

# UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION XV MICHIGAN OHIO

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

May 27, 2022

Via E-mail Only to: marko@kgvlaw.com

Mr. Mark T. Ostrowski Attorney at Law Kluczynski Girtz & Vogelzang 3033 Orchard Vista Drive, S.E., Suite 308 Grand Rapids, MI 49546

Re: OCR Docket No. 15-22-1103

Dear Mr. Ostrowski:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX XXXXXX xXXXXX, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Benzie County Central Schools (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged that:

- 1. from XXXXX XXXXX XXXXX XXXXX XXXXX, the District did not implement XXXXX XXXXX XXXXX XXXXX of the Student's 504 Plan; and
- 2. on XXXXX XXXXX XXXXX, and on or about XXXXX XXXXX XXXXX:
  - a. the Student's teacher disciplined XXXXX with an in-school suspension (ISS) XXXXX behaviors related to XXXXX disability, without providing XXXXX 504 "accommodations" when the behaviors escalated;
  - b. the District treated the Student differently than XXXXX peers without a disability when XXXXX was sent to the Principal's office to serve XXXXX suspension alone rather than with other students with disciplinary referrals who served their suspension in ISS, and did not inform XXXXX parent of the ISS; and

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.

In reaching a determination, OCR reviewed documents provided by the District and interviewed the Parent and District staff. On XXXXX XXXXX XXXXX, the District requested to voluntarily enter into a Resolution Agreement to resolve the complaint allegations. After carefully considering all of the information obtained from the data response and interviews, OCR found that a voluntary Resolution Agreement was appropriate for allegation #1 and found insufficient evidence to support a violation regarding allegation #2.

## **Facts**

The Student is enrolled in the XXXXX XXXXX at the District's Middle School for the 2021-2022 school year. The Parent reported that the Student is an individual with a disability and receives services through a Section 504 Plan (504 Plan).

XXXXX – PARAGRAPH REMOVED - XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

XXXXX – PARAGRAPH REMOVED - XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

# **Legal Standard**

The Section 504 regulation, at 34 C.F.R. 104.33(a), provides that a recipient operating a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the disability. Section 104.33(b)(1) defines an appropriate

education as the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of non-disabled students are met, and that satisfy the requirements of sections 104.34, 104.35, and 104.36. Section 104.33(b)(2) provides that the implementation of an individualized education program developed in accordance with IDEA is one means of meeting this requirement. Appendix A of the implementing regulation further clarifies that the quality of the educational services provided to students with disabilities must equal that of the services provided to nondisabled students; thus, teachers for students with disabilities must be trained in the instruction of persons with the disability in question and appropriate equipment and materials must be available.

#### **Analysis**

# Allegation #2

OCR has determined that there is insufficient evidence to find that the District discriminated against the Student with respect to the second allegation.

XXXXX – PARAGRAPH REMOVED – XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

Therefore, there is insufficient evidence to support that the Student was discriminated against as alleged with respect to allegation #2.

## Allegation #1

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.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 13, 2022. For questions about implementation of the Agreement, please contact XXXXX XXXXX XXXXX. He 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.

Sincerely,

/s/

Denise C. Vaughn Supervisory Attorney/Team Leader

Enclosure