



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 29, 2020

Via E-mail Only to speters@ohioedlaw.com

Scott C. Peters, Esq.
Peters Kalail & Markakis Co, L.P.A.
Corporate Plaza II
6480 Rockside Woods Blvd. South, Suite 300
Cleveland, Ohio 44131

Re: OCR Docket No. 15-18-1362

Dear Mr. Peters:

This letter is to notify you of the disposition of the above-referenced complaint filed on May 12, 2018, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Twinsburg City School District (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that:

1. XXXXX SENTENCE REMOVED XXXXX.
2. XXXXX SENTENCE REMOVED 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 District staff members, acting within the scope of employment, subjected a student to disability-based harassment that was sufficiently severe, persistent, or pervasive to interfere with his ability to participate in or benefit from the District's educational program, 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;
- whether the District has a prompt and equitable process to respond to complaints of disability discrimination as required by the Section 504 implementing regulation at 34 C.F.R. § 104.7(a) and (b); and

- 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.

To conduct its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the parent and District staff. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that the District violated the regulations implementing Section 504 and Title II as alleged in allegation #1, but insufficient to support a finding that the District violated the regulations implementing Section 504 and Title II as alleged in allegation #2. The bases for OCR’s determination are explained below.

Allegation #1

- **Summary of OCR’s Investigation**

XXXX PARAGRAPH REMOVED XXXXX

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- **Applicable Regulatory Standards**

The implementing regulation for Section 504 at 34 C.F.R. § 104.4 provides that students with disabilities shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, be afforded an opportunity that is not equal to that afforded others, or otherwise be subjected to discrimination. 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.

The Section 504 regulation at 34 C.F.R. § 104.33(a) and (b) also requires a recipient that operates a public elementary or secondary education program to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or the severity of the person’s disability.

The Section 504 regulation at 34 C.F.R. § 104.7(b) and the Title II regulation at 28 C.F.R. § 35.107(b) require a recipient to adopt grievance procedures that incorporate appropriate due

process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 or Title II.

- **Analysis**

XXXX PARAGRAPH REMOVED XXXXX

XXXX PARAGRAPH REMOVED XXXXX

XXXX PARAGRAPH REMOVED XXXXX

For these reasons, OCR finds sufficient evidence to support that the District violated the regulations implementing Section 504 and Title II as alleged in allegation #1. On September 25, 2020, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address this allegation. OCR will monitor the implementation of the Agreement. OCR notes that, in a phone conversation on August 13, 2020, the Complainant stated that, because the Student has graduated and no longer attends the District, no individual remedies were necessary or appropriate to resolve this allegation.

Allegation #2

- **Summary of OCR’s Investigation**

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The Section 504 regulation at 34 C.F.R. § 104.33(a) and (b) also requires a recipient that operates a public elementary or secondary education program to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or the severity of the person's disability.

- **Analysis**

XXXX PARAGRAPH REMOVED XXXXX

XXXX PARAGRAPH REMOVED XXXXX

Conclusion

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.

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.

OCR looks forward to receiving the District's first monitoring report by November 1, 2020. For questions about implementation of the Agreement, please contact Ms. XXXXX. She will be overseeing the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at (216) 522-7640, or by e-mail at Sacara.Miller@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure