



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

January 3, 2018

Laura G. Anthony  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215

Re: OCR Docket # 15-17-1190

Dear Ms. Anthony:

This letter is to notify you of the disposition of a complaint filed on January 3, 2017, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Northwest Local School District (the District), alleging discrimination against a student (the Student) on the basis of disability. Specifically, the complaint alleged the following:

[XXX---paragraph redacted---XXX]

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 and 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department and 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, the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR initiated an investigation into the following legal issues:

1. Whether the District excluded a qualified student with a disability from participation in, denied the student the benefits of, or otherwise subjected the student to discrimination under any of the District's programs, activities, aids, benefits, 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 denied a qualified student with a disability a free appropriate public education (FAPE) in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.
3. Whether District employees, acting within the scope of their official duties, subjected a student with a disability to unwelcome comments or other conduct based upon the student's disability, and whether the comments and/or conduct were sufficiently severe or persistent to deny or limit the student's ability to benefit from or participate in the educational program, in violation of Section 504 at 34 C.F.R. § 104.4(b).

To investigate the complaint, OCR reviewed information provided by the Student's parent (the Parent) and the District, including email correspondence among District staff and between District staff and the Parent for the 2016-2017 school year, the Student's 2016-2017 class schedule, and the Student's 2016-2017 school transportation schedule. OCR also interviewed the Parent. Prior to the completion of OCR's investigation, the District asked to voluntarily resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the complaint allegations. We set forth below a summary of OCR's investigation to date.

### **Applicable Legal Standards**

The Section 504 regulation prohibits a recipient from, on the basis of disability, excluding qualified individuals with a disability from participation in, denying them the benefits of, or otherwise subjecting them to discrimination under any of its programs or activities. Prohibited discrimination includes, in providing any aid, benefit or service, affording a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or services that is not equal to that afforded others, or providing different or separate services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others. The regulation further provides that a recipient may not otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing Title II at 28 C.F.R. § 35.130 contains similar provisions. *See* 34 C.F.R. § 104.4(a), (b)(1)(ii), (b)(1)(iv), and (b)(1)(vii); 28 C.F.R. § 35.130(a), (b)(1)(ii), (b)(1)(iv), and (b)(1)(vii).

In investigating potential disability discrimination under a different treatment theory, OCR first will determine whether the recipient treated the individual with a disability differently from similarly situated individuals without disabilities. If so, OCR will determine whether the recipient had a legitimate, nondiscriminatory reason for the difference in treatment and whether that reason was a pretext for discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.33, also requires recipient school districts to provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or the severity of the person's disability. An appropriate education for purposes of FAPE is defined as 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 nondisabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards.

Finally, disability harassment is a form of discrimination prohibited by Section 504 and Title II. Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that is sufficiently severe, persistent, or pervasive that it creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. When disability harassment limits or denies a student's ability to participate in or benefit from a recipient's programs, the recipient must respond by promptly investigating the incident and responding appropriately.

## Background

[illegible]

### Alleged Different Treatment

[illegible]

In its data response, the District denied the allegation that it discriminated against the Student based on disability.

[XXX---paragraph redacted---XXX]

XX In light of the District's request to resolve this complaint pursuant to Section 302 of OCR's CPM, and based on the above information that supports a cause for concern, OCR has determined that it is appropriate to resolve this allegation with a resolution agreement prior to the completion of the investigation.

## Alleged Failure to Implement the Student's Section 504 Plan

[illegible]

[XXX--- paragraph redacted--- XXX]

[XXX--- paragraph redacted --- XXX]

As noted above, prior to OCR completing its investigation related to this allegation, the District requested to voluntarily resolve the complaint.

## Alleged Disability-Based Harassment

Finally, the Parent alleged that the District subjected the Student to disability-based harassment  
XX.

[XXX--- paragraph redacted--- XXX].

As noted above, prior to OCR completing its investigation related to this allegation, the District requested to voluntarily resolve the complaint.

## Resolution and Conclusion

As noted above, prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint allegations pursuant to Section 302 of OCR's CPM, which 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 allegation(s). 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 allegation(s) or the information obtained during the investigation and consistent with applicable regulations.

On December 28, 2017, the District submitted to OCR the enclosed, signed resolution agreement (the Agreement), which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. Under the terms of the Agreement, the District will: send the Student's parent a certified letter notifying the parent that, the District will reconvene the Student's Section 504 team to determine whether the Student requires compensatory education or other remedial services, and provide such services to the Student if accepted by the Parent; and, provide training on the District's obligations to students with disabilities under Section 504. The District will provide documentation to OCR to demonstrate its implementation of the Agreement.

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. A Parent may 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. In the event that OCR receives such a request, we 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.

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 individual may file another complaint alleging such treatment.

We appreciate the cooperation shown by the District during the course of this investigation. OCR looks forward to receiving the District's first monitoring report under the Agreement, which is due **March 31, 2018**. For questions regarding the monitoring of this complaint, please contact XXXXXXXXXXXXXxx, who will be monitoring the District's implementation of the Agreement, by e-mail XXXXXX.XXXXXXXXXX@ed.gov or by telephone at (216) XXX-XXXX. For questions regarding this letter please contact me by telephone at (216) xxx-xxxx.

Sincerely,

/s/

Lisa M. Lane  
Supervisory Attorney/Team Leader

Enclosure