



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

**REGION XV
MICHIGAN
OHIO**

September 24, 2021

Via Email Only to: Hoyingd@cpsboe.k12.oh.us

Daniel J. Hoying,
General Counsel
Cincinnati Public Schools
Education Center
2651 Burnet Avenue
Cincinnati, Ohio 45219

Re: OCR Docket No. 15-17-1238

Dear Mr. Hoying:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Cincinnati Public Schools (the District) on May 19, 2017. The complaint alleged that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that the District discriminated the Student **XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX**.

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 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, the District is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following issues:

- whether the District excluded a qualified individual with a disability from participation in, denied him the benefits of, or otherwise subjected him to discrimination on the basis of disability under any of its programs or activities in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130(a);

- whether the District failed to afford a qualified student with a disability an equal opportunity to participate in or benefit from the District’s programs, activities, aids, benefits, or services 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 provide a qualified student with a disability an equal opportunity for participation in the District’s non-academic and extra-curricular services and activities in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.37(a).

During the course of the investigation, OCR considered documentation provided by the Complainant (the parent), and the District, and conducted interviews with District staff. Additionally, OCR provided the Complainant with an opportunity to respond to information provided by the District.

After carefully reviewing the information provided, OCR’s investigation to date raised a concern that the District inappropriately considered the Student’s disability status when XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. To complete its investigation, OCR would need to review additional data, including XXXXX XXXXX XXXXX XXXXX other students XXXXX XXXXX XXXXX XXXXX XXXXX, and interview District staff who provided XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

On August 6, 2021, prior to the completion of OCR’s investigation, the District requested to resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). When fully implemented, the Agreement will resolve the complaint, in accordance with Section 504 and Title II.

Summary of OCR’s Investigation to Date

The District is a K-12 public school district located in Cincinnati, Ohio. XXXXX – SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. The parent reported that the Student was diagnosed with a disability and received services pursuant to a Section 504 plan during XXXXX XXXXX XXXXX XXXXX. The Student did not have a Section 504 plan in place during the XXXX-XXXX school year.

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Legal Standard

The Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130(a) prohibit recipients of federal financial assistance from excluding a qualified individual with a disability from participation in, denying the individual the benefits of, or otherwise subjecting them to discrimination on the basis of disability under any of its programs or activities.

Furthermore, 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) require recipients of federal financial assistance to afford a qualified student with a disability an equal opportunity to participate in or benefit from the recipient’s programs, activities, aids, benefits, or services. Similarly, the Section 504 implementing regulation at 34 C.F.R. § 104.37 requires recipients of federal financial assistance to provide a qualified student with a disability an equal opportunity for participation in the District’s non-academic and extra-curricular services and activities.

The following three elements must be satisfied to establish a prima facie case of different treatment: 1) the student is a member of a protected class (e.g., disability); 2) the student was subjected to adverse treatment; and 3) someone who is similarly situated and outside of the student’s protected class was treated more favorably.

Although all three elements must exist to establish a prima facie case, OCR need not address all three elements if it determines one is missing.

If the above elements of a prima facie case of different treatment are established, OCR examines whether the recipient has articulated a legitimate, nondiscriminatory reason for subjecting the

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 Student's parent 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, 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 file a private suit in federal court, whether or not OCR finds a violation.

We appreciate your cooperation and that of District staff throughout the investigation of this complaint. You may contact me by telephone at (216) 522-2672 or via email at Nathaniel.McDonald@ed.gov if you have any questions or concerns about this letter or the resolution of the complaint. For questions about implementation of the Agreement, please contact Ms. Chenelle Love, who will be monitoring the District's implementation of the Agreement, by telephone at (216) 522-7626 or by e-mail at Chenelle.Love@ed.gov. We look forward to receiving the District's first monitoring report by September 30, 2021.

Sincerely,

/s/

Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure