



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

November 14, 2022

Via e-mail only to: [redacted]

Marshall W. Grate, Esq.
Clark Hill
200 Ottawa N.W., Suite 500
Grand Rapids, Michigan 49503

Re: OCR Docket No. 15-22-1148

Dear Mr. Grate:

This letter is to notify you of the disposition of the above-referenced complaint filed on December 14, 2021, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Kalamazoo Public School District (the District), alleging that the District discriminated against a student (the Student) based on disability ([redacted]). Specifically, the Complainant alleged that, [redacted], the District failed to implement the Student's Section 504 plan by not providing the following accommodations and services:

1. [redacted];
2. [redacted];
3. [redacted];
4. [redacted];
5. [redacted]; and
6. [redacted].

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 U.S. Department 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 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 excluded a qualified student with a disability from participation in, denied the student the benefits of, or otherwise subjected the student to discrimination in its programs and activities based on her 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; and
- 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.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and District staff. Prior to the completion of OCR's investigation, the District asked to resolve this complaint under Section 302 of the OCR's *Case Processing Manual*, 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 Investigation to Date

During the [redacted] school year, the Student attended the District's [redacted] (the School) as a [redacted]; she has been a District student since [redacted]. According to the Complainant, the Student has been diagnosed with [redacted]. [sentences redacted].

The Complainant stated that the District developed a Section 504 plan to address the Student's [redacted] when the Student was in [redacted]. The Complainant stated that the Student also has a health plan, which she receives [redacted] and which can be changed if her health needs have changed. According to the Student's health plan, if the Student demonstrates [redacted], the Student's [redacted] must be verified, and an appropriate response must be provided.

The Complainant alleged that District staff did not understand and had not implemented the Section 504 plan. Specifically, the Complainant alleged that the District did not provide the six accommodations and services listed above.

Each party provided OCR a copy of the Student's Section 504 plans dated [redacted]. The Complainant told OCR that on [redacted], the Student's Section 504 team met, and she received the first draft of a revised plan. According to the Complainant, the draft version removed health-related provisions and made the Student responsible for everything, which the Complainant opposed. OCR's review of the Student's [redacted] Section 504 plan indicated that all health-related provisions were to be implemented by both the Student and her teacher. On [redacted], the Complainant told OCR that the Student's Section 504 plan revision had not yet been finalized. OCR interviewed the [redacted], who managed the Student's Section 504 plan for the [redacted] school year. She told OCR that the Student's Section 504 plan dated [redacted] was finalized and implemented but could not recall when this plan was finalized.

The Complainant stated that certain staff at the School must be trained on [redacted] for the Student but that none of the staff were trained on [redacted] for the [redacted] school year. The Complainant stated that the Student's teachers were trained, at a session held [redacted], only on what to do concerning emergency events and did not know about [redacted], and thought there

was nothing wrong with the Student when she experiences these symptoms. The District denied this and stated that the District nurse provided training to relevant staff, including teachers and staff members, including School office staff. The Student's Section 504 plan dated [redacted], did not specify which staff members were required to receive training on [redacted]; it stated only that "specific staff" were to receive training on [redacted] and events, without specifying which staff. The [redacted] told OCR that the Student's core teachers ([redacted]) and anyone who voluntarily wanted to attend the training, would be trained on [redacted]. The [redacted] stated that the [redacted] staff and the [redacted] staff were trained to administer medication for the Student but the Student's teachers could not administer medication to the Student or be trained on [redacted] because their collective bargaining agreement prohibited them from performing such services (e.g., administering medication).

The Complainant also alleged that the District staff just [redacted]. The Complainant provided a copy of the Student's [redacted] Section 504 plan, which stated that she was to be [redacted] when the Student's [redacted] and that she should be contacted with any questions about care, which was the [redacted]'s responsibility. The Complainant stated that on [redacted], the Student's [redacted], and the teacher sent her a [redacted] instead of [redacted] her. The Complainant stated that she was not sure whether the Student was escorted to the office or sent alone, but, by the time the Student went to the office, [redacted]. The Complainant stated that the Student should have had a correction done in the classroom, such as [redacted]. Denying the allegation, the District stated that it had "patiently addressed" the Complainant's concerns. The [redacted] was not aware of the [redacted] incident and whether any [redacted] was made to the Complainant regarding the Student's [redacted].

The Complainant also alleged that the teachers did not provide staff supervision in [redacted] and [redacted]. The Complainant stated that the teachers escorted the Student out of class and/or sent her to the office, from [redacted], to the filing of this complaint, without checking the Student's [redacted]. The Complainant stated that this was contradictory to the Student's health plan and Section 504 plan, which called for her to be in class so that she could learn, and the Student's education was suffering as a result. The Complainant stated that on [redacted], and [redacted], the Student was removed from the classroom, rather than being allowed to self-manage her [redacted] with the classroom teacher's supervision. Regarding the [redacted] incident, the Complainant received an e-mail from one of the Student's teachers that the Student came to her stating she thought [redacted], and [redacted] was provided to the Student. The Complainant stated that she checked the Student's [redacted], so she responded that the Student needed [redacted]. Regarding the [redacted] incident, the Complainant stated that she received a call from the Student that she was not getting [redacted], as [redacted] had been broken. The Student was in the office with a staff member trained for emergency care. However, the staff member could not locate the [redacted] and assist the Student. The Complainant also stated that the Student was [redacted] in class for [redacted] weeks, and the teachers did not find this to be a cause of alarm.

The District denied this allegation. The District also asserted that the Student's teachers were not the appropriate individuals to be responsible for administering and implementing the Student's Section 504 plan, as teachers do not have "the luxury of time" to administer a Section 504 plan if that task would compromise classroom management, and the teacher's collective bargaining agreement restricted regular classroom teachers from administering medication. The District

stated that it instead used “trained support staff” to assist with the implementation and monitoring of the Student’s Section 504 plans.

OCR’s review of the Student’s [redacted] Section 504 plan indicated that the plan did not specifically address who would be responsible for monitoring the Student’s [redacted] and assisting with [redacted]. The [redacted] plan indicated that, in school, the [redacted] was responsible for ensuring that the Student’s [redacted] needed to be documented. The plan also listed several items that the Student’s general education teacher would ensure occurred. However, the plan did not clearly specify that the general education teacher was responsible for monitoring the Student’s [redacted] and providing adult supervision with [redacted].

Furthermore, the Student’s [redacted] Section 504 plan referred to the Student’s “health care plan” as “current data and/or student response to previous accommodations, aids and services,” but OCR could not confirm which document was incorporated into the Student’s Section 504 plan as a “health care plan.” For example, the District’s documents submitted to OCR included a copy of a document entitled “[redacted]” dated [redacted], explaining the Student’s [redacted]. This document also indicated that the Student needed assistance/supervision for [redacted]. The District’s documentation also included a document entitled “[redacted],” written by the [redacted] and updated on multiple dates explaining the Student’s need for assistance in her [redacted]. This document indicated that the Student might require supervision and guidance from office staff at times when the Complainant was not available by phone to assist her and staff might need to assist the Student if she had [redacted] if her symptoms prevented her from caring for her needs independently.

The Complainant also alleged that the Student had not always been within [redacted], at school. [sentence redacted]. Therefore, the Student had no way of assessing her [redacted]. The District did not provide a specific response to this allegation.

The Student’s [redacted] Section 504 plan and her draft [redacted] Section 504 plan did not specifically mention that the Student had to have [redacted] at all times. However, the Student’s “[redacted]” document written by the [redacted] indicated that the Student’s [redacted]. This document indicated that [redacted], so the Student should be allowed access to her [redacted] for medical purposes while in school.

The [redacted] told OCR that if the Student’s [redacted] needed to be charged, it could be charged in the Student’s [redacted] teacher’s classroom. When asked about why the Student’s Section 504 plan did not specifically mention the Student’s need to [redacted], the [redacted] told OCR that the Complainant never gave her that information or asked for it to be included in the plan and did not raise it as an issue.

The Complainant also alleged that the Student did not have access to [redacted]. The Complainant stated that on [redacted], the Student was sent to the office, because [redacted]; the Complainant did not know which of the Student’s teachers were involved with this incident. The Complainant stated that she provided [redacted] to each teacher, so there should have been [redacted] in the classroom. Additionally, the Student had [redacted] in her locker. The Complainant asserted that, despite the Student having [redacted] in the classroom and locker, the teacher sent her to the office, as the nurse and teachers came up with their own plan at the [redacted] training to send the Student to the office if she did not feel well. The Complainant

stated that this was contradictory to the Student’s health plan and her Section 504 plan. The District did not provide a specific response to this allegation.

OCR’s review of the Student’s [redacted] Section 504 plan indicated that this plan did not specifically mention the Student’s access to [redacted], while the draft version of [redacted] Section 504 plan stated that the Student “[redacted].” The Student’s “[redacted]” document written by the [redacted] discussed her access to [redacted], stating the following:

[paragraph redacted]

The [redacted] confirmed to OCR that the Complainant provided [redacted] to the teachers and the office also had [redacted] for the Student. The [redacted] stated that she was not aware of the alleged [redacted] incident when the Student was allegedly sent to the office because she [redacted], but she personally escorted the Student and another student on an unknown date to [redacted].

The Complainant also alleged that [redacted], per the Student’s Section 504 plan, but that District staff had not [redacted] throughout the [redacted] school year.

The Student’s [redacted] Section 504 plan stated that the Student’s [redacted] should be [redacted] before [redacted] and, if [redacted], the Student was to be allowed to take the [redacted] at another time, and this would be the general education teacher’s responsibility. The Student’s [redacted] Section 504 plan stated that the Student’s [redacted] should be documented in a log before she took [redacted], and, if [redacted], the District should arrange for her to take [redacted] at another time, and this was the responsibility of both the Student and the teacher.

The District’s documentation included a copy of a document entitled “[redacted],” which recorded the Student’s [redacted] on two dates (that are not legible) with staff initials. However, the District did not provide any additional information on when and how this record is maintained, so OCR could not determine whether this activity was done prior to [redacted] or for other purposes. When asked about this document, the [redacted] did not know who developed this record or its purpose. The [redacted] also could not recall whether or not the Student’s [redacted]. The [redacted] also stated that there were no medical logs documenting [redacted] because of the Student’s [redacted]. The [redacted] stated that the Student was responsible for self-monitoring because of her own [redacted], and the Complainant could access the readings through a [redacted]. The [redacted] said the Student’s teachers had some responsibility but did not explain how the teachers would be responsible.

Although this complaint did not include an allegation about the District’s disability grievance procedures, OCR noted during its investigation to date that the e-mail communications between the Complainant and District staff indicated that the Complainant asked for a copy of the District’s grievance procedures at least [redacted] times but was not provided with a copy, and the Complainant stated that she could not find the District’s grievance procedures on its website. During her interview with OCR, the [redacted] did not know whether or not the grievance procedures were provided to the Complainant. The [redacted] also could not provide any information to OCR on where a parent could obtain a copy of the District’s grievance procedures.

OCR attempted to locate the grievance procedures on the District’s website by searching for “grievance” and “discrimination” on May 29, 2022, but was unable to locate a copy. On September 27, 2022, OCR staff searched the District’s website with the search term “grievance” and located a publicly accessible District web page titled “Nondiscrimination, Title IX, Section 504, Title VI, and Title II Contact Information.” The web page included a nondiscrimination notice, with information on how and who to report concerns or complaints of discrimination, harassment, bullying, or cyberbullying by students, staff, and adults. The web page directed individuals to report such concerns or complaints to building-level administrators in writing, with the date, details of the concerns, and signature of the person making the complaints. The District’s web page stated the complaints will be promptly investigated and appropriate action will be taken but included no detail about timeframes or what specifically would be done in response to a complaint. Additionally, the web page included telephone numbers for the District’s office of student services for students and human resources for staff, stating that questions regarding the District’s nondiscrimination policy. OCR could not determine when the District’s web page was created, last updated, or modified.

Legal Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides also 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 a recipient’s program or activity. Title II’s implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). The Department’s Section 504 regulations prohibit school districts from: denying a qualified student with a disability the opportunity to participate in or benefit from an aid, benefit, or service; affording a qualified student with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others; providing a qualified student with a disability with an aid, benefit, or service that is not as effective as that provided to others and does not afford that student with an equal opportunity to obtain the same result, gain the same benefit, or reach the same level of achievement in the most integrated setting appropriate to the student’s needs; providing different or separate aid, benefits, or services to students with disabilities or to any class of students with disabilities unless such action is necessary to provide a qualified student with a disability with aid, benefits, or services that are as effective as those provided to others; and otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33(a) and (b), requires a recipient to provide a FAPE to each qualified individual with a disability within its jurisdiction, regardless of the nature or severity of the individual’s disability. For purposes of FAPE, an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of individuals with disabilities as adequately as the needs of individuals without disabilities are met and which have been developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards). The provision of a free education is the provision of educational and related services without cost to the person with a

disability or to his or her parents or guardian, except for those fees that are imposed on persons without disabilities or their parents or guardian. 34 C.F.R. § 104.33(c).

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(d), requires a recipient to establish procedures for periodic reevaluation of students who have been provided special education and related services. Reevaluation must be completed prior before initial placement and prior to any subsequent significant change in placement. 34 C.F.R. § 104.35(a) and (d). The resulting placement decisions must be made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 C.F.R. § 104.35(c)(3).

The Title II regulation, at 28 C.F.R. § 35.130(b)(7)(i), requires a public entity to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

The Section 504 implementing regulation, at 34 C.F.R. § 104.7(b) requires a recipient that employs fifteen or more persons to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. Furthermore, the Title II implementing regulation, at 28 C.F.R. § 35.107 also requires a public entity that employs 50 or more persons to adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II. In evaluating whether a school district's grievance procedures are prompt and equitable, OCR will examine, for example, the extent to which notice of the procedures has been provided to students, parents, and employees of the school; whether the procedures afford an opportunity for an adequate, reliable, and impartial investigation; whether reasonably prompt timeframes have been established for the various stages of the complaint process; whether notice of the outcomes of the complaint has been provided to the parties; and whether there is an assurance that any violations will be addressed, and steps will be taken to prevent a recurrence.

Analysis, Resolution and Conclusion

While OCR has not yet completed its investigation, OCR has identified several causes for concern that support resolving the complaint using OCR's Section 302 process. The evidence obtained to date suggests that there were multiple documents related to the Student's [redacted] at school, including the Student's "[redacted]," the "[redacted]" document written by the [redacted], and her Section 504 plan. OCR notes that some of the [redacted] the District determined the Student needs, such as [redacted], were not addressed in the Student's [redacted] Section 504 plan but mentioned in a different document (e.g., "[redacted]" document). These combined documents also appear to lack necessary specificity and clarification to ensure all staff understand what they are required to do to implement them. Furthermore, the Student's Section 504 plan stated that the "health care plan" is attached but it was not clear which document her Section 504 plan refers to.

While it was not clear whether the Student's Section 504 plan drafted in [redacted] was finalized for implementation during the [redacted] school year, there was ambiguity in the plan regarding

who needed to do what. For example, the [redacted] interviewed told OCR that the Student was responsible for self-monitoring but could not explain how the Student’s teachers would be responsible for implementing the provision of the plan requiring [redacted]. The documentation submitted by the District concerning this part of the Student’s Section 504 plan raised concern about whether it was being consistently or fully implemented. The Student’s [redacted] Section 504 plan also did not specify which “specific staff” were to be trained on [redacted], which raises a concern that this provision could not be effectively implemented due to its ambiguity.

Furthermore, the documents indicate that the District relies on the Complainant to assist, from another location, with supervision of the [redacted] rather than assuring the Student’s related services be provided or supervised by trained District staff on site. The information from the District also suggests that some decisions about the Student’s related aids and services are being made not based on the Student’s individual needs but rather for administrative reasons of the District. There also appears to be a misunderstanding by District staff or administrators about what is required by law. Administering [redacted], providing assistance in [redacted], and allowing a student to [redacted] in school are a few examples of related aids and services or reasonable modifications that schools may have to provide for a particular student with [redacted].

Finally, the evidence obtained to date indicated that the Complainant had repeatedly requested the District’s disability grievance procedures but had not been given them. The [redacted] appeared unfamiliar with the District’s Section 504 grievance procedures and could not identify whether or where a parent could obtain a copy of such procedures. OCR notes that as of September 27, 2022, the District’s public web page includes a notice of nondiscrimination and discrimination complaint procedures. The complaint procedure includes information regarding discrimination complaints carried out by employees, adults, and other students, as well as relevant information on how to file a complaint. However, the web page does not provide timeframes for the major stages of the complaint process, nor does it describe the investigation process; it only states that complaints of any violation of the District’s nondiscrimination policy will be promptly investigated. The web page also does not specify that the parties will receive notice of the complaint outcome.

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 allegations prior to the conclusion of OCR’s investigation and OCR determined resolution was appropriate. On November 10, 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 December 28, 2022. For questions about implementation of the Agreement, please contact Kiran Mikhael. Ms. Mikhael will be overseeing the monitoring and can be reached by telephone at (216) 522-4971 or by e-mail at Anne.Mikhael@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

Enclosure