



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

April 29, 2022

Via E-mail Only to: [redacted]

Kathy Perrico, Esq.
Walter Haverfield LLP
1301 E. Ninth Street, Suite 3500
Cleveland, Ohio 44114

Re: OCR Docket No. 15-22-1240

Dear Ms. Perrico:

This letter is to notify you of the disposition of the above-referenced complaint filed on February 15, 2022, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Solon City School District (the District) alleging that the District discriminated against a student (the Student) and other District students on the basis of disability. Specifically, the Complainant alleged that during the [redacted] school year the District refused to consider the possibility of providing testing accommodations to the Student for group [redacted] assessments because the District does not provide additional resources to students at the District for group assessments.

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 allegation, OCR opened an investigation of the following legal issues to determine whether the District discriminated against the Student or students on the basis of disability:

- whether the District, in interpreting evaluation data and in making a placement decision, failed to draw upon information from a variety of sources; ensure that information obtained from all such sources was documented and carefully considered; and/or ensure that the placement decision was made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35(c); and

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- 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.

To conduct its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant. 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.

Applicable Legal and Regulatory Standards

The Section 504 regulation at 34 C.F.R. § 104.33 requires recipient public school districts to provide a free appropriate public education (FAPE) to all qualified students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met and are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36 regarding educational setting, evaluation, placement, and procedural safeguards.

Section 104.35(c) of the Section 504 regulation requires a recipient school district, in interpreting evaluation data and in making placement decisions, to draw upon information from a variety of sources; establish procedures to ensure that information obtained from all such sources is carefully considered; and ensure that the placement decision is 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).

Summary of OCR’s Investigation and Analysis

During its investigation to date, OCR reviewed information provided by the Complainant and the District. The complaint alleged that the District would not provide the Student, who has a Section 504 plan that states it is for [redacted], with testing accommodations in [redacted] during the [redacted] school year. The Student is in the [redacted] grade and at the District’s [redacted] school, but is advanced in [redacted] and taking [redacted] at the District’s [redacted] school. The Student’s Section 504 plan, dated [redacted], includes the following testing accommodations: “[redacted]”. The Complainant stated that the Student was granted testing accommodations for [redacted] assessments, but not all were provided during group tests. The Complainant stated that the [redacted] group testing caused the Student to be anxious, and as a result she would give him strong medication. The Complainant and District provided OCR with a [redacted], written notice, confirming the District’s decision not to provide group testing accommodations in [redacted]. Among other things, the notice states that the Section 504 team (the Team) determined that it was “not an option” for [the Student] to use [redacted] for team tests.” [sentences redacted] The notice does not document any discussion of any potentially

appropriate alternatives the District could provide for the Student. The notice includes a note that “team tests are a lower percentage of the quarter grade than individual assessments.”

While the notice does not document that individual testing was considered by the team, multiple e-mail communications between the Complainant and team members demonstrate that this accommodation and others were, in fact, discussed.

The District, in its data response, provided additional documentation demonstrating extensive communication with the Complainant, and a desire to work on strategies to assist the Student with being more comfortable with group testing. The District expressed concerns that the nature of [redacted]’s group assessments made traditional testing accommodations, like [redacted], unworkable in light of students working together in a group. The documentation did not explain why the Student would need the testing accommodations determined by the Team in the Section 504 plan for individual tests but not for group testing based on his disability-related needs. The notice of its determination in [redacted] did not indicate that his need for these accommodations had changed based on the group testing setting. This raises a compliance concern that the reason that the District chose not to provide the same testing accommodations to the Student in his [redacted] class as he was given in his other classes may have been because of a categorical decision against providing particular testing accommodations in the [redacted] class, and not due to the Student’s individualized needs (i.e., that it was “not an option” for the Student to receive certain accommodations). Before OCR completed its investigation, the District requested to enter into a Section 302 agreement with OCR.

Voluntary Resolution and Conclusion

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 allegation prior to the conclusion of OCR’s investigation and OCR determined resolution was appropriate. On April 28, 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.

OCR looks forward to receiving the District's first monitoring report by June 1, 2022. For questions about implementation of the Agreement, please contact Mr. Daniel Scharf. Mr. Scharf will be overseeing the monitoring and can be reached by telephone at (216) 522-7627 or by e-mail at Daniel.Scharf@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