



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 12, 2023

Via e-mail only to: [\[redacted content\]](#)

Diane Lease, Esq.
Chief Legal Counsel
Ohio Department of Education
25 South Front Street
Columbus, Ohio 43215-4183

Re: OCR Docket No. 15-14-4013

Dear Ms. Lease:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Ohio Department of Education (ODE) alleging discrimination against a student (the Student) on the basis of disability who attended a nonpublic school through a scholarship program administered by ODE.¹ Specifically, the Complainant alleged that ODE did not appropriately respond when the Student's parent contacted ODE to complain that the School had discriminated against the Student based on disability [redacted content].

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 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 also is 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 as a public entity, ODE is subject to these laws.

To conduct its investigation, OCR interviewed the Student's parent, and ODE's Director of Nonpublic Educational Options (the director). In addition, OCR reviewed documents provided by ODE and the parent. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that ODE violated the regulations implementing Section 504 and Title II. ODE has signed the enclosed resolution agreement, which, once implemented, will address the violations OCR identified. The bases for OCR's determination are explained below.

¹This letter and enclosure replace the resolution documents OCR issued to ODE on December 21, 2018, and revoked on January 3, 2019, for further consideration and analysis.

Summary of OCR’s Investigation

The Student enrolled in the School as a [redacted content] grade student in the fall of [redacted content]. The Student has [redacted content] and was identified as a student with a disability and provided with an Individualized Education Program (IEP) at his prior school, which IEP was shared with the School prior to his enrollment. The Student received a portion of his tuition to attend the School through an ODE scholarship program. The Student’s parent told OCR that the [redacted content] school year was his first year as an ODE scholarship program recipient. The School was an ODE-listed provider under the scholarship program.

[redacted sentence]. She told OCR she believed the School was discriminating against the Student based on his disability. [redacted sentence]. [redacted sentence].

OCR interviewed the [redacted content] who oversaw the administration of the scholarship program.² The [redacted content] told OCR that ODE would investigate any allegation that a provider is discriminating against a scholarship program recipient. The [redacted content] told OCR that ODE kept a database of the complaints filed against providers.

Information ODE published during that time period on its website for parents about the scholarship program stated that parents could file a written complaint with ODE if they believed that a provider had violated rules required of providers. No further information was provided as to who to contact or how to file such a complaint. The only nondiscrimination provision in the Ohio Revised Code and Ohio Administrative Code sections cited in the parent information regarding filing a complaint was at OAC 3301-101-09(B)(1), which stated a scholarship program provider “shall not discriminate on the basis of race, color, or national origin, regardless of whether the provider receives federal financial assistance.”

ODE submitted copies of three letters from the director to providers under a different scholarship program administered by ODE. The letters demonstrated that ODE had investigated complaints against these providers, summarized ODE’s investigation, and indicated that the providers had violated the rules for that program and that ODE had revoked their registrations as providers under the program. None of the complaints investigated involved allegations of discrimination, but rather were about operating issues, such as billing practices or lack of required credentialed staff.

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

[redacted paragraph].

² OCR did not investigate how ODE administers the program with respect to other provisions of Section 504 or Title II not discussed in this letter, such as Section 504 regulatory requirements for free appropriate public education (FAPE) for students with disabilities.

[redacted paragraph].

[redacted paragraph].

In response to ODE’s assertions, OCR asked that ODE provide its grievance procedure for complaints alleging disability discrimination. Additionally, OCR asked where the grievance procedure was published. In response, ODE indicated in a [redacted content]., e-mail that:

The informal policy referenced on page 1 of the [November 30, 2017] response and used by the Office of Nonpublic Educational Options (NEO) in this case is in fact the grievance procedure that NEO follows when it receives a complaint regarding a chartered nonpublic school. As it is an informal policy, it is not published. Please note that this informal policy differs from the policy that is followed when the Department receives a complaint regarding alleged disability discrimination in a traditional public school district or special education services under the Individual with Disabilities Educational Improvement Act (IDEA). The following policy is followed in those situations, and it is published on the Department’s website: <https://education.ohio.gov/Topics/Special-Education/Dispute-Resolution>

OCR accessed the link provided and it led to a web page describing ODE’s processes for resolving parent/family member complaints and disputes regarding special education under the Individuals with Disabilities Education Act (IDEA). At no time during the investigation did ODE identify or provide OCR with its Section 504 and/or Title II grievance procedures.

OCR searched ODE’s public website during the investigation but was unable to find any Section 504 or Title II grievance procedures posted there and was also unable to find any reference to any ODE Section 504 coordinator. At a link titled “Ohio Department of Education Compliance,” there was posted the following statement: “The Ohio Department of Education complies with all Federal laws and regulations prohibiting discrimination, and with all requirements of the U.S. Department of Education.” Following that sentence were several paragraphs about Title IX of the Education Amendments of 1972³ and notice of the ODE employee designated for inquiries and complaints regarding Title IX, but no mention of disability-related inquiries or complaints. In addition, ODE’s website has the following statement at the bottom of each page: “The Department of Education is an equal opportunity provider of ADA services.”

In 2022, OCR again searched ODE’s public website for its nondiscrimination notice and Section 504 and Title II grievance procedures and coordinator(s). The statement at the bottom of ODE web pages had been revised to state, “The Ohio Department of Education is an equal opportunity employer and provider of ADA services.” Although OCR could not find reference to an ODE Section 504 coordinator or grievance procedures, ODE’s website included a document titled “Disability Inclusion Access”, which provided the name, telephone number, and e-mail address of a person designated as ODE’s ADA coordinator. This document stated that “anyone who wishe[d] to file a grievance alleging discrimination on the basis of disability in the provision of

³ Title IX prohibits discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.

services, activities, programs, or benefits” by ODE could contact the ADA coordinator “no later than 30 calendar days after the alleged violation.” The document did not provide other details about the grievance process, such as timeframes or what steps ODE would take in response to a grievance.

Applicable Regulatory Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4, states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives federal financial assistance. The Title II regulation contains a similar prohibition at 28 C.F.R. § 35.130(a).

The Title II regulation also prohibits public entities from, either indirectly or through contractual, licensing, or other arrangements, on the basis of disability, denying a qualified individual with a disability the opportunity to participate in or benefit from the public entities’ aids, benefits, or services. *See* 28 C.F.R. § 35.130(b)(1)(i). The Section 504 regulation contains a similar prohibition at 34 C.F.R. § 104.4(b)(1)(i). Appendix B to the Title II regulation explains that all governmental activities of public entities are covered under Title II, even if they are carried out by contractors.

OCR’s jurisdiction under Title II is delegated to OCR by the U.S. Department of Justice (DOJ). DOJ has delegated to OCR the responsibility for implementing Title II regulatory compliance procedures for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas: all programs, services, and regulatory activities relating to the operation of elementary and secondary education systems, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.⁴ The Title II regulation, at 28 C.F.R. § 35.102, states that (with the exception of certain public transportation services, programs, and activities not at issue in this matter) the regulation applies to all services, programs, and activities provided or made available by public entities.

“Public entity” is defined in the Title II regulation, in relevant part, as any State or local government; and any department, agency, special purpose district, or other instrumentality of a State or States or local government. 28 C.F.R. § 35.104.

The Section 504 regulation defines “recipient” as any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 34 C.F.R. § 104.3(f).

“Program or activity” is defined, in relevant part, as all the operations of a department, agency, special purpose district, or other instrumentality of a State or of a local government; or the entity of such State or local government that distributes such assistance and each such department or

⁴ 28 C.F.R. § 35.190(b)(2).

agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government. 34 C.F.R. § 104.3(k)(1)(i) and (ii).

When it issued conforming amendments to the regulations governing nondiscrimination on the basis of race, color, national origin, disability, sex, and age under the Civil Rights Restoration Act of 1987 in December 2000, including the Section 504 regulation, the Department explained that, if State and local governmental entities receive financial assistance from the Department, the "program or activity" or "program" in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the federal assistance is extended. For example, if the Department provides financial assistance to a State educational agency, all of the agency's operations are subject to the nondiscrimination requirements of the regulations.

Here, ODE is a public entity, employs over 600 employees, and receives funds from the Department and is subject to Section 504 as well as Title II. The scholarship program is part of ODE's program or activity, and the Section 504 and Title II regulations apply to it.

The Section 504 regulation requires a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with the regulation. 34 C.F.R. § 104.7(a). The regulation further requires the recipient to take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability in violation of Section 504 and the Section 504 regulation. The notification is to state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The recipient is required to identify its responsible employee in its notification of nondiscrimination. 34 C.F.R. § 104.8.

The Title II regulation similarly requires a public entity that employs 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Title II regulation, including any investigation of any complaint communicated to it alleging its noncompliance with the regulation or alleging any actions that would be prohibited by the regulation. The public entity is further required to make available to all interested individuals the name, office address, and telephone number of the designated employee(s). 28 C.F.R. § 35.107(a).

The Section 504 regulation, at 34 C.F.R. § 104.7(b), further requires a recipient to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the regulation. The Title II regulation contains a similar requirement at 28 C.F.R. § 35.107(b).

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR will examine, for example, the extent to which notice of the procedures has been provided to students, parents, and employees; whether the procedures afford an opportunity for an adequate, reliable, and impartial investigation; whether reasonably prompt timeframes have been established for the various stages of the complaint process; whether notice of the outcomes of the complaint are provided to the parties; and whether there is an assurance that any violations will be addressed, and steps will be taken to prevent a recurrence.

Analysis and Conclusion

In the instant case, the preponderance of the evidence supports that ODE failed to provide a prompt and equitable resolution, incorporating appropriate due process standards, of a complaint of disability discrimination made by the Student's parent with respect to ODE's scholarship program. Although the director did a cursory inquiry with the School as to what had transpired with the Student, her actions did not constitute an adequate, reliable, or impartial investigation, and the evidence shows that she did not recognize the parent's allegation as one implicating Section 504 or Title II. The evidence further shows that ODE failed to adopt grievance procedures to promptly and equitably resolve allegations of disability discrimination. Although ODE's website now mentions an ADA grievance procedure, it does not include elements necessary for prompt and equitable resolution of disability grievances, such as an adequate, reliable, and impartial investigation; reasonably prompt timeframes for the various stages of the complaint process; notice of the outcomes of the complaint provided to the parties; and an assurance that any violations will be addressed, and steps will be taken to prevent a recurrence. In addition, ODE has not published a notice of nondiscrimination, including notice of any Section 504 coordinator, which meets regulatory requirements. Based on the above, OCR has determined that ODE has violated the Section 504 and Title II regulations at 34 C.F.R. §§ 104.7 and 104.8 and 28 C.F.R. §§ 35.106 and 35.107.

ODE has signed the enclosed resolution agreement, which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. 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 ODE's implementation of the agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address ODE'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 ODE 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 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, OCR 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.

The Complainant may have a right to file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving ODE’s first monitoring report by **October 23, 2023**. For questions about implementation of the Agreement, please contact Ms. Tanya Williams Sample. She will be overseeing the monitoring and can be reached by e-mail at Tanya.Sample@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure