



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

July 28, 2022

Via e-mail only to: Smitts@gardencityschools.com

Ms. Susan Smitt
Director of Special Services
1333 Radcliff Street
Garden City, Michigan 48135

Re: OCR Docket No. 15-22-1245

Dear Ms. Smitt:

This letter is to notify you of the disposition of the above-referenced complaint filed on February 17, 2022, with the U.S. Department of Education, Office for Civil Rights (OCR), against Garden City Public Schools (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged that from the start of the XXXXXXXX school year, the District failed to provide XXXXXXXX textbooks for the Student to use at home and did not install the premium version of an assistive technology app on the Student's electronic device until XXXX XX, XXXX, both of which were required under the Student's Individualized Education Program (IEP).

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 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 issue: 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.

OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and the Student and the District's Special Services Director (director) and an intervention specialist. The District indicated that it was interested in resolving the complaint allegations, and OCR determined that the complaint allegations were appropriate for resolution.

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

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Summary of OCR’s investigation to date

The Student’s IEP in effect at the start of the XXXXXXXXX school year included XXXXXXXXX, including: an “extra set of textbooks for home use” for all academic subjects, and “Assistive Technology / Apps / Extensions” for “all general education classes throughout the school day: for word prediction, grammar and spelling, lengthy writing assignments.”

With regard to the textbooks for home use, the Student stated that while XXX XXXX XXX XXXX classes did not use textbooks, XXXX and XXXX classes did and XXX was not provided them. XXX – SENTENCE REMOVED – XXX – SENTENCE REMOVED – XXX.

During the investigation, the District provided OCR with a document dated XXXX XX, XXXX, and signed by the Student acknowledging that XXX was provided with the XXXX and XXXX textbooks.

With regard to the application providing word prediction, grammar, and spelling assistance for lengthy writing assignments, the information showed that the Student requested and received help with the basic Grammarly application (Grammarly app) in XXX XXXX and on XXXX XX, XXXX, was provided with the premium version of the Grammarly app. The director stated that Grammarly was provided because XXX XXXX XXX XXXX, not because it was specified in the IEP.

OCR’s review of the IEP confirms item XXX says the Student will receive “spelling – using Grammarly” but that it did not specify the premium version of Grammarly. Further, with respect to the requirement that the District provide an application for use for lengthy assignments, there was no reference to a specific application or program to be provided, so long as XXX had access to technology that provided assistance in word prediction, grammar and spelling for lengthy writing assignments. OCR’s review of the Grammarly website shows that both the free version and premium version provided assistance with spelling, grammar and punctuation but neither version provided word prediction.

Legal Standard

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.

Analysis and Voluntary Resolution

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.

With respect to the requirement that the Student be provided with assistive technology for lengthy writing assignments, the evidence obtained to date shows the IEP did not specify the technology or application to be used and that the Student was provided with the basic free version of the Student's preferred application (Grammarly) at the start of the school year. The District then provided XXX with the premium version of that same app starting in XXXX XXXX. The evidence obtained to date shows that both versions of the application provided grammar and spelling assistance but did not provide word prediction. Thus, there is a concern that the Student may not have received word prediction assistance for lengthy assignments during the relevant time period. In addition, the evidence obtained to date shows the Student was not given an extra set of textbooks for home use until late in the school year.

Therefore, OCR determined that the evidence obtained to date raises concerns that support a need for the agreement to require the Student's IEP team to convene a meeting to discuss the IEP provisions, clarify those that are unclear, and determine if it is necessary to provide the Student with any compensatory education.

On July 27, 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 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. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, 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 September 30, 2022. For questions about implementation of the Agreement, please contact Ms. Julie Gran. She will

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be overseeing the monitoring and can be reached by telephone at (216) 522-2684 or by e-mail at Julianne.gran@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