



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

July 11, 2022

Via E-mail Only to dtowster@scottscrivenlaw.com

Derek L. Towster, Esq.
Scott Scriven LLP
250 E. Broad Street, Suite 900
Columbus, Ohio 43215

Re: OCR Docket No. 15-22-1185

Dear Derek L. Towster:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXXXXX XX, 2022, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Lakewood City Schools (the District) alleging that the District discriminated against a Student based on disability. Specifically, the Complainant alleged that from XXXXXXXX 2021 to XXXXXXXX x, 2021, the District failed to XXXXXXXX XXX XXXXXXXXXXXX XXXXXXXX to ensure that the Student was not XXXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXXXXXX from her disability and failed to implement a provision of the Student's Section 504 plan providing for X XXXXXXXXXXXX XXXXXXXXXXXX, XXXXXXXXXXXX XXX XXXXXXXX XXX X XXXX XXXXXXXXXXXX, XXX XX XXX XXXXXXXXXXXX XXXXXXXXXXXX.

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 issues:

- 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; 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

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

XXXXXXXX XXX XXX XXXXXXX XXX XXXXXXXXXXX XXX X XXXXXXX XXX XXXXXXXXXXX.
XXX XXXXXXXXXXX XXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXX XXX XXXXXXXXXXX
XXXXXXXX XXXXXXXXXXX XXX XXXXXXX.

The District also cited to its attendance policy. The District’s General Education Attendance Policy, Board Policy No. 5200 (Attendance), provides that a student is excessively absent when the student “is absent from school with combined *nonmedical excused absences and unexcused absences* in excess of thirty-eight (38) or more hours in one (1) school month, or sixty-five (65) or more hours in a school year.” A student is habitually truant if the student is “absent *without a legitimate excuse* for thirty (30) or more consecutive hours, for forty-two (42) or more hours in one (1) school month, or seventy-two (72) or more hours in one (1) school year.” (Emphasis added) The policy states that medically-excused absences due to personal illness or “other set of circumstances the Superintendent deems on a case-by-case basis to be a good and sufficient cause of medical absence from school” will not count toward a student’s excessive absence hours.

The policy defines a medically excused absence as one due to illness or medical visit, and states that “a medical excuse for personal illness will be accepted in the form of doctor’s [sic] note within 10 school days of the absence or parent call-in on the day of the absence due to illness or doctor’s visit. A student may have up to ten (10) medically excused absences without a doctor’s note, but with a phone call from a parent/guardian.”

The principal of XXX, XXX XXXXXXX XXX XXXXXXXXXXX X, 2021, XXXXXXX, told OCR that she oversees the attendance XXXXXXX and is responsible for ensuring that it complies with State of Ohio attendance requirements. XXXXXXX – REMAINDER OF PARAGRAPH REMOVED – XXXXXXX

XXXXXX – SENTENCE REMOVED – XXXXXXX. The Ohio Revised Code defines excessive absences as absences “with a nonmedical excuse or without legitimate excuse from the public school the child is supposed to attend for thirty-eight or more hours in one school month, or sixty-five or more hours in a school year,” in which instance “the attendance officer of that school shall notify the child's parent, guardian, or custodian of the child's absences, in writing, within seven days after the date after the absence that triggered the notice requirement.” See ORC § 3321.191(C)(1). This definition is consistent with the District’s definition of excessive absences in its attendance policy XXX XXX XXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXXXXXX XX XXX XXXXXXXXXXX XXXXXXXXXXX X, 2021, letter to the Complainant.

XXXXXX – PARAGRAPH REMOVED – XXXXXXX

The principal was unclear as to what the accommodation in the Student’s Section 504 plan allowing for XXXXXXXXXXXX XX XXXXXXX XXXX XXXXX X meant, although she ultimately concluded to OCR that it meant that the Student could XXXX XX XXXXXXX XXXX. However, the principal could not recall whether per the Section 504 plan, the Complainant was required to XXXX XXX, XX XXXX XXX XXXXXXXXXXX XXXXXXXXXXXXXXX XXXX, XXX XXX XXXXXXXXXXX XXXXXXX XX XX XXXXXXX.

XXXXX – PARAGRAPH REMOVED – XXXXX

The XXXXXXXXXXX told OCR that, with respect to the XXXXXXXXXXX X, 2021, letter, he explained to the Complainant that it was an XXXXXXXXXXXXXXXXXXX XXXXXXX XXXXXXX and it did not mean that XXX XXXXXXX XXXXXXX XX XXXXXXX XX XXX XXXX XXX XXXX XXX. He wanted to ease her concerns. The XXXXXXXXXXX told OCR that because the Student’s Section 504 team would be meeting the next week, they had planned on discussing the letter at the meeting. He also told OCR that he explained the XXXXXXX XXXXXXXXXXX pXXXXXXXX to the Complainant.

OCR also requested that District witnesses clarify whether the Student’s XXXXXXX XXXX XXXXXXX XX XXXXXXXXXXX. According to the principal, they were XXX XXXXXXX. XXXXX – SENTENCE REMOVED – XXXXX

In the Student’s December 15, 2021, Section 504 plan, the District removed the XXXXXXX XXXXX XXXX as an accommodation. District personnel told OCR that this was because the District’s XXXXXXXXXXX XXXXXXX XXXXXXX XXXXXXXXXXX XXXXXXXXXXX XX XXXXX X XXXX XXXXX XXXX XXXXXXXXXXX XXX XXXXXXX XXXXX XXX XXXXXXX XXX XXXXXXXXXXX XXXX XXX XXXX XXXXXXXXXXX XX XXXXXXX XX XXXXXXXXXXXXXXXXXXX XXXXXXX.

XXXXX – PARAGRAPH REMOVED – XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

Applicable Regulatory 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 or benefits from federal financial assistance. The Title II implementing regulation contains a similar provision, at 28 C.F.R. § 35.130(a). The Title II implementing regulation, at 28 C.F.R. § 35.130(b)(7)(i), requires a public entity to make reasonable modifications to its 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 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free and appropriate public education (FAPE) to each qualified individual 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 nondisabled students are met, and that are developed in accordance with Section 504’s procedural requirements at 34 C.F.R. §§ 104.34 - 104.36 regarding educational setting, evaluation, placement, and procedural safeguards. One

way a District can demonstrate that it has provided a student with FAPE is by showing that it fully implemented the student’s properly developed Section 504 plan.

Analysis and Conclusion

OCR has determined that the District did not XXXXXX XXX XXXXXXXXXXXX XXXXXX to accommodate the Student’s disability and did not provide the Student with a FAPE in accordance with the requirements of Section 504 with respect to the Student’s XXXXXXXXXXXX and XXX XXXXXXXXXXXX.

The evidence supports a finding that XX XXX XXXXXXXXXXXX XX the 2021-2022 school year, the Student had been identified as a Student with a disability and had a Section 504 plan in place delineating XXXXXXXXXXXXXXXXXXXX accommodations, including X XXXXXXXX XXXXX XXXX.

The evidence also shows that the District did not XXXXXXXX XXXXXXXX the Student when she XXXXXXXX XXXX in most instances. This is evidenced by the XXXXXXXXXXXX statement to OCR that only XXX XX XXX XXXXXXXXXXXX XXXXXXXX in her XXXXXXXXXXXX XXXXXXXX during the relevant period XXXX XXXXXXXX. Although he later revised that assessment, the Student’s XXXXXXXXXXXX XXXXXXXX do not reflect whether the XXXXXXXX XXXX XXXXXXXX, and the information the District sent to the Complainant in the XXXXXXXXXXX X, 2021, letter indicate that most of them were XXX XXXXXXXX. The Complainant told OCR that for many of those XXXXXXXXXXXX XXXXXXXX she had called XXX to report that the Student XXXXX XX XXXX, However, the Student’s Section 504 plan did not explicitly require that XXX XXXX XXX and the District employees were not sure if the Student’s Section 504 plan required the Complainant XX XXXX. Finally, the statement in the XXXXXXXXXXX X letter did not reflect the District’s updated attendance policy, which did not include XXXXXXXX XXXXXXXXXXX XX XXX XXXXXXXXXXXX XXXXXXXX XXXXXXXX. Based on the District’s attendance policy, XXXX XXXXXXXXXXXX XXXXXXXXXXX XXXXXXX XXXX XXXXXXX XXXXXXXX the Student. However, the District did not appear to XXXXXXX XXX XXXXXXXXXXXX XXXXXXXX, even though her Section 504 plan provided for a XXXXXXXXXXX XXXXX XXXX. Thus, the District did not XXXXXXX XXX XXXXXXXXXXXX XXXXXXX regarding the requirements for XXXXXXXXXXX XXXXXXXXXXX XXX XXXXXXX to accommodate the Student’s disability. By not XXXXXXXXXXX XXX XXXXXXXXXXX XXXXXXX, the District also did not provide the Student with the XXXXXXXXXXX XXXXX XXXX XXXXXXXXXXXXXXXXXXXX in her Section 504 plan.

XXXXX – SENTENCE REMOVED -- XXXXX

The evidence also supports that the Student’s Section 504 plan included a provision requiring XXX XXXXXXXXXXX XX XXXXXXX XXXXXXXXXXXXXXXXXXXX in the event that the Student XXXXX XX XXXXXXX, and in at least one instance, on XXXXXXXXXXX X, 2021, the Student’s XXXXXXX did not make this accommodation. Instead, XX XXXXXXX in an e-mail to the Complainant that XX XXXXXXXXXXXX XXXXXXX from the Student’s XXXXX on a XXX XXXXXXXXXXXX because of the Student’s XXXXXXXX. Although the XXXXXXX told OCR that XX XXXX XXX XXXXXXXXXXX XX XXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX XX XXXX XX

XXX XXXXXX XXX XXX XXXX XXX XXXXXXXX XXXXX XXX XXXXXXXXXX XX XXX
XXX, XXXXX XX XX XXXXXXXXXXXX in his XXXXXXXXXXX X, 2021, e-mail to an
XXXXXXXXXXXX XXXXXXXXXXXX.

Therefore, based on the evidence OCR reviewed in this investigation, OCR finds that from
XXXXXX XXXXXXXX XXXXXXXX X, 2021, the District did not fully implement the
Student’s Section 504 plan because it did not provide the Student with X XXXXXXXX XXXXX
XXXX XXX XXXXXXXXXXXX XXX XXXXXXXX XXX XXXX XXX XXXXX XXX
XXXXXXXX XX XXXXX XXX XX XXX XXXXXXXXXXXX. OCR further finds that this
resulted in the Student being denied FAPE in violation of Section 504 and Title II.

On July 11, 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 July 22, 2022. For
questions about implementation of the Agreement, please contact XXXXX XXXXXXXX, who
will be overseeing the monitoring and can be reached by telephone at (XXX) XXX-XXXX or

Page 7 – Derek L. Towster, Esq.

by e-mail at XXXXX.XXXXXXXXXX@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure