

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance from the Department. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation at 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 school system, the District is subject to Section 504 and Title II. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the legal issue of whether the District provided a qualified student with a disability with a free and appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33(a).

To conduct its investigation, OCR interviewed the Complainant and a member of the District's staff. OCR also reviewed documentation provided by the Complainant and the District. Prior to the completion of OCR's investigation, the District asked to voluntarily resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). OCR sets forth below a summary of its investigation to date.

## OCR's Investigation to Date

The Student is diagnosed with XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. He had a Section 504 plan in effect to address his needs as a student with a disability while in the Program.

Each year, the Program is staffed and operated by District personnel, including teachers, and is open to District students. The District's XXXXX XXXXX XXXXX XXXXX administers the Program, which is held in District school buildings, including during XXXXX XXXXX.

[illegible]

The Complainant reported that when the Student participated in the Program during XXXXX  
XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX  
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX  
XXXXX XXXXX XXXXX. She also reported that staff excluded the Student from XXXXX  
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX  
XXXXX XXXXX XXXXX. She reported that there were occasions XXXXX XXXXX  
XXXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX  
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XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.  
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. She also  
reported that staff members demonstrated a lack of understanding of the seriousness XXXXX  
XXXXX XXXXX XXXXX. For instance, staff asked questions such as whether it was alright if  
the Student XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX  
XXXXXX XXXXX XXXXX.

The Administrator reported that in early XXXXX XXXXX, she scheduled a meeting with the Complainant to discuss his participation in the XXXXX XXXXX Program, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. She said Program staff met anyway and discussed the Student's Section 504 plan and XXXXX XXXXX. She said that she and three other staff members attended the meeting. She said that she sent the Complainant an email after the meeting informing her what they discussed, and the Complainant approved and said that everything sounded fine with her.

According to the Administrator, the Student brought XXXXX XXXXX XXXXX each day during the XXXXX Program. She said that he had XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. She said that the students in his classroom would XXXXX XXXXX XXXXX XXXXX before returning to the classroom. The Administrator said that there were not supposed to be XXXXX XXXXX in the Student's classroom. She said that students ate lunch in the cafeteria each day, and there was XXXXX XXXXX XXXXX area that the Program maintained for the Student and other students XXXXX XXXXX XXXXX XXXXX XXXXX. The Administrator said that there were other students XXXXX XXXXX XXXXX in the XXXXX XXXXX Program.

[illegible]

The Administrator said that during the conversation about the XXXXX, the Complainant told her that XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX on two prior occasions. The Administrator said she looked into this and it was her understanding that when this happened, XXXXX XXXXX was removed from the classroom and taken to the cafeteria. The Administrator said that as a result of this conversation with the Complainant, she had staff send an email to all parents in the Student's classroom directing that they were not to bring XXXXX to the Program.

The Administrator stated that in another instance, the Complainant reported that a staff member who normally did not work in the Student's room brought in XXXXX XXXXX for an activity during the XXXXX week of the XXXXX XXXXX Program. The Administrator said this staff member was under the impression that the Student had already exited the Program for the XXXXX, and that it was alright to bring in the XXXXX XXXXX. The Administrator explained that students were going to use XXXXX XXXXX XXXXX for a learning exercise. She said that the staff member called the Complainant that day to ask if the Student could XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX in order for him to participate in the exercise. She said the Complainant told the staff member that this was not permissible. The Administrator reported that, as a result, the class did not do the activity that day.

The Administrator said that she only knew about the two incidents discussed above that caused a concern for the Complainant that XXXXX XXXXX had been brought into the Student's classroom. She said that the Complainant also mentioned that XXXXX had previously been brought into the Student's classroom and she addressed it by having staff send an email to parents in the Students classroom that XXXXX was not permitted to be brought into the classroom.

### **Applicable Legal Standard**

The Section 504 implementing regulation at 34 C.F.R. § 104.33 requires recipients of federal financial assistance to provide qualified students with disabilities with a free appropriate public education (FAPE). The Section 504 implementing regulation at 34 C.F.R. § 104.33 (b)(1) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students who have a disability as adequately as the needs of students who do not have disabilities are met.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a student's Section 504 team determined were necessary to provide the student with FAPE. OCR then determines whether the recipient provided the student the agreed-upon services and, if not, whether this resulted in a denial of FAPE.

### **Conclusion and Voluntary Resolution**

The evidence obtained by OCR to date raises a concern that the Student's 504 Plan was not followed and that he was potentially denied a FAPE. The Student's Section 504 plan states that the Student is XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The Administrator acknowledged that the Student's classroom was supposed to be XXXXX XXXXX XXXXX, and that the Student was to have lunch in the cafeteria XXXXX XXXXX XXXXX XXXXX XXXXX. The Administrator also acknowledged that there were other students in the Program XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The information to date shows that during the XXXXX XXXXX Program there were occurrences in which XXXXX XXXXX XXXXX XXXXX was brought into the Student's classroom and other instances in which XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX was brought into the classroom and had to be removed from the room. The information also shows that the Student was excluded from activities when XXXXX XXXXX XXXXX XXXXX were allowed to be brought into his classroom and enjoyed by classmates without him being able to partake.

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. As noted above, the District expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On January 27, 2022, the District signed the enclosed Agreement, which, when fully implemented, will address the compliance concerns OCR identified. OCR will monitor the District's implementation of the 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 **March 15, 2022**. For questions about implementation of the Agreement, please contact XXXXX XXXXX, who 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) 522-7574, or by e-mail at [Denise.C.Vaughn@ed.gov](mailto:Denise.C.Vaughn@ed.gov).

Sincerely,

/s/

for  
Denise C. Vaughn  
Supervisory Attorney/Team Leader

Enclosure