presented there. While that complaint was in investigation, OCR received a second complaint against the District, alleging that on xxxxxxxx xx xxxx, the Student attended another event at the high school auditorium that was inaccessible to xxx due to xxx disability, because xxx could not xxx the program presented there.

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 allegations, OCR investigated the following legal issues:

- whether the District afforded a student with a disability an opportunity to participate in or benefit from an aid, benefit, or service that was not equal to that afforded to others 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

- whether the District failed to take appropriate steps to ensure that its communications with a student with a disability were as effective as its communications with others and furnished appropriate auxiliary aids and services necessary to afford the student with an equal opportunity to participate in and enjoy the benefits of the District's program in violation of the Title II implementing regulation at 28 C.F.R. §§ 35.160(a) and (b).

Summary of OCR's Investigation to Date

During OCR's investigation, OCR interviewed the Complainant and reviewed documentation xxx provided. OCR also held discussions with relevant District personnel, such as the District's Director of Student Services (Director), the principal of the Student's school, and the superintendent and reviewed documentation the District provided.

The Complainant informed OCR that the Student is in xxxxxx grade. She has an individualized education program (IEP) that identifies her as a person who is xxxxxxxx xxxxxxxx. The IEP is silent on the issue of services during assemblies. The Complainant said that the Student's xxxxxxxx was re-evaluated in February 2014, and that report concluded that the she has a xxx xxxxxxxx xxxxxxxx xxxxxxx xxxxx xx xxxxx xxxxx that gradually degrades over distances and drops to xxx xxxxxx xxx xxxxx.

The District informed OCR that the Student uses a xxxxxx xxx at school, a wireless microphone that enables people with xxxxxxxx xxxxx to xxxxx and understand more xxxxxx in xxxxx, xxxxxx situations and in situations where an individual with xxxxxxxx xxxxx is at a distance from a speaker. The Director told OCR that the parent contacted the District on xxxxxxx x xxxxx, to request extensions for xxxxxxxx xxxxx the Student uses so that the Student could use the xxxxxx xxx. These extensions act as xxxxxxxxxx for the xxxxxxxxxxxxxx microphone and so are necessary to allow the xxxxxxxxxxxx xxxxxxxxxxx xxxxxxx to function. The Student, however, did not pick up the extensions before one of the assemblies in question, the xxxxxxx xxxxx training discussed below.

According to the Complainant, the Student attended a training session in the school auditorium on xxxxxxx xx xxxxx, but xxx was unable to xxxxx anything due to the lack of xxxxxxxxxxxxxx in the auditorium. The Complainant told OCR that she complained to the Director but that nothing changed after xxx complaint. According to the Complainant, the school held an assembly in the same auditorium on xxxxxxx xx xxxxx, and, once again, the Student was unable to xxxxx what was discussed.

The District told OCR that it had issued District students Chromebooks and held three optional training sessions (two on xxxxxxx x xxxxx, and one on xxxxxxx xx xxxxx) for parents and students to train them on how to use a Chromebook. The District held the meetings before the start of the regular school year and did not know ahead of time which students were going to attend.

The District informed OCR that by August 13, 2014, an xxxxxxxxxxxxxx had fitted the Student's

xxxxxxx xxxx with the required extensions to work with the xxxxx xxx.

The Complainant's second allegation involved an event that occurred in the auditorium on xxxxxx xx xxxx--an 8:00 a.m. class meeting for xxxxx graders (xxx students) the principal held to go over school policies.

District staff told OCR that the evening before the meeting, the Complainant had informed the District via e-mail that the Student's xxxxx xxx was not working properly. The District told OCR that it responded to the Complainant's e-mail regarding the Chromebook training and contacted the contractor to repair the xxxxx xxx. The District's stated that it owned a backup xxxxx xxx but that the District's contractor repaired the original device before the backup was ready for use. The District told OCR that the principal had prepared written talking points to share with the Student concerning the assembly, and a video that he did not end up showing at the meeting.

[x--- paragraph redacted---x]

The Complainant alleged that the Student attended the xxxxxx xx session and could not xxxx and xxxxxxxxxxx the information presented. According to District staff, the Student received notes from the xxxxxxxxxxx and from the principal and did not have questions for the xxxxxxxxxxx about the meeting.

While the initial complaint was pending with OCR, the Complainant alleged that on xxxxxxxx xx xxxx, the Student attended another assembly at the school auditorium that included the entire student body, and the District again did not provide necessary accommodations to permit the Student to xxxx.

[x---paragraph redacted---x]

Additionally, the District informed OCR that it has developed an assembly presentation checklist that has been shared with the Student's teachers to notify the building administrators of any teacher-sponsored assemblies that may necessitate xxxx services.

[x--- paragraph redacted---x]

During the course of this investigation, OCR provided the District with technical assistance concerning Section 504 and effective communication and students with disabilities.

Applicable Legal Standards and OCR Policy

As stated above, the Section 504 and Title II standards require that school districts provide persons with disabilities an equal opportunity to participate in the districts' programs and communications as effective as communication with persons who do not have disabilities. 34 C.F.R. § 104.4(b)(1)(ii) and 28 C.F.R. §§ 35.130(a) and (b)(1).

Appendix A of the Section 504 regulation clarifies that the quality of educational services

provided to students with disabilities must equal that of the services provided to students without disabilities. 34 C.F.R. Part 104, Appendix A.

Further, the revised Title II implementing regulation, at 28 C.F.R. §§ 35.160(b)(1), provides that a public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the public entity's service, program, or activity. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

28 C.F.R. 15.160(b)(2), amended 2010. When interpreting what constitutes "primary consideration," guidance provided by the Department of Justice (DOJ) in Appendix A to the regulation states:

As noted in the preamble to the 1991 Title II regulation, and reaffirmed here: 'The public entity shall honor the choice [of the individual with a disability] unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 35.164. Deference to the request of the individual with a disability is desirable because of the range of disabilities, the variety of auxiliary aids and services, and different circumstances requiring effective communication.' 28 C.F.R. Part 35, App. A (2010).

If, after complying with appropriate processes to make the following determinations, a school district can prove that providing a particular auxiliary aid or service would be a fundamental alteration in the nature of a service, program, or activity or be an undue financial and administrative burden, the district does not need to provide that auxiliary aid or service; however, the district still has an obligation to provide, to the maximum extent possible, an effective auxiliary aid or service.

Resolution

[x--- paragraph redacted---x]

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 provide the Student with xxxx services or similar services for all assemblies events where the audience will exceed xx individuals or in other circumstances as necessary in order to provide the Student with equally effective communication and with an equal opportunity to participate in these District programs/activities/benefits unless to do so would constitute a fundamental alteration of the program/activity/benefit or an undue administrative or financial burden. If so, the district must provide an effective auxiliary aid or service to the maximum extent possible. To effectuate this requirement, the District will provide the Complainant/the Student with a calendar of all scheduled and required events and offer xxxx services for those events. The District will also train and notify staff members as to the need to notify appropriate District personnel when other, non-required assemblies fitting the criteria are offered, in sufficient time and with sufficient detail as to content of the programs/method of delivery, so that the District can determine if xxxx services are appropriate and can contact the Student to see if she plans to attend and needs services to be provided. The District will also develop a backup method by which to provide services and a method by which to convey information presented if a last minute technological or other reasonably unavoidable interruption in delivery of the technology occurs. The District will, further, offer the Student the opportunity to obtain the information that was presented orally at the Chromebook training session either by providing xxx with complete notes from the presentation or through the scheduling of a makeup session/additional training and will present the Student with the information within 30 days of xxx acceptance of the offer; finally, the District will summarize for the Student information she missed and wishes to obtain concerning the assembly/pep rally on xxxxxxxx xx xxxx. The District will report to OCR at the end of the school year on all the events of the size specified that occurred and whether xxxx services were provided, including rationales for those where xxxx services were not provided.

In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing this complaint 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.

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 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. 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.

The Complainant may file a private suit in Federal court whether or not OCR finds a violation.

We appreciate the cooperation of the District during the preliminary investigation and resolution of this complaint. I will serve as the OCR contact person for the monitoring of the Agreement.

You may reach me at xxx-xxx-xxxx or at xxxxx.xxxxx@ed.gov. We look forward to receiving the District's first monitoring report by February 27, 2015, and the report should be directed to me. If you have any questions about this letter or OCR's resolution of this case, please contact me using the contact information given above.

Sincerely,

/s/

Karla K. Ussery
Senior Attorney