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### **Legal Standard**

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person 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 or benefits from Federal financial assistance. The Title II implementing regulation contains a similar provision, at 28 C.F.R. § 35.130(a). In investigating an allegation of disability discrimination under a different treatment theory, OCR first will determine whether the recipient treated the individual with a disability differently than a similarly situated individual without a disability. If so, OCR will determine whether the recipient had a legitimate, nondiscriminatory reason for the difference in treatment and if so, whether that reason was a pretext for discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free and 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 Section 504’s procedural requirements at 34 C.F.R. §§ 104.34 - 104.36 regarding educational setting, evaluation, placement, and procedural safeguards. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

OCR guidance provides that school districts’ obligation to provide FAPE to each qualified individual with a disability remains in effect during the pendency of the COVID-19 pandemic. While a school district would not be required to provide services to students with disabilities while a district is closed and not providing any educational services to the general student population, OCR guidance provides that “Once school resumes, the school must return to providing special education and related services to students with disabilities in accordance with the student’s IEP or, for students entitled to FAPE under Section 504, consistent with any plan developed to meet the requirements of Section 504.” See U.S. Department of Education, Office for Civil Rights, “Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students,” Mar. 16, 2020. <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-coronavirus-fact-sheet.pdf>. To fulfill that obligation, the IEP team and other individuals responsible for ensuring that FAPE be provided pursuant to Section 504, “would be required to

make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.” See U.S. Department of Education, “Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak,” Mar. 12, 2020, <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/qa-covid-19-03-12-2020.pdf>.

### **Analysis**

#### **Allegations ##1 and 2 – Alleged Denial of FAPE**

OCR has determined that the District failed to provide the Student with a FAPE in accordance with the requirements of Section 504.

The evidence supports a finding that, while the Student’s IEP required XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, the District only provided one session of XXXXX XXXXX XXXXX from XXXXX to the end of the XXXXX school year, and no XXXXX XXXXX XXXXX during XXXXX. The evidence indicates that the District provided the Student with the amount of XXXXX XXXXX XXXXX XXXXX required by the Student’s IEP from XXXXX to XXXXX.

With respect to the XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX required by the Student’s IEP, the Complainant told OCR that the District did not provide the full amount of XXXXX XXXXX XXXXX from XXXXX to the end of the XXXXX school year, and the District did not provide any evidence to indicate otherwise. The evidence further shows that the District offered only up to XXXXX XXXXX XXXXX XXXXX of XXXXX XXXXX XXXXX from the beginning of the XXXXX school year to XXXXX.<sup>1</sup>

OCR has also determined that, with respect to allegation #2, the District failed to provide the Complainant with XXXXX XXXXX as per the Student’s IEP. XXXXX - SENTENCE REMOVED - XXXXX. The evidence provided by the District contains a document which shows some of the Student’s XXXXX during the XXXXX and XXXXX school years. However, the District’s data does not demonstrate whether, how, or when this, or any, XXXXX XXXXX was provided to the Complainant.

Therefore, based on the evidence OCR reviewed in this investigation, OCR finds that the District failed to provide the Student with the full amount of XXXXX XXXXX and XXXXX XXXXX XXXXX XXXXX required by XXXXX IEP, and failed to provide the Complainant with the XXXXX XXXXX required by XXXXX IEP, denying the Student a FAPE as required by Section 504.

#### **Allegation #3 – Alleged Different Treatment**

OCR has also determined that the District treated the Student differently than similarly-situated students without disabilities, and did not have a legitimate, nondiscriminatory reason for that difference in treatment.

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Therefore, based on the evidence OCR reviewed in this investigation, OCR finds that the District treated the Student differently than similarly-situated students without disabilities, and did not have a legitimate, nondiscriminatory reason for that difference in treatment, in violation of Section 504 and Title II.

On May 1, 2022, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the violations in accordance with Section 504 and Title II. 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.

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 May 13, 2022. For questions about implementation of the Agreement, please contact XXXXX XXXXX. XXXXX XXXXX will be overseeing the monitoring and can be reached by telephone at XXXXX or by e-

Page 9 – Ms. Erin H. Walz, Esq.

mail at [XXXXXX@ed.gov](mailto:XXXXXX@ed.gov). If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at [Brenda.Redmond@ed.gov](mailto:Brenda.Redmond@ed.gov).

Sincerely,

/s/

Brenda Redmond  
Supervisory Attorney/Team Leader

Enclosure