



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
OHIO

July 27, 2023

Via e-mail only to: [\[redacted content\]](#)

Mark T. Ostrowski
Kluczynski Girtz & Vogelzang
3033 Orchard Vista Drive, S.E., Suite 308
Grand Rapids, Michigan 49546

Re: OCR Docket No. 15-23-1192

Dear Mark T. Ostrowski:

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 St. Joseph County Intermediate School District (ISD) alleging that the ISD discriminated against students based on disability when the ISD failed to provide qualified teachers for its center-based (Pathfinder EI) program for the 2022-2023 school year.

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 ISD is subject to these laws.

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

- whether the ISD denied students a free and appropriate public education (FAPE) when it failed to assign a teacher qualified to teach students with disabilities in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.33(a) and (b), and Title II and its implementing regulation at 28 C.F.R. § 35.130.
- whether the ISD provided students with disabilities with an aid, benefit, or service that is not as effective as that provided to others in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. § 104.4(b)(1)(iii) and Title II and its implementing regulation at 28 C.F.R. § 35.130(b)(1)(iii).

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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During its investigation to date, OCR reviewed information provided by the Complainant and the ISD and interviewed the Complainant and ISD staff.

The complaint alleged that the ISD failed to staff its Pathfinder Emotional Impairment (EI) program (the Program) with qualified teachers for the 2022-2023 school year. The complaint alleged that the ISD discriminated against students with disabilities when it staffed the Program with substitute teachers who were not certified teachers and were not certified in EI. According to the complaint, the ISD closed two EI Program Classrooms in December 2022 due to its inability to employ certified teachers. The Complainant disputes the ISD's assertion that the teacher shortage is a valid reason to not have certified teachers.

The ISD confirmed to OCR that it had difficulties hiring certified teachers for the Program. In this regard, the ISD provided OCR with a document the [redacted content] wrote that addressed the ISD's staffing shortages for the 2022-2023 school year. The document indicated that at the beginning of the 2022-2023 school year, five of the ISD's 13 classrooms did not have certified staff and three of those five classrooms did not have a consistent substitute teacher.

According to the [redacted content], the ISD started the 2022-2023 school year with 22.5 unfilled openings that were filled by instructional or direct student support personnel, across multiple areas, including teachers, assistant teachers, speech, and psychologists. The [redacted content] also noted that there were only a few available substitutes for the classrooms at issue.

The [redacted content] told OCR that at the beginning of the 2022-2023 school year, the ISD had one Elementary EI classroom and two Secondary EI classrooms. One Secondary EI classroom was in the Pathfinder building and the other was at an off-site location.

The ISD provided documentation that indicated that the Secondary Teacher at Pathfinder held a Full-year Substitute Permit. Similarly, the teacher for the Secondary Classroom at the off-site location held a Daily Substitute Permit.

According to the Michigan Department of Education, an individual seeking a Full-year Basic Substitute Permit is required to have, in part:

- At least 60 semester hours of satisfactory credit from a regionally accredited two- or four-year college or university;
- If the assignment is in a core subject area, the individual must have a corresponding major on the transcript or passing scores on the state approved discipline area test; and
- A District or school assigned mentor teacher.

The Daily Substitute Permit is designed to support temporary teacher absences, which includes intermittent daily substitute assignments and short-term vacancies, defined as less than 90 calendar days, where a properly prepared, certified, endorsed, or otherwise authorized individual is unavailable. Qualification for this permit requires completion of at least 60 semester hours of satisfactory (grade 'C' or better) credits or an associate degree from a college, university, or community college.

The [redacted content] and the [redacted content] told OCR that a substitute permit authorized the Secondary Teacher to instruct a special education classroom. The [redacted content] and the [redacted content] told OCR that the Secondary Teacher was assigned a certified teacher mentor who approved her lesson plans and oversaw classroom instruction. The ISD did not provide information regarding how frequently the Secondary Teacher met with her mentor or information regarding the mentor teacher's education background or certifications. The ISD also did not advise OCR about the type or amount of training the Secondary Teacher received, or whether the Secondary Teacher received training specifically designed to prepare her for teaching EI students.

The [redacted content] told OCR that at the beginning of the 2022-2023 school year, the Elementary EI classroom did not have a teacher of record and that the ISD staffed the Elementary classroom with substitutes until the Elementary Teacher was hired in November 2022. The ISD also assigned a teacher consultant to support the classroom.

The [redacted content] told OCR that the ISD hires substitutes through a 3rd party staffing agency which requires candidates to have a Daily Substitute Permit. According to the [redacted content], the ISD's process is the same whether hiring substitutes in the general education or special education settings. Due to the significant substitute shortage, the ISD also created an internal list of ISD employees who were available to support its classrooms. The [redacted content] and the [redacted content] told OCR that ISD staff members, including ISD administrators, often served as substitutes.

In Fall 2022, the off-site location notified the ISD that it would need to find another location to host the Secondary EI classroom by January 2023. The ISD considered combining the two Secondary EI classrooms to operate at the Pathfinder building, but, in November 2022, the Secondary Teacher gave notice that she would not be returning in January 2023. At that time, the ISD decided to close the Secondary Program classrooms due to the ISD's inability to hire a replacement. The special education placement for each of the 11 students in the Secondary Program classrooms were changed to their respective district of residence.

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 ISD expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On July 25, 2023, the ISD 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 ISD 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 ISD's first monitoring report by August 4, 2023. For questions about implementation of the Agreement, please contact Tanya Williams Sample, who will oversee the monitoring and can be reached by telephone at (202) 987-1836 or by e-mail at Tanya.Sample@ed.gov. If you have questions about this letter, please contact me by telephone at (202) 987-1838 or by e-mail at Denise.C.Vaughn@ed.gov.

Sincerely,

For/Denise Vaughn
Supervisory Attorney/Team Leader

Enclosure