



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

October 24, 2017

Timothy J. Mullins, Esq.  
Giarmarco, Mullins & Horton, P.C.  
Tenth Floor Columbia Center  
101 West Big Beaver Road  
Troy, Michigan 48084-5280

Re: OCR Docket #15-17-1218

Dear Mr. Mullins:

This letter is to notify you of the disposition of the above-referenced complaint filed with the U.S. Department of Education's Office for Civil Rights (OCR) on January 17, 2017, against Oakridge Public Schools (the District) against a student (the Student) on the basis of disability. Specifically, the complaint alleged that the District failed to provide the Student with X XXXXX XXX XXX XXX XX XXXX X XXXX XXXX as required by her Individualized Education Program (IEP) during the XXXX-XXXX school year.

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 U.S. Department of Education (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 at 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, the District is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation of the following legal issue: whether the District failed to provide a qualified student with a disability a free appropriate public education (FAPE), in violation of Section 504's implementing regulation at 34 C.F.R. § 104.33.

During OCR's investigation to date, OCR reviewed information and documentation from the Complainant and the District and interviewed the Student's parent. However, prior to OCR's completion of its investigation, the District expressed interest in voluntarily resolving the complaint allegation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). On October 2, 2017, the District signed the attached resolution agreement (Agreement), which, once

implemented, will address the Section 504 and Title II compliance concerns raised by the complaint allegation. A discussion of OCR’s investigation to date is presented below.

### **Summary of OCR’s Investigation to Date**

X---six paragraphs redacted---X

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

The Section 504 implementing regulation, at 34 C.F.R. § 104.4, provides 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 Federal financial assistance.

The Section 504 regulation at 34 C.F.R. § 104.33 further provides that a recipient that operates a public elementary or secondary education program must provide a free appropriate public education (FAPE) to each qualified individual with a disability within its 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 persons with disabilities as adequately as the needs of persons without disabilities 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. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one way a recipient can demonstrate that it has provided a qualified student with a disability with a FAPE in accordance with the Section 504 regulation.

### **Voluntary Resolution and Conclusion**

In the instant case, the complaint alleged that the District failed to provide the Student with X XXXXX XXXXX as required by her IEP during the XXXX-XXXX school year. The information OCR has obtained to date is sufficient to raise concerns regarding whether the District failed to provide the Student with X XXXXX XXXXX required by her IEP and whether that resulted in a denial of FAPE to the Student. However, as noted above, before OCR completed its investigation into the allegation, the District expressed interest in resolving the complaint through Section 302 of OCR’s CPM and on October 2, 2017, the District signed the attached Agreement, which, once implemented, will address any Section 504 or Title II compliance issues raised by the complaint allegation.

The Agreement requires the District to convene the Student’s IEP team, to clarify the provision of the Student’s IEP XXXXXX XXX XXXXX XX X XXXXX XXXXX. The team will then determine whether the Student is entitled to compensatory education or other remedial services for the XXXX-XXXX school year, based on the District’s provision of a safe space to take breaks during the XXXX-XXXX school year. This should include a determination of whether any XXXXXXXXXX the Student received during the XXXX-XXXX school year was a result of the

District's failure to provide XX XXXXXXXX XXXX XXXXX and thus should be removed from the Student's record.

As the District has agreed to the terms of the attached Agreement, OCR is closing this complaint effective the date of this letter. OCR will, however, monitor the District's compliance with the terms 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.

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 a 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, 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.

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

OCR appreciates the District's cooperation during the resolution of this complaint. If you have any questions about this letter, please contact Ms. Brenda Redmond, Supervisory Attorney/Team Leader, at (216) 522-2667 or at [Brenda.Redmond@ed.gov](mailto:Brenda.Redmond@ed.gov).

OCR looks forward to receiving the District's first monitoring report under the Agreement on or before December 15, 2017. For questions about implementation of the Agreement, please contact Ms. Tanya Williams Sample, who will be monitoring the District's implementation of the Agreement, at (216) 522-4487 or at [Tanya.Sample@ed.gov](mailto:Tanya.Sample@ed.gov).

Sincerely,

/s/

Meena Morey Chandra  
Regional Director

Enclosure