



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

June 29, 2023

Via email only to: [redacted content]

Mr. David Washburn
Superintendent
Comstock Park Public Schools
101 School Street NE
Comstock Park, Michigan 49321

Re: OCR Docket No. 15-23-1201

Dear Superintendent Washburn:

This letter is to notify you of the disposition of the above-referenced complaint filed on January 6, 2023, with the U.S. Department of Education, Office for Civil Rights (OCR), against Comstock Park Public Schools (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged that during the [redacted content] school year:

1. The District did not properly implement a provision of the Student's Section 504 plan regarding [redacted content] [redacted content] [redacted content], and
2. The District did not evaluate the Student to determine the appropriateness of adding a provision to the Section 504 plan allowing the Student [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content].

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 investigated 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.

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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Background

During the [redacted content] school year, the Student was [redacted content] [redacted content] [redacted content] at the District’s [redacted content] (the School). [redacted content] has been diagnosed with [redacted content] [redacted content] [redacted content]. The Student has a Section 504 plan, which provides for [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content].

Information Obtained to Date

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

Allegation #1

During the [redacted content] school year, the [redacted content] [redacted content] provision of the Student’s Section 504 plan read as follows:

[redacted content] Section 504 plan	[redacted content] update
[redacted sentence]	[redacted sentence]

The Complainant told OCR that, [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] school year, she reached out to the District’s special education director to discuss the Student’s [redacted content] [redacted content] [redacted content]. [redacted sentence]. [redacted sentence].” [redacted sentence].

The District submitted email correspondence occurring [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] school year between the Complainant and members of the Student’s Section 504 team regarding the [redacted content] [redacted content] [redacted content]. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence]. [redacted sentence].

The team met on [redacted content], and amended the plan to require [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence].” The parties agree that the Student did not [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] [redacted sentence] school year.

[redacted paragraph].

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. The regulation implementing Section 504, at 34 C.F.R. § 104.35(c), states that recipients must, in interpreting evaluation data and in making a placement decision, draw upon information from a variety of sources; ensure that information obtained from all such sources was documented and carefully considered; and 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. An appropriate education will include:

- education services designed to meet the individual education needs of students with disabilities as adequately as the needs of nondisabled students are met;
- the education of each student with a disability with nondisabled students, to the maximum extent appropriate to the needs of the student with a disability;
- evaluation and placement procedures established to guard against misclassification or inappropriate placement of students, and a periodic reevaluation of students who have been provided special education or related services; and
- establishment of due process procedures that enable parents and guardians to receive required notices; review their child's records; and challenge identification, evaluation and placement decisions. Due process procedures must also provide for an impartial hearing with the opportunity for participation by parents and representation by counsel, and a review procedure.

Analysis and Conclusion

Witness interviews and the Student's educational records support a determination that the District implemented the [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]; and that it considered the Complainant's input and provided written notice of its decision when the Complainant raised objections to [redacted content] [redacted content] [redacted content] [redacted content]. However, there is concern that the Student did not receive [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] even though [redacted content] Section 504 team determined that [redacted content] would be best served [redacted content] [redacted content] [redacted content] [redacted content], due to a decision made by individuals outside of the Section 504 evaluation process.

OCR notes the District convened a Section 504 team meeting on [redacted content], and revised the plan to provide [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content].” However, the parties agreed that the Student only received [redacted content], [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] school year. Section 504 requires school districts to implement the [redacted content] [redacted content] [redacted content] [redacted content] a student’s Section 504 plan, as deemed appropriate by the Student’s Section 504 team. Here, the Student should be provided [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] determined appropriate by the group of individuals knowledgeable about the Student and the placement options, and not by any one individual.

OCR further notes that the team convened another Section 504 meeting in [redacted content], for an annual review of the Student’s Section 504 plan. Following the meeting, the team emailed the Complainant [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [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].

Allegation #2

Regarding the Complainant’s allegation that the District did not properly evaluate whether the Student needed [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], the Complainant said she requested to add a provision to the Student’s Section 504 plan allowing the Student [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. In correspondence with the District, the Complainant cited to [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. The Complainant indicated that the Student needed the requested accommodation due to [redacted content] “[redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content].” [redacted sentence].

In an email on [redacted content], the Complainant told the [redacted content] [redacted content] [redacted content] [redacted content] that the Student needed [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. The [redacted content] [redacted content] [redacted content] replied that if there is a disability specific reason that the Student is unable [redacted content] [redacted content] [redacted content] [redacted content] then such a provision may be added. The special education coordinator [redacted content] [redacted content] [redacted content] stated that she would have the Student’s Section 504 team determine if there is a disability-specific reason that the Student [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. [redacted sentence].

On [redacted content], the special education coordinator sent the Complainant a Prior Written Notice stating that the team considered the Complainant’s request, reviewed the records, and

gathered information from the Student’s teachers to determine whether the requested provision was appropriate. The teachers reported that the Student [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. [redacted sentence]. The Prior Written Notice document notified the Complainant that the District did not support adding the requested accommodation.

The Complainant did not agree with the Section 504 team’s decision and requested a meeting with [redacted content] [redacted content] [redacted content] to discuss the matter. On [redacted content], the Complainant and [redacted content] [redacted content] met. Witness statements and other records show that during this meeting, [redacted content] [redacted content] told the Complainant that even though the Section 504 plan was not changed, they still would make sure the Student [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. District witnesses agreed that [redacted content] [redacted content] told the Student’s teachers to provide the Student [redacted content]. At this time, the team did not add a provision to the Student’s Section 504 plan regarding [redacted content].

During the [redacted content] Section 504 team meeting, the team discussed adding a provision regarding [redacted content] [redacted content]. On [redacted content], [redacted content] [redacted content] emailed the Complainant stating: “[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 paragraph].

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.

The Section 504 regulation, at 34 C.F.R. § 104.35, provides that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation of any person

who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and before any subsequent significant change in placement.

Analysis and Conclusion

The preponderance of the evidence supports a determination that the District evaluated the Student to determine the appropriateness of adding a provision to the Section 504 plan allowing the Student [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], considered the Complainant's input, and provided the Complainant with written notice of the team's decision. However, the evidence raises a concern that the Complainant did not receive proper notice of procedural safeguards following this decision. The evidence also raises a concern that [redacted content] [redacted content] decided to revise the plan in response to the Complainant's demands, despite the Section 504 team's decision not to add the requested provision to the Student's plan.

The evidence supports that the Complainant made a request to add a provision to the Student's Section 504 plan in an email on [redacted content]. The evidence shows that the District's [redacted content] [redacted content] [redacted content] replied that the team would add the requested provision if there was a disability-specific reason to add it and then proceeded to gather information from the Student's Section 504 team to determine if a change was warranted. The [redacted content] [redacted content] [redacted content] also asked the Complainant for her input on [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. The preponderance of the evidence supports a conclusion that the Section 504 team decided not to amend the Student's Section 504 plan based on a review of the information from a variety of sources, including feedback from individuals knowledgeable about the Student and the placement options. The District sent notice in the form of a Prior Written Notice document to the Complainant on [redacted content], explaining its decision.

[redacted sentence]. As a result, in [redacted content], following a team meeting, the Section 504 team proposed to add a provision allowing the Student the option [redacted content] [redacted content] [redacted content] assessments in paper-pencil format rather than digital [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content]. [redacted sentence]. [redacted sentence].

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 allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On June 22, 2023, 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.

OCR notes that the Section 504 implementing regulation at 34 C.F.R. Part 104, Appendix A, states that except in extraordinary circumstances, which are not present here, OCR does not review the results of individual placement decisions or resolve disputes over the content of education plans, so long as the procedural requirements of the Section 504 regulation regarding identification, evaluation, placement, and procedural safeguards are met. As such, a due process hearing is the appropriate venue in which to address conflicts regarding program placement, evaluation, and other educational decisions.

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 August 29, 2023. For questions about implementation of the Agreement, please contact [redacted content], who will oversee the monitoring and can be reached by telephone at [redacted content] or by email at [redacted content]. If you have questions about this letter, please contact me by telephone at (216) 522-7640 or by email at Sacara.Miller@ed.gov.

Sincerely,

Sacara Miller
Supervisory Attorney/Team Leader

Enclosure