



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

August 4, 2023

Via email only to:[redacted content]

Dr. Ami S. Rudd
Managing Director of Student Services
3615 Superior Avenue, Building 44
Suite 4403A
Cleveland, Ohio 44114

Re: OCR Docket No. 15-23-1291

Dear Dr. Rudd:

This letter is to notify you of the disposition of the above-referenced complaint filed on February 8, 2023, with the U.S. Department of Education, Office for Civil Rights (OCR), against [redacted content] (the School) alleging that the School discriminated against a student with disabilities (the Student) by not timely and properly evaluating the Student in [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 School is subject to these laws.

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

- Whether the School 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 School failed to conduct an evaluation of a student who, because of disability, needed or was believed to have needed special education or related services, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35(a).

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

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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[redacted content] [redacted content] [redacted content] [redacted content]. [redacted sentence]. The [redacted content] [redacted content] [redacted content] said she told the Complainant that the School could write a plan for the Student if the Complainant provided medical documentation of his condition. The [redacted content] [redacted content] [redacted content] told OCR that she requested medical documentation by phone and did not send an email to the Complainant. The School provided a screenshot of an undated message thread between the [redacted content] [redacted content] [redacted content] and the Student’s team, which includes a message from the [redacted content] [redacted content] [redacted content] stating that she spoke to the Complainant about [redacted content]. [redacted sentence].

The School’s records show that the Complainant withdrew the Student from the School on [redacted content]. Around the time of the Student’s withdrawal, the Complainant corresponded with School staff asking for a copy of the Student’s Section 504 plan. Based on her earlier meeting with his teachers, she believed that the Student had a Section 504 plan in place. The administrator replied that the School received her request for a Section 504 plan “but did not receive the medical documentation, which is what would trigger a formal plan.”

The evidence gathered to date raises a concern that the School did not timely and properly respond to information about the Student’s disabilities and the Complainant’s request for an evaluation of the Student under Section 504. The evidence supports a concern that the School knew about the Student’s diagnosis of [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] subsequent correspondence with the Student’s previous [redacted content] school, and that the School had reason to believe the Student may need to be evaluated based on the Complainant’s requests during conversations about [redacted content] [redacted content] [redacted content] [redacted content]. Although the School’s position is that someone called the Complainant twice to request her consent to evaluate the Student, the School does not know who made the calls. There is further concern that the School did not provide the Complainant with a written request for the consent to evaluate the Student and that the School’s process for obtaining consent may create a barrier to identifying students with disabilities who need to be evaluated.

Additionally, there is concern that the [redacted content] [redacted content] [redacted content] was aware of the Student’s [redacted content] diagnosis and knew that the Student [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content], but she advised the Complainant that the School could provide a Section 504 plan only if the Complainant provided diagnosis paperwork.

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 School expressed an interest in resolving the allegation prior to the

conclusion of OCR’s investigation and OCR determined resolution was appropriate. On July 28, 2023, the School 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 School 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 School’s first monitoring report by **August 15, 2023**. For questions about implementation of the Agreement, please contact Ms. Allison Beach, who will oversee the monitoring and can be reached by telephone at (202) 987-1846 or by email at Allison.Beach@ed.gov. 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