



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

October 7, 2022

Via e-mail only to: [redacted]

Jessica L. Dawso, Esq.
Scott Scriven LLP
250 E. Broad St., Suite 900
Columbus, Ohio 43215

Re: OCR Docket No. 15-22-1039

Dear Ms. Dawso:

This letter is to notify you of the disposition of the above-referenced complaint filed on October 21, 2021, with the U.S. Department of Education, Office for Civil Rights (OCR), against Madison-Plains Local School District (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged that:

1. the District did not provide the Student with [redacted] required by her Individualized Education Program (IEP) from [redacted], to [redacted], resulting in her being unable to begin the school year in person;
2. the District did not provide the Student with [redacted] required by her IEP for approximately the [redacted]; and
3. the District requires the Student's family to provide supplies and materials (e.g., [redacted]) necessary for her to receive education provided by the District.

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. Therefore, OCR had jurisdiction to investigate this complaint.

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

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During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and relevant witnesses from the District and the [redacted], which operates the program in which the Student was placed. With respect to the complaint allegations, the information obtained to date supports compliance concerns. Before the conclusion of OCR's investigation, the District requested to resolve this complaint pursuant to Section 302 of the OCR's *Case Processing Manual (CPM)*, and OCR determined resolution was appropriate. The bases for OCR's determination and the District's voluntary resolution of the complaint are explained below.

Summary of OCR's Investigation

For the [redacted] school year, the Student was in the [redacted] grade. The Student has been a District student since the [redacted] school year and has been served under an IEP as a student with [redacted] since that time.

[paragraph redacted]

Allegation #1

The Complainant alleged that the District did not provide the Student with [redacted] required by her IEP from the [redacted], which started [redacted], until [redacted]. [sentence redacted] The Complainant stated that, after she filed this OCR complaint, the District [redacted] for the Student on [redacted].

[paragraph redacted]

[redacted] (the coordinator) told OCR that, as the staff member responsible for hiring staff and teachers, she tried to [redacted] for the Student starting in [redacted], but had difficulty in filling the position. [sentence redacted] The coordinator also stated that, while they were unable to [redacted] for the Student prior to the [redacted], she communicated with the Complainant and explained who would be serving as her [redacted], how the [redacted] was familiar with the Student (e.g., [redacted]), and how she would be trained by the Student's [redacted] before the Student would start school. [sentence redacted] The coordinator told OCR that, despite the arrangements she had made for [redacted] to support the Student as she started the school year, the Complainant informed the coordinator that the Student's parents would keep the Student at home for virtual learning to start the school year due to non-disability-related pandemic concerns. At that time, the school allowed this.

The District's [redacted] (the director) confirmed to OCR that the [redacted] had secured a [redacted] to work with the Student prior to the [redacted]. The director also confirmed that the Complainant made the decision to keep the Student at home for virtual learning. E-mail records reflect, however, that the Student's method of attendance was not confirmed between the parties until the day before school. [sentences redacted]

The director told OCR that the Complainant asked the District to [redacted] while she kept her at home, which the District had approved for the prior school year as a way to meet the Student's

needs and provide FAPE. Therefore, for the [redacted], the District contracted with [redacted] to serve as the Student's [redacted] at home until the Student returned to school in person and she provided timesheets and activity logs to the District documenting her services as the Student's [redacted] during that period.

[paragraphs redacted]

The director told OCR that the [redacted] served as the Student's [redacted] because she requested to do so. The coordinator told OCR that before the [redacted] she made clear to the Complainant who would be working with the Student and that the [redacted]. The coordinator said that this was clear to everybody working with the Student, as her IEP specifically addressed such a situation. The coordinator told OCR that the Complainant still chose not to send the Student to school in part because of concerns about the lack of a [redacted], so they contracted with [redacted] to ensure the Student's needs were being met while at home.

According to the documents obtained during the investigation, on [redacted], the Complainant notified the coordinator that she was planning to send the Student back to school starting on [redacted]. The documentation showed that the coordinator informed the Complainant that transportation would not be ready by [redacted], and the District was short-staffed due to COVID-19. The director confirmed when interviewed by OCR that the District needed additional time to modify the bus and was not ready until [redacted]. [sentence redacted]. [sentence redacted] The Complainant decided to send the Student to school on [redacted].

The coordinator stated that when the Student returned to school on [redacted], she was supported by [redacted], who later became the Student's [redacted]. [sentences redacted] The director told OCR that there was no need to reconvene the Student's IEP team to discuss her needs while in a virtual learning environment because the Student's IEP was already designed for a hybrid model of learning (i.e., covering both in-person and virtual modes of instruction).

Allegation #2

The Complainant also alleged that the District did not provide the Student with [redacted] required by her IEP for approximately the [redacted]. The Complainant stated that the Student did not attend school in person because of the lack of [redacted] as well as the other circumstances described above and therefore she did not receive these services in person.

The District provided OCR a copy of the Student's IEP dated [redacted]. The Student's IEP indicated that the Student was to receive specially designed instruction for [redacted]. The section entitled "Related Services" described that the Student was to receive the following:

[paragraphs redacted]

The Student's [redacted], IEP also documented that the Student was to receive [redacted]. According to this IEP, the Student was to receive the following [redacted] services or activities from [redacted], to [redacted], by her [redacted]:

[paragraphs redacted]

The District provided a copy of the service logs for the Student's [redacted]. The logs indicated the following:

[paragraphs redacted]

OCR spoke with the [redacted] who worked with the Student for the [redacted]. [sentence redacted] The [redacted] told OCR that she ultimately did not provide virtual services to the Student, and first met with her the first full week she attended school in person. When asked whether she provided a total of [redacted] minutes for [redacted] as required by the Student's IEP, the [redacted] said she provided [redacted] minutes for that quarter; however, the log, as described above, did not reflect that the Student received [redacted] service minutes during the [redacted] quarter. The [redacted] added that she was planning to make up the missed services. When asked how she determined to make up the service time (e.g., independently or in consultation with the Student's IEP team), the [redacted] said that she made this decision independently, not through the Student's IEP team. The [redacted] also stated that she did not communicate with the Complainant about her plan to make up the services nor had she provided her service logs to the Complainant.

After speaking with the [redacted], OCR requested additional information regarding [redacted] services provided to the Student to make up the service time missed from the [redacted] quarter. In response, on [redacted], the District provided a copy of "[redacted] notes" for the [redacted] quarter. The notes indicated that the [redacted] provided a total of [redacted] minutes to the Student during the [redacted] quarter (service dates: [redacted]), and stated that as of [redacted], the District had made up [redacted] minutes and it would provide additional therapy sessions to provide minutes that were not delivered during the [redacted] quarter.

OCR asked the coordinator for additional information on how the Student received other related services and [redacted] services/activities during the [redacted] quarter of the [redacted]. In response, following the interview, the District provided a copy of IEP progress reports dated [redacted]. The [redacted], progress report indicated that the Student was "in progress" for each [redacted] service/activity noted in her IEP but the [redacted], progress report did not indicate any progress status for each service/activity other than stating "[redacted]."

The director told OCR that, once the Complainant told her that the Student would be at home for virtual learning, she communicated with all her [redacted], but that they did not need to change the Student's IEP, as it still covered the same type of remote learning that could be done at home. The director stated that, generally, for the first two weeks, staff would spend time settling schedules, so direct services may not be provided. The director stated that the District is small, which is why the Student's IEP service frequency is measured quarterly to afford more flexibility.

Regarding [redacted], as explained above, when the Complainant notified the District on [redacted], that she would send the Student to school for in-person learning on [redacted], the District needed additional time to modify [redacted] and was not ready until [redacted].

When asked whether any meeting occurred at which the team discussed the Student’s needs, or potentially any needs that had not been met for the [redacted], the director said that the Student’s IEP team met on [redacted], and the Complainant did not share any concerns.

Allegation #3

The Complainant also alleged that the District required the Student’s family to provide supplies and materials necessary for her to receive education provided by the District. [sentences redacted]

[paragraph redacted]

The coordinator told OCR that any [redacted] items such as [redacted] are the parent’s responsibility. The director stated that the District provides [redacted] services to the Student, but not supplies like [redacted]. [sentences redacted] The director said that the District never requested the Complainant provide [redacted] and has no records about [redacted]. Regarding items such as [redacted], [redacted] and District witnesses told OCR that they never received any information indicating that the Student would need these items because of her disability. OCR’s review of the Student’s IEPs, however, showed that her IEPs explained how the Student [redacted]. The Student’s IEPs discussed that the Student “[redacted],” and “[redacted]” as part of her “medical and safety information.”

[paragraph redacted]

Applicable Regulatory Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires recipient institutions that operate public elementary or secondary education programs to provide a free appropriate public education (FAPE) to each qualified person 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 individuals without disabilities are met and that are developed in accordance with procedural requirements set forth in 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards. According to the Section 504 implementing regulation at 34 C.F.R. § 104.33(b)(2), implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one way a recipient can demonstrate that it has provided a qualified student with a disability with a FAPE.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a team determined were necessary to provide the student with FAPE. OCR then determines whether the district provided the student the agreed-upon services and, if not, whether this resulted in a denial of FAPE, i.e., had an educational impact on the student.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33(c), provides that the provision of a free education is the provision of education and related services without cost to the student

with a disability or to his or her parents or guardian, except for those fees that are imposed on the students without a disability or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a student with a disability or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this part, of payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this part.

Title II is not to be construed to provide a lesser standard than the standards applied under Section 504. 28 C.F.R. § 35.103(a).

Analysis and Conclusion

Regarding allegation #1, the Complainant alleged that the District did not provide the Student with [redacted] required by her IEP from [redacted], to [redacted], resulting in her being unable to begin the school year in person. Regarding allegation #2, the Complainant alleged that the District did not provide the Student with [redacted] required by her IEP for approximately the [redacted].

According to her IEP, the Student was to receive [redacted] and [redacted] was to be trained by the [redacted] to become familiar with the Student's specific needs. [sentence redacted] The evidence shows that the [redacted] could not [redacted] for the Student prior to the [redacted], which prompted the Complainant not to send the Student to school for in-person learning. The evidence shows that the District approved [redacted], to serve as the Student's [redacted] while the Student was at home and to receive compensation for her services under contract with the District, because [redacted]. The evidence also shows that once the Student returned to school for in-person learning on [redacted], the [redacted] had [redacted] in place to meet her [redacted] needs and her [redacted] met her other needs (including [redacted] until [redacted]).

The information obtained to date raises several compliance concerns regarding allegations ##1-2. For example, the evidence suggests that the District may not have timely reconvened the Student's IEP team to discuss and determine the Student's individualized needs and how she would receive her education and related services, including her [redacted] services, before her transitioning to in-person or virtual mode prior to or at the [redacted]. Although one District witness told OCR that the District did not need to change the Student's IEP because it contemplated a hybrid learning environment, OCR's review of the Student's IEP (dated [redacted]), reveals that not all services were to be provided to the Student virtually. For example, [redacted]. Additionally, the evidence shows that the Student did not receive all required services, such as [redacted], during the [redacted] quarter in the amounts required by her IEP. [sentence redacted] The evidence also suggests that the Student might have not received the [redacted] contemplated by her IEP timely at the [redacted] because it had not been prepared. Finally, the evidence suggests that the District might not have timely arranged [redacted] for the Student when it was aware that there would be multiple students who would require [redacted]. In addition, some of the evidence obtained by OCR raises a concern as to whether the District appropriately developed the Student's IEP that had been in place based on the Student's individualized needs, rather than based on the District's available resources, and whether it provided all the services addressed in allegation #2 (e.g., [redacted].) to the Student to the extent and in the manner required by her IEP.

Regarding allegation #3, the Complainant alleged that the District required the Student's family to provide certain supplies and materials necessary for her to receive the education provided by the District; [sentence redacted]. The evidence obtained to date confirmed that the District did not provide the Student with [redacted].

OCR found compliance concerns regarding allegation #3. For example, the Student's IEP specifically discussed the Student's need to use [redacted], but the information obtained to date indicates that the District did not provide the [redacted] to the Student. While District and [redacted] witnesses told OCR that the Student no longer uses [redacted], the information obtained to date indicates that the Student's IEP team did not reconvene in a timely manner to discuss this change to her [redacted] needs and did not update her IEP to correctly reflect how her [redacted] needs must be met under the current circumstances. Additionally, the Student's IEP specifically discussed the Student's needs to [redacted] but the IEP was silent on whether this need was related to the Student's disability and, if so, how and who in the District would meet the Student's [redacted] needs while she participates in the District's program and activities. The information overall suggests that the District did not reconvene the Student's IEP team to discuss the Student's individualized needs related to her disabilities, including her [redacted] needs and what aids and services would be necessary for her to participate in the District's program and activities and how such needs should be met to provide her with a FAPE through the required Section 504 evaluation and placement process.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 6, 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 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. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, 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 November 1, 2022. For questions about implementation of the Agreement, please contact Sarah Poppleton, who will oversee the monitoring and can be reached by telephone at (216) 522-2674 or by e-mail at Sarah.Poppleton@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-4709 or by e-mail at John.Cohen@ed.gov.

Sincerely,

/s/

John Cohen
Supervisory Attorney/Team Leader

Enclosures