

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION XV MICHIGAN OHIO

1350 EUCLID AVENUE, SUITE 325 CLEVELAND, OH 44115-1812

April 15, 2022

Via E-mail Only to jesstark@kgvlaw.com

Jessica M. Stark, Esq. Kluczynski, Girtz, & Vogelzang 3033 Orchard Vista Drive SE, Ste 308 Grand Rapids, Michigan 49546

Re: OCR Docket No. 15-22-1033

Dear Ms. Stark:

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.

Based on the complaint allegations, OCR opened an investigation of the following legal issue: 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.

XXXX - PARRAGRAPH REMOVED – XXXX.

XXXX - PARRAGRAPH REMOVED – XXXX.

OCR reviewed documents provided by the District and the Complainant. OCR also conducted interviews with the Complainant and the XXXXX XXXXX XXXXX XXXXX

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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Summary of Evidence

XXXXX – PARAGRAPH REMOVED – XXXXX.

XXXXX - PARAGRAPH REMOVED – XXXXX.

OCR also interviewed a District paraprofessional (the Paraprofessional) who participates in XXXXX XXXXX. She explained that she has a kind of supervisory role there; she ensures that things go smoothly. She also brings games for the students to play. XXXXX - SENTENCE REMOVED - XXXXXX - SENTENCE REMOVED - XXXXXX - SENTENCE REMOVED - XXXXXX - SENTENCE REMOVED - XXXXXX. XXXXXX - SENTENCE REMOVED - XXXXXX. XXXXXX - SENTENCE REMOVED - XXXXXX.

XXXXX – PARAGRAPH REMOVED – XXXXX.

XXXXX – PARAGRAPH REMOVED – XXXXX.

Applicable Legal Standards

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 federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

Also, the Section 504 regulation, at 34 C.F.R. § 104.33, requires public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-36. Districts are required to 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 any subsequent significant change in placement. 34 C.F.R. § 104.35(a). Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. 34 C.F.R. § 104.33(b)(2).

In interpreting evaluation data and in making placement decisions, a recipient school district must draw upon information from a variety of sources, establish procedures to ensure that information obtained from all such sources is documented and carefully considered, and ensure that the decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 104.35(c).

Furthermore, the Section 504 regulation at 34 C.F.R. § 104.34(a) requires a recipient school district to educate each qualified student with a disability in its jurisdiction with students without a disability to the maximum extent appropriate to the needs of the student with a disability. The Section 504 regulation at 34 C.F.R. § 104.34(a) also requires a recipient school district to place a student with a disability in the regular educational environment operated by the recipient unless the recipient demonstrates that the education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Similarly, the Title II regulation at 28 C.F.R. § 35.130(d) requires a public school district to administer services, programs, and activities in the most integrated setting appropriate to the needs of a qualified student with a disability. The Section 504 regulation at 34 C.F.R. § 104.34(b) requires a recipient school district, in providing or arranging for the provision of non-academic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 104.37(a)(2), to ensure that students with a disability participate with

students without a disability in such activities and services to the maximum extent appropriate to the needs of the student with a disability in question.

The Section 504 regulation, at 34 C.F.R. § 104.6(a), provides that when OCR finds that a district has discriminated against persons on the basis of disability, the district shall take such remedial action as OCR deems necessary to overcome the effects of the discrimination. Compensatory services are required to remedy any educational or other deficits that result from a student with a disability not receiving the evaluations or services to which they were entitled.

Analysis and Conclusion

As a result, OCR has cause for concern that the Student's participation XXXXX XXXXX XXXXX XXXXX may have been a significant change in placement requiring the District to re-evaluate the Student, convene the Student's team, and comply with the other requirements of 34 C.F.R. § 104.35. Additionally, OCR has cause for concern XXXXX XXXXX XXXXX could result in different treatment of the Student, as well as other students with disabilities, in violation of Section 504 and Title II. Specifically, the concern is that the Student and other students with disabilities are not being educated to the maximum extent appropriate to their needs with students without disabilities pursuant to 34 C.F.R. § 104.34.

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 allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On April 13, 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

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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.

OCR looks forward to receiving the District's first monitoring report by **May 30, 2022**. For questions about implementation of the Agreement, please contact Ms. Aleksandra Chojnacki. Ms. Chojnacki will be overseeing the monitoring and can be reached by telephone at (216) 522-4944 or by e-mail at Aleksandra.Chojnacki@ed.gov. If you have questions about this letter, please contact me by e-mail at Nathaniel.McDonald@ed.gov.

Sincerely,

/s/

Nathaniel J. McDonald Supervisory Attorney/Team Leader

Enclosure