

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

- whether the District implemented, with respect to actions regarding the identification, evaluation or educational placement of a student with a disability, a system of procedural safeguards that included an opportunity for the parents or guardian of the student to examine relevant records, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.36;
- 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;
- whether the District failed to take appropriate steps to ensure that communications with a student with a disability were as effective as communications with others, in violation of the Title II implementing regulation at 28 C.F.R. § 35.160; and
- whether the District did not ensure that a qualified student with a disability was afforded with nonacademic and extracurricular services and activities in such a manner as was necessary to afford the student with an equal opportunity to participate in such services and activities, in violation of the Section 504 implementation regulation at 34 C.F.R. § 104.37.

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Prior to the completion of OCR's investigation, the District asked voluntarily resolve this complaint pursuant to Section 302 of OCR's Case Processing Manual. On XXXXX the District signed the enclosed resolution agreement which, once implemented, will address the compliance concerns OCR identified. OCR's insufficient evidence findings and compliance concerns, and the District's voluntary resolution of the compliance concerns, are explained below.

Facts

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- **Allegation #1: XXXXX XXXXX XXXXX XXXXX**

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- **Allegation #2: XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
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- **Allegation #3 – XXXXX XXXXX XXXXX**

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Legal 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 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 of 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards, including notice. Determinations regarding the disability-related aids and services necessary to provide a student FAPE must be made based on an individualized assessment of the student's needs. Such decisions cannot be based on presumptions and stereotypes regarding persons with disabilities or on classes of such persons. For example, a recipient may not deny a student a particular disability-related service, e.g., an individual aide, based on generalizations or stereotypes about what individuals with the student's particular disability need. According to the Section 504 implementing regulation at 34 C.F.R. § 104.33(b)(2), implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one way a recipient can demonstrate that it has provided a qualified student with a disability with a FAPE.

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.33(c), the provision of a free education is the provision of educational and related services without cost to the person with a disability or to their parents or guardian, except for those fees that are imposed on non-disabled persons or their parents or guardian.

The Section 504 regulation, at 34 C.F.R. § 104.36, requires that recipients that operate a public elementary or secondary education program establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of IDEA is one means of meeting this requirement.

The Section 504 implementing regulation at 34 C.F.R. § 104.37 also requires recipients of federal financial assistance to provide students with disabilities an equal opportunity to participate in nonacademic and extracurricular services and activities.

• **Allegation #1 – XXXXX XXXXX XXXXX XXXXX**

Based on the foregoing, the evidence is insufficient to support a finding that the District XXXXX
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XXXXX XXXXX in violation of the Section 504 regulation at 34 C.F.R. § 104.36.

While OCR did not find compliance concerns with the District's XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, OCR did find cause for concern that the District may be limiting its provision of one-on-one aides to students with

- With respect to Allegation #2, the preponderance of the evidence does not support that the District failed to provide the Student with XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX - SENTENCE REMOVED – XXXXX. XXXXX - SENTENCE REMOVED – XXXXX.

• **Allegation #3 – XXXXX XXXXX XXXXX**

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Compensatory services are required to remedy any educational or other deficits that result from students with disabilities not receiving the services to which they are entitled. In general, the individualized determinations of whether, and to what extent, compensatory services are required must be made by a group of persons knowledgeable about the student.¹ XXXXX - SENTENCE REMOVED – XXXXX. XXXXX - SENTENCE REMOVED – XXXXX.

On XXXXX XXXXX, XXXXX, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the compliance concerns OCR identified during its investigation. 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

¹ For more information, please see Fact Sheet: Providing Students with Disabilities Free Appropriate Public Education During the COVID-19 Pandemic and Addressing the Need for Compensatory Services Under Section 504, available at <https://www2.ed.gov/about/offices/list/ocr/docs/factsheet-504.html>.

resolving the additional compliance concerns OCR identified prior to the conclusion of further investigation and OCR determined resolution was appropriate.

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 **May 15, 2023**. For questions about implementation of the Agreement, please contact Hanna Klein, who will oversee the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at XXXXX or by e-mail at XXXXX.

Sincerely,

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure