



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 19, 2021

By email only to: robyl@grps.org

Dr. Leadriane Roby
Superintendent
Grand Rapids Public Schools
1331 Franklin S.E.
Grand Rapids, MI 49506

Re: OCR Docket No. 15-15-1294
Grand Rapids Public Schools, Michigan

Dear Superintendent Roby:

I hope this letter finds you and your staff well during these challenging times. Please note that the U.S. Department of Education has posted COVID-19 information and resources for schools and school personnel on its website at <https://www.ed.gov/coronavirus>.

This letter is to advise you of the resolution of the complaint investigation that the U.S. Department of Education (Department), Office for Civil Rights (OCR) initiated in the Grand Rapids Public Schools (District). The Complainant alleged that the District discriminated against a District student (the Student) and other students in the District's "XXXXXXXXXX XX XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX" (XXXX) program based on their disabilities. Specifically, the Complainant alleged:

1. From XXXXX XXXX through mid-XXXXX XXXX, the District failed to provide a teacher in its XXXX classroom at XXXXXX Middle School after the existing teacher left on XXXXXXXX leave (Allegation 1).
2. From XXXXX XXXX through the end of the 2014-2015 school year, the Student and his classmates were denied access to the online classroom curriculum (the Unique Learning System or ULS) because the individuals staffing the XXXX classroom at XXXXXX Middle School did not have access to the ULS system (Allegation 2).
3. Portions of the District's website, including the homepage, the special education page, the parent's page, and the parent volunteer page are inaccessible to individuals with disabilities (Allegation 3).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual 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 that receives financial assistance from the Department. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), contains a similar provision as it relates to public entities. In addition, the District is required to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as its communication with others, pursuant to Title II, at 28 C.F.R. § 35.160(a).

In order for OCR to determine that the District violated the law, OCR must find 1) that there were technological barriers that impeded the ability of people with disabilities to access online programs, services, and activities, and 2) that the District failed to provide equally effective alternative ways for people with disabilities to access the impacted online programs, services, or activities. If, during the course of OCR's investigation, the District removes the technological barriers that impeded the ability of people with disabilities to access online programs, services, and activities, and OCR confirms the technological barriers have been removed, further investigation is unnecessary, and OCR will determine that there is insufficient evidence to support a conclusion that the District violated the law.

During its investigation, OCR interviewed the Complainant, the Complainant's Advocate, and District staff members. OCR also reviewed documentation that the District submitted.

OCR made the following determinations.

During school year 2014-2015, the District operated a XXXX class at the School. Approximately XXX students with disabilities were enrolled in the XXXX class, which was typically run by the Teacher and a paraprofessional.

With respect to Allegation 1, the Complainant alleged that from XXXXX XXXX through mid-XXXXX XXXX, the District failed to provide a teacher in the XXXX class after the Teacher left on XXXXXXXX leave. The Complainant asserted that during the first several weeks of the Teacher's leave, the District did not assign a substitute teacher to the class; instead, a paraprofessional, occupational therapist, and physical therapist covered the class in the Teacher's absence. The Complainant stated that a long-term substitute teacher was ultimately assigned to the class in mid-XXXXX XXXX, but only because the Complainant hired an advocate.

OCR determined that the Teacher was absent from the XXXX class beginning on XXXXXXXXX

XX, XXXX, through the end of the school year on XXXX X, XXXX, which was a total of 63 full-days of school and five half-days of school.

The District's Director of Human Resources and Labor Relations (the HR Director) informed OCR that the District used a system called "EDUStaff" to assign substitute teachers. She stated that if teachers knew that they were going to be absent on a future date, they could log into EDUStaff and input a request for a substitute teacher. If a teacher were already on leave, she stated that the principal would initiate the request for a substitute teacher, and a principal's secretary or HR staff would input the substitute request into EDUStaff. The School's Principal (the Principal) stated that staff members from EDUStaff also visited the School each morning to assess whether there was a need for substitute teachers, and "floating substitutes" were available to cover classes if there was an unexpected absence. The Principal also stated that he and another supervisory District staff member also provided substitute coverage at times.

The Principal stated that he used the EDUStaff system to assign substitute teachers to the XXXX class during school year 2014-2015. The District provided to OCR a copy of a spreadsheet listing the dates the Teacher was absent during that school year, including whether the absence was for a full or half-day, and the name of the substitute teacher assigned to cover for the Teacher. OCR determined that four substitute teachers (Substitutes A-D) covered the Teacher's absences. The HR Director informed OCR that Substitutes A, C, and D all had substitute permits through the state of Michigan, but she did not know of the credentials for Substitute B. Substitute A covered for the Teacher for 9 days from XXXXXXXX XX – XXXXX X, XXXX and XXXXX X – X, XXXX; Substitute B covered for the Teacher for one day on XXXXX X, XXXX; Substitute C covered for the teacher for 51 days and 6 half-days from XXXXX XX – XXXX X, XXXX; and Substitute D covered for the Teacher for one half-day on XXXXX XX, XXXX. No substitute teacher was listed as covering for the Teacher on XXXXXXXX XX, XXXX; however, the Principal asserted that there were always substitutes available to cover for the Teacher.

OCR informed the Complainant that the District provided information indicating that substitute teachers were assigned to cover the Teacher's absences from XXXXXXXX XX, XXXX, through the end of the school year, including that a long-term substitute (Substitute C) was assigned to the XXXX class beginning on XXXXX XX, XXXX. In response, the Complainant questioned the credentials of the substitute teachers. He also stated that he was told that special service providers were the only staff members in the XXXX class when the Teacher initially went on leave, and he explained that the reason he hired an advocate was to fight for a substitute teacher to be assigned to the class. The Complainant's Advocate also added that the District informed them that there was a substitute teacher shortage, which was why the District assigned service providers to cover for the Teacher.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, the preponderance of the evidence did not support the Complainant's allegation that the District failed to provide a teacher in the XXXX class from XXXXX XXXX through mid- XXXXX XXXX. While the Complainant and his Advocate asserted that the District informed them that no substitute teacher was hired for the XXXX class until mid- XXXXX XXXX, the District

provided documentation demonstrating that substitute teachers were assigned to the class for all but one day of the Teacher's absences, including a long-term substitute teacher (Substitute C) who started on XXXXX XX, XXXX. Therefore, OCR determined that there is insufficient evidence to substantiate the Complainant's allegation that from XXXXX XXXX through mid-XXXXX XXXX, the District failed to provide a teacher in the XXXX class at the School after the Teacher left on XXXXXXXX leave. Accordingly, OCR will take no further action with respect to Allegation 1.

With respect to Allegation 2, the Complainant alleged that from XXXXX XXXX through the end of school year 2014-2015, the Student and his classmates were denied access to the ULS because the individuals staffing the XXXX class did not have access to the ULS system. During the course of OCR's investigation, the District notified OCR that the Complainant filed the same allegation with the Michigan Department of Education, Office of Special Education, Program Accountability (the MDE).

OCR's case processing procedures provide that a complaint allegation will be closed when the same or similar complaint allegations filed with OCR involve the same operative facts that have been resolved by a state civil rights enforcement agency, and the resolution of the complaint meets OCR's regulatory standards, i.e., all allegations were investigated, any remedies secured are the same as those OCR would obtain if it were to find a violation of the complaint, and there was a comparable resolution process under comparable legal standards.

OCR reviewed the MDE's final decision, dated July 17, 2015, which addressed various allegations raised by the Complainant against the District. During its investigation of the Complainant's allegations, the MDE contacted the Complainant and the Complainant's Advocate. The MDE also contacted the District's Executive Director of Special Education, Director of Special Education, and Special Education Supervisor. In addition, the MDE reviewed related documentation, including substitute teacher folder contents, dated school year 2014-2015; the Student's Individualized Education Program (IEP); an employee attendance report, date range XXXXXXXXXX XX, XXXX – XXXXX X, XXXX; and a substitute placement report, date range XXXXXXXXXX XX, XXXX – XXXX X, XXXX.

With respect to Allegation 2, OCR determined that the MDE investigated the Complainant's allegation that substitute teachers in the XXXX class did not have access to the ULS system. The MDE determined that the substitute teacher folder included daily lesson plans, directions and resources for spelling, guided highlighted reading, and logins for two different online curriculum systems, including the ULS. Therefore, the MDE concluded that the District provided evidence that "the substitute teacher folder utilized by the substitute teachers contained all the information that a substitute would need to meet the individual needs of the students in the classroom, including ... online access to the [ULS]." By letter, dated July 17, 2015, the MDE notified the Complainant of its determination. Based on the foregoing, OCR determined that MDE investigated Allegation 2 and provided a comparable resolution process under appropriate legal standards. Accordingly, OCR will take no further action with respect to Allegation 2.¹

¹ To the extent the Complainant also believed that the Student and his classmates were denied a free appropriate public education (FAPE) because he alleged the individuals staffing the XXXX class did not have access to the ULS system, OCR did not address this issue. The regulation implementing Section 504, at 34 C.F.R. § 104.33(a),

With respect to Allegation 3, the Complainant alleged that portions of the District's website, including the homepage, the special education page, the parents' page, and the parent volunteer page are inaccessible to individuals with disabilities. OCR conducted an assessment of the District's online programs, services, and activities and noted possible compliance concerns including, but not limited to:

- Users with disabilities who use computer keyboards for navigation due to a disability did not have access to all contents and functions.
- Users with disabilities who use computer keyboards for navigation due to a disability were unable to tell visually where they were on a page, as visual focus indicators were missing.
- Although there was an extensive navigation menu, no "skip navigation" or "skip to content" link was present, posing a barrier to those who use computer keyboards for navigation due to a disability.

On May 11, 2021, the District signed the enclosed resolution agreement (Agreement) to voluntarily resolve the directed investigation pursuant to Section 302 of OCR's Case Processing Manual. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation. This letter 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 complaint. 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. An individual may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

With respect to Allegations 1 and 2, the Complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect,

provides that a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified disabled person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation, at 34 C.F.R. § 104.33(b)(1)(i), defines an appropriate education as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of non-disabled persons are met. Implementation of an IEP is one method for meeting this requirement. As discussed above, neither OCR's investigation of Allegation 1, nor the MDE's investigation pertaining to Allegation 2, substantiated that students in the XXXX class were denied related aids or services, as alleged by the Complainant.

or the appropriate legal standard was not applied; and how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the Recipient. The Recipient has the option to submit, to OCR, a response to the appeal. The Recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the Recipient.

Please feel free to contact me with any questions you may have at (303) 844-4480 or by email at mary.lou.mobley@ed.gov.

Sincerely,

//s//

Mary Lou Mobley
Co-Lead, National Digital Accessibility Team

Enclosure

Courtesy copy by email only to:

Ms. Sharron Pitts, Esq.
General Counsel
pittss@grps.org