



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

October 12, 2021

**Via E-mail Only to [redacted]**

John L. Miller, Esq.  
Giarmarco, Mullins & Horton, P.C.  
Tenth Floor Columbia Center  
101 W. Big Beaver Road  
Troy, Michigan 48064-5280

Re: OCR Docket Nos. 15-20-1345 & 15-21-1298

Dear Mr. Miller:

This letter is to notify you of the disposition of the above-referenced complaints filed respectively on September 2, 2020, and June 17, 2021, with the U.S. Department of Education, Office for Civil Rights (OCR), against Troy School District alleging that the district discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged the following:

**Complaint #15-20-1345:**

1. the district did not provide the Student with [redacted] services as outlined in her Individualized Education Programs (IEPs) from [redacted], to [redacted];
2. the district did not provide the Student with access to educational instruction from [redacted], to [redacted], and beginning again at the start of the [redacted] school year; and
3. [redacted]

**Complaint #15-21-1298:** from [redacted], to [redacted], the district did not provide the Student with the full amount of instructional minutes per week required by her IEP.

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 of Education and as a public entity, the district is subject to these laws.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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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), as required by the Section 504's implementing regulation at 34 C.F.R. § 104.33; and
- whether the district, on the basis of disability, excluded a student from participation in, denied a student the benefits of, or otherwise subjected a student to discrimination in its programs and activities based on the student's disability in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4, and the regulation implementing Title II at 28 C.F.R. § 35.130.

During its investigation to date, OCR reviewed information provided by the Complainant and the district. OCR also interviewed the Complainant and a district witness. Prior to the conclusion of OCR's investigation of these complaints, the district expressed its interest in resolving these complaints under Section 302 of OCR's *Case Processing Manual*. After careful review of the information obtained regarding allegations #3 of the OCR Docket #15-20-1345, OCR has determined that the evidence is insufficient to find that the district violated Section 504 and/or Title II, as alleged. Regarding the remaining allegations raised in the OCR Docket ##15-20-1345 and 15-21-1298, OCR found compliance concerns and determined it to be appropriate to resolve these allegations under Section 302 of OCR's *Case Processing Manual*. The bases for OCR's determinations are explained below.

### **Applicable Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.4(a), 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 subject to discrimination under any program or activity which receives Federal financial assistance.

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>.

## **Background**

The Student is a student with a disability who attends the district's [redacted]. During the [redacted] school year, the Student attended the school as a [redacted] grader. The district identified the Student as eligible for special education under as a student with the primary disability of [redacted]. Her disabilities include, [redacted].

[paragraph redacted]

[paragraph redacted]

[paragraph redacted]

The district provided OCR with copies of the Student's IEPs in place during this timeframe. OCR reviewed the Student's IEP dated [redacted], which required the Student to receive a total of [redacted] minutes of instruction per day ([redacted] minutes per 5-day week) in both the special education and general education settings. [sentence redacted]. The district also provided OCR with a copy of the Student's most recent IEP dated [redacted]. This IEP had the same amount of daily instruction as the [redacted], IEP.

[paragraph redacted]

Pursuant to the Student's IEPs, the Student was to receive certain related direct services, including [redacted]. [Sentences redacted].

[paragraph redacted]

Due to the COVID-19 pandemic, beginning March 13, 2020, up through the end of the 2019-2020 school year, the Governor of Michigan issued a series of executive orders directing all schools to close their buildings and to suspend in-person instruction or services.

[paragraph redacted]

## **Allegation #3 of OCR Docket #15-20-1345**

- **Summary of Investigation**

[paragraphs redacted]

- **Analysis and Conclusion**

[paragraph redacted]

Based on the foregoing, regarding allegation #3 of OCR Docket #15-20-1345, OCR finds that the evidence is insufficient to conclude that the district violated Section 504 and Title II, as alleged.

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 in this letter 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 district. The district has the option to submit to OCR a response to the appeal. The district must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the district.

### **Remaining Complaint Allegations**

- **Summary of Investigation to Date**

- **Allegation #1 of OCR Docket #15-20-1345**

The Complainant alleged that the district did not provide the Student with [redacted] services as outlined in her IEPs from [redacted], to [redacted]. The Complainant told OCR that direct [redacted] services were not provided for the Student when the district was operating in a virtual setting, because the therapists did not work directly with the Student during those time periods. The Complainant also stated that no virtual therapies were provided during the Student's virtual instruction during this time period and none of the therapists checked in with the Complainant or provided her with activities to do with the Student regarding her related services. Also, during this time period, the Complainant did not have access to equipment used at the district, such as [redacted].

The district asserted that these services were provided to the Student virtually. District staff told OCR that the Student's special education teacher often communicated with the Student's related service providers to collaborate on ideas and skills during the time period the district was providing remote virtual instruction. The Student's related service providers also joined the Student's teacher during online learning sessions via Zoom weekly to provide direct services to the Student and to check-in with the Complainant.

- Direct [redacted] services

The district provided documentation regarding its provision of the [redacted] services during this time period, including copies of the Student's [redacted]'s e-mail communications and a service log. [sentences redacted]

- Direct [redacted] services

The district provided documentation regarding its provision of the [redacted], including copies of the therapist service log and e-mail communications. The documentation indicated that most of the [redacted]'s interaction was with the Complainant and not the Student. [sentences redacted]

It is not clear from the documentation if the [redacted] worked directly with the Student during this time period, beyond sending resources with the expectation that the Complainant would conduct these activities with the Student.

- Direct [redacted] services

The district provided documentation about its provision of [redacted] services to the Student during the [redacted], including a service log maintained by the [redacted] and copies of several e-mails. [sentence redacted] The [redacted] sent materials home for the Student to use during their sessions, and for the Complainant to use with the Student. [sentence redacted].

- **Allegation #2 of OCR Docket #15-20-1345**

The Complainant alleged that the district did not provide the Student with access to educational instruction as outlined in her IEPs from [redacted], to [redacted], and beginning again at the start of the [redacted] school year.

The Complainant acknowledged that after [redacted], the district provided the Student with virtual instruction but asserted that the Student did not receive any hands-on materials or educational services that she would normally have received in his classroom, such as [redacted]. The Complainant stated that without these materials and services she was not able to access instruction during this virtual period. [sentence redacted]. In addition, the Complainant stated that she was required to attend every virtual instruction session with the Student and provide adult support.

The district asserted that the Student received all materials necessary for instruction and there was no issue in the Student's participation in these virtual sessions. District staff told OCR that the Student's supplementary aids/services such as adult support were provided during the virtual learning sessions. However, district documentation indicated that the Student's team felt [redacted] made learning in a virtual setting very challenging for the Student.

- **OCR Docket #15-21-1298**

The Complainant alleged that from [redacted], to [redacted], the district did not provide the Student with the full amount of instructional minutes per week required by her IEP. The Complainant stated that the Student received [redacted] minutes of instruction per week at the

elementary school in both special and general education, when her IEP required her to receive [redacted] minutes of instruction in both the special education and general education setting.

According to the Complainant, from [redacted], until [redacted], the Student received instruction in the virtual setting as she had during the prior school year; the district returned to in-person instruction at [redacted]. [sentences redacted].

- **Compliance Concerns**

Regarding allegation #1 of OCR Docket #15-20-1345, the evidence obtained to date showed that during the alleged period the district's [redacted] service providers engaged with the Complainant via virtual meetings, e-mails, and phone calls regarding the Student. However, the evidence obtained to date raises concerns as to whether these services were provided directly to the Student in compliance with the Student's IEP and whether they met the minimum service amounts in certain months. The evidence to date also raises concerns as to whether these sessions were meaningful in light of many challenges the Student faced in the virtual environment, the expectation placed on the Complainant to provide consistent hands-on support during the sessions, and whether the Student had the necessary equipment to work toward her IEP goals.

Regarding allegation #2 of OCR Docket #15-20-1345, the evidence showed that from [redacted], to [redacted] and beginning at the start of the [redacted] school year the district provided virtual instruction to the [redacted] students. The district asserted that the Student received all her necessary instruction and materials and adult support and there were no issues in the Student's participation in these virtual sessions. However, the evidence raises concern that the Student's participation was not meaningful without the adult support which her IEP team had determined was necessary for the Student to receive FAPE while she was participating at school, and that the Complainant was required to provide the necessary support services for the Student to be able to participate in the virtual learning. Additionally, the evidence suggests that the district did not provide the Student with the requisite amount of educational instructional time set forth in her IEP. [sentence redacted].

Regarding OCR Docket #15-21-1298, the Student's IEPs in place during this time period required the Student to receive [redacted] minutes of instruction in both the special and general education setting, which was consistent with her pre-pandemic IEP. The Complainant explained that the Student's school schedule was limited to [redacted] daily, a reduced school day not contemplated by her IEP, and which her IEP stated was not consistent with her disability-related needs. Based on this information OCR had compliance concerns regarding the implementation of the Student's IEPs.

- **Voluntary Resolution**

Under Section 302 of OCR's *Case Processing Manual*, 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 concerns that can be addressed through a resolution agreement. In this case, the district expressed an interest in

resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On October 11, 2021, 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.

## **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.

Please be advised that the district may not harass, coerce, intimidate, or discriminate against any individual because she 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 10, 2021. For questions about implementation of the Agreement, please contact Suwan Park. Ms. Park will be overseeing the monitoring and can be reached by telephone at (216) 522-4972 or by e-mail at [Suwan.Park@ed.gov](mailto:Suwan.Park@ed.gov). If you have questions about this letter, please contact me by telephone at (216) 522-4978, or by e-mail at [Erin.Barker-Brown@ed.gov](mailto:Erin.Barker-Brown@ed.gov).

Sincerely,

/s/

Erin Barker-Brown  
Acting Team Leader

Enclosure