



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

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

10/16/2019

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

Re: OCR Docket No. 15-18-1068

Dear Ms. Anthony:

This letter is to notify you of the disposition of the above-referenced complaint filed on November 2, 2017, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Westerville City School District (the District) alleging that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that:

1. During the fall of 2017, the District failed to implement various provisions of the Student's Individualized Education Program (IEP) plan in the Student's XXXXX.
2. In XXXXX 2017, the District XXXXX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit 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.

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

- whether the District failed to provide 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; and
- whether the District excluded a qualified student with a disability from participation in, denied him the benefits of, or otherwise subjected him to discrimination in its programs and activities based on his disabilities in violation of the regulation implementing Section 504 at 34 C.F.R. §§ 104.4 and 104.43, and the regulation implementing Title II at 28 C.F.R. § 35.130.

During its investigation to date, OCR reviewed documents provided by the District and interviewed the Student’s parent and District staff. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is insufficient to support a finding that the District failed to implement the Student’s IEP in violation of the regulations implementing Section 504 with respect to allegation #1. Before OCR could conclude the investigation of allegation #2, the District requested to enter into an agreement with OCR, pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM).

Allegation #1: Failure to Implement

**Summary of OCR’s Investigation**

During OCR’s investigation, OCR reviewed documents provided by the District including the Student’s IEP in place during the relevant time period. According to the IEP, the Student XXXXX. Based on OCR’s investigation, the evidence shows that the Student’s teachers, including his Science teacher, received the Student’s “IEP At A Glance” from his special education case manager and intervention specialist (Intervention Specialist) XXXXX prior to the start of school. The “IEP At A Glance” is a document which summarizes the goals and services on a student’s IEP for quick reference. OCR staff confirmed that the services listed in the “IEP At A Glance” matched those listed in the IEP.

XXXXXX PARAGRAPH REMOVED XXXXX

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XXXXXX PARAGRAPH REMOVED XXXXX

**Applicable Regulatory Standards**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires a recipient school district to provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual's disability. For purposes of FAPE, an appropriate education 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 individuals with disabilities as adequately as the needs of individuals without disabilities are met and which have been developed in accordance with process requirements of 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards).

**Analysis and Conclusion**

After reviewing the evidence, OCR finds that there is insufficient evidence to conclude that the XXXXX failed to implement the Student’s IEP.

XXXXX PARAGRAPH REMOVED XXXXX

Allegation #2: Disability Discrimination

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

XXXXX PARAGRAPH REMOVED XXXXX

XXXXX PARAGRAPH REMOVED XXXXX

XXXXX PARAGRAPH REMOVED XXXXX

XXXXX PARAGRAPH REMOVED XXXXX

**Applicable Regulatory Standards**

34 C.F.R. § 104.4(b), provides that school districts must afford a qualified student with a disability an opportunity to benefit from an aid, benefit, or service that is equal to that afforded others and are prohibited from providing different or separate aids, benefits, or services to a qualified student with a disability when that action is not necessary to provide aids, benefits, or services as effective as those provided to others.

In determining whether a school district subjected a student to such different treatment on the basis of disability in violation of Section 504 and Title II, OCR examines first whether a student with a disability was treated differently from a student or students without disabilities in similar circumstances. If so, OCR determines whether the district articulated what could constitute a legitimate, non-discriminatory reason for the differences in the treatment of similarly-situated students. If so, OCR examines whether the articulated reason(s) is a pretext for unlawful discrimination by examining, for example, whether the recipient treated the student(s) in a manner that is consistent with its established policies and procedures and whether there is any other evidence of discrimination based on disability.

**Analysis and Conclusion**

Under Section 302 of OCR’s CPM, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR’s investigation has identified issues that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegation prior to the conclusion of OCR’s investigation and OCR determined resolution was appropriate. Specifically, OCR found that the XXXXX. OCR therefore determined that this finding of fact raised a cause for concern which could properly be resolved through a resolution agreement. On September 27, 2019, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution 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.

With respect to allegation #1, 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 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 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.

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 file a private suit in federal court, whether or not OCR finds a violation.

For questions about implementation of the Agreement, please contact Mr. John Cohen. He will be overseeing the monitoring and can be reached by telephone at (216) 522-4709 or by e-mail at John.Cohen@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-4709, or by e-mail at John.Cohen@ed.gov.

Sincerely,

/s/

Sacara E. Miller  
Supervisory Attorney/Team Leader

Enclosure