

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION XV MICHIGAN OHIO

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

April 7, 2022

Via E-mail Only to brentsch@claymontschools.org

Mr. Brian Rentsch Superintendent Claymont City Schools 201 N. Third Street Dennison, Ohio 44621

Re: OCR Docket No. 15-22-1073

Dear Superintendent Rentsch:

This letter is to notify you of the disposition of the above-referenced complaint filed on November 5, 2021, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Claymont City Schools (the District) alleging that the District discriminated against a student (the Student) based on disability and retaliation. Specifically, the Complainant alleged that:

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. Persons who seek to enforce their rights under these laws are also protected from retaliation. As a recipient of federal financial assistance from the Department and as a public entity, the District is subject these laws.

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

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

- 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.
- Whether the District intimidated, threatened, coerced, or discriminated against any individual for the purpose of interfering with any right or privilege secured by Section 504 and/or Title II, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.61 and Title II's implementing regulation at 28 C.F.R. § 35.134.

To conduct its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and District staff. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that the District violated the regulations implementing Section 504 and Title II as alleged. The bases for OCR's determination are explained below.

Allegation #1

Summary of OCR's Investigation

XXXXX – PARAGRAPH REMOVED – XXXXX.

XXXXX – PARAGRAPH REMOVED – XXXXX.

XXXXX – PARAGRAPH REMOVED – XXXXX.

The District provided additional information showing that it addressed the matter further with the teacher. The District also submitted a copy of a PowerPoint presentation which the XXXXX XXXXX principal presented to all XXXXX XXXXX teaching staff and administration on XXXXX XXXXX XXXXXX. The training covered the District's basic obligations under Section 504 and staff's obligation to implement Section 504 plans and Individualized Education Programs (IEPs).

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XXXXX – PARAGRAPH REMOVED – XXXXX.

Regarding the implementation of the XXXXX provision of the Student's Section 504 plan, the Complainant told OCR that the XXXXX had never happened. She said after the incident with the XXXXX described above, the School principal asked the counselor to call the Student. She said when the counselor called, she did not even know who the Student was. The District did not provide any documentation regarding this allegation. The superintendent told OCR that the counselor did not have documentation of speaking with the Student but did talk with XXXXX when XXXXXX XXXXX XXXXXX XXXXXX.

Applicable Regulatory Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states 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 subjected to discrimination under any program or activity which receives or benefits from federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines a person with a disability, in relevant part, as any person who has a physical or mental impairment which substantially limits one or more major life activities.

A recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education (FAPE) to each qualified person with a disability in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. 34 C.F.R. § 104.33.

The regulation implementing Title II, at 28 C.F.R. § 35.160, states that public entities must take appropriate steps to ensure that communications with a participant with a disability are as effective as communications with others.

Analysis and Conclusion

according to the principal, they could not be XXXXX XXXXX as required by the Student's Section 504 plan. Further, the other XXXXX XXXXX assigned earlier in the quarter remained in XXXXX progress report, and the evidence suggests that some of these were not XXXXX XXXXX.

For these reasons, OCR finds that there is sufficient evidence to support a finding that the District did not implement the above referenced provisions of the Student's Section 504 plan, and as a result the Student did not have equal access to XXXXX course material and was denied a FAPE in violation of Section 504 and Title II as alleged in allegation #1.

Allegation #2

Summary of OCR's Investigation

XXXXX – PARAGRAPH REMOVED – XXXXX

On XXXXX XXXXX XXXXX, the principal, the Student, the Student's parents, the principal, and the assistant principal met. The principal's write-up of the meeting states:

XXXXX – PARAGRAPH REMOVED – XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

As stated above, the District submitted documentation showing that, following the meeting, the principal addressed the matter further with the teacher. Further, the XXXXX XXXXX at issue were removed from the Student's Progress Book and XXXXX was switched to a different XXXXX XXXXX class.

Applicable Regulatory Standards

The regulation implementing Section 504 at 34 C.F.R. § 104.61, incorporating by reference the regulation implementing Title VI of the Civil Rights Act of 1964 at 34 C.F.R. § 100.7(e), prohibits recipients of federal financial assistance from intimidating, threatening, coercing, or discriminating against an individual for the purpose of interfering with any right or privilege secured by Section 504 because the individual made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Section 504. The Title II implementing regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

OCR has established the following general framework for analyzing retaliation claims. To establish a *prima facie* case of retaliation, i.e., one capable of creating an inference that retaliation occurred, OCR examines whether: (1) an individual experienced an adverse action caused by the recipient; (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. Upon rebuttal, if the recipient articulates a facially legitimate, non-retaliatory reason for the materially adverse action, OCR then evaluates if the proffered reasons advanced by the recipient are a pretext to cover a retaliatory motive.

Analysis and Conclusion

OCR further finds, due to the close temporal proximity of the teacher's conduct to the Student's request for XXXXX XXXXXX, there is some evidence of a causal connection between the adverse action and the protected activity. OCR also notes further evidence of a causal connection in that the context of the teacher's conduct was a reaction to the Student's request for XXXXX XXXXX which also drew the attention of the class to the Student's disability. Accordingly, OCR finds that a preponderance of the evidence supports a conclusion that the Student experienced retaliation as a result of XXXXXX protected activity.

For these reasons, OCR finds that there is sufficient evidence to support a finding that the District violated Section 504 and Title II as alleged in allegation #2.

On April 8, 2022, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the violations in accordance with Section 504 and Title II. 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 **June 3, 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 (202) 987-1846 or by e-mail at 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