



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV  
MICHIGAN  
OHIO

February 23, 2022

Via E-mail Only to [mmarkling@mcgownmarkling.com](mailto:mmarkling@mcgownmarkling.com)

Matthew John Markling, Esq.  
McGown & Markling Co., L.P.A.  
1894 North Cleveland-Massillon Road  
Akron, Ohio 44333

Re: OCR Docket No. 15-21-1387

Dear Mr. Markling:

This letter is to notify you of the disposition of the above-referenced complaint filed on September 3, 2021, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Wadsworth City School District (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged that, during the XXXXX school year:

1. The District did not reevaluate the Student when XXXXX was failing and not attending XXXXX remote courses.
2. The District did not implement the Student's Section 504 plan accommodation that provided for XXXXX XXXXX to help with organization.

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 with 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 made a significant change in the placement of a student with a disability without appropriately reevaluating the student, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35(a).

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did not address helping the Student with XXXXX organization. The emails were generally about the Student's XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. Therefore, the evidence gathered in OCR's investigation to date supports a concern that the District did not implement a provision of the Student's IEP requiring XXXXX XXXXX XXXXX to help with organization.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.4, 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 which receives Federal financial assistance. The Title II regulation, at 28 C.F.R. § 35.130, states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a free 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 procedural requirements of 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards. Those services may include modifications to the regular education program, including adjustments to rules regarding absences when a student's absences are due to a disability.

The Section 504 regulation, at 34 C.F.R. § 104.35, provides that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and before any subsequent significant change in placement. OCR considers transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement. Further, under OCR policy, any suspension, exclusion, or expulsion that exceeds 10 days or any series of shorter suspensions or exclusions that in the aggregate totals more than 10 days and creates a pattern of exclusions constitutes a significant change of placement that would trigger the district's duty to reevaluate a student under 34 C.F.R. § 104.35(a). Re-evaluations may also be required in certain other circumstances, for example, where a parent or teacher requests a reevaluation based on concerns that a student's existing disability related aids and services are not meeting the student's needs or when the student has repeated absences that may be disability related.

Although the Section 504 regulation does not set forth specific timeframes within which Students with disabilities must be reevaluated to make sure they are receiving the appropriate services, a recipient school district must ensure that qualified students with disabilities are evaluated and provided access to meaningful educational services without unreasonable delay.

## **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. OCR determined that this case was appropriate for Rapid Resolution Process (RRP) pursuant to Section 110 of OCR's *Case Processing Manual*. RRP is an expedited case processing approach that can be used to resolve complaints during the evaluation stage or after issuance of the letter of notification. Before OCR completed its investigation, the District expressed an interest in resolving the allegations pursuant to Section 302 of OCR's *Case Processing Manual* and OCR determined resolution was appropriate. OCR notes that, because the Student will not reenroll in the District, the resolution agreement includes no individual remedies. In a telephone call on January 21, 2022, OCR provided technical assistance to the District on its obligations under Section 504 to students with disabilities. On February 21, 2022, 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.

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 July 1, 2022. For questions about implementation of the Agreement, please contact Ms. Allison Beach. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2666 or by e-mail at

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Allison.Beach@ed.gov. 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