

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION XV MICHIGAN OHIO

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

May 17, 2023

Via e-mail only to: [redacted content]

[redacted content]
R.J. Landau Partners, PLLC
5340 Plymouth Road
Suite 200
Ann Arbor, Michigan 48105

Re: OCR Docket No. 15-22-1322

Dear [redacted content]:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content], with the U.S. Department of Education, Office for Civil Rights (OCR), against Ann Arbor Public Schools (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that during the [redacted content] school year the District did not [redacted content] [red

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 allegation, OCR opened an investigation of the following legal issue: whether the District provided a qualified student with a disability with a free appropriate public education (FAPE), as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation to date, OCR reviewed information provided by the Student's parents and the District and interviewed the Student's parents and District staff. Based on this information, OCR determined that there is a cause for concern that the District did not fully implement the Student's IEP. However, prior to the completion of OCR's investigation, the District signed the attached resolution agreement, which, once implemented, will address the

compliance concerns OCR identified. A summary of OCR's investigation to date and the bases for its determination are provided below.

Summary of OCR's Investigation to Date

During the [redacted content] school year, the Student attended [redacted content] [redac

At the start of the [redacted content] school year, the Student's [redacted content], IEP [redacted content] was in effect. The Student's IEP was amended [redacted content] [redacted content], as described in more detail below, the [redacted content] and [redacted content] IEPs both required [redacted content] [reda

The Student's parents told OCR that the District did not [redacted content] [redacted con

1. [redacted content] [redacted content]

The [redacted content] IEP required that the District [redacted content] [redacted conten

content] [redacted content] [red

The Student's parents told OCR that the District also failed to provide [redacted content] [redacted content

OCR reviewed the [redacted content] IEP, which like the [redacted content] IEP required that the Student [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content]. The [redacted content] IEP further required that the District [redacted content] [redacted content]. [redacted sentence]. [redacted sentence]. OCR requested that the District provide OCR with [redacted content] content], [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content]. In response to OCR's request, the District provided [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content], [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content]. [redacted sentence]. [redacted sentence].

In response to OCR's request to the Student's parents [redacted content] [redacted sentence]. [redacted sentence]. [redacted sentence].

2. [redacted content] [redacted content]

The Student's parents further told OCR that the District failed [redacted content] [redacted content]. OCR reviewed the [redacted content] [redact

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[redacted content] [redacted content] [redacted content] [redacted content]. [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted content] [re

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4(a), provides that no qualified individual 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 federal financial assistance. The regulation further provides, at 34 C.F.R. § 104.4(b), that a recipient, in providing any aid, benefit or service, may not, directly or through contractual, licensing or other arrangements, on the basis of disability, afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others.

The Section 504 regulation, at 34 C.F.R. § 104.33, further requires recipients to provide a 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 procedural requirements set forth in 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards, including notice. Implementation of an IEP developed in accordance with the requirements of Section 504 is one way a school district can demonstrate that it has provided a student with FAPE.

Analysis

The evidence demonstrates that the Student is a qualified individual with a disability and that [redacted content] school year. During the [redacted content] school year, the Student had two IEPs in place which required that the District [redacted content] [re

[redacted content] Although the evidence indicates that [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], the District was unable to document that [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content]. With respect to the [redacted content] IEP requirement to [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] content], [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] content] [redacted content] [red content] [redacted content], [redacted content] [redacted content] [redacted content] content] [redacted content] [redacted content] [redacted content] [redacted content] content]. Further, the Student's parents were unaware that [redacted content] [redacted content], as the District did not [redacted content] [redacted content].

OCR has cause for concern that the District's failure to fully implement the provisions of the Student's IEPs regarding [redacted content] [redacted content], [redacted content], [redacted content] school year may have resulted in the Student being denied a FAPE in violation of Section 504. OCR also has cause for concern that the Student may not have been provided with [redacted content] [r

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 conclusion of the investigation, 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 May 16, 2023, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the allegation 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

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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 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.

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 15, 2023. For questions about implementation of the Agreement, please contact Timsi Pathak, who will oversee the monitoring and can be reached by telephone at (216) 522-7642 or by e-mail at Timsi.Pathak@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