

UNITED STATES DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS

REGION XV MICHIGAN OHIO

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

September 27, 2023

Via e-mail only to: [redacted content]

Julia Bauer, Esq. 250 East Broad Street, Suite 900 Columbus, Ohio 43215

Re: OCR Docket No. 15-23-1689

Dear Julia Bauer:

This letter is to notify you of the disposition of the complaint filed against Miamisburg City School District (the District) that the U.S. Department of Education, Office for Civil Rights (OCR), opened for investigation on [redacted content]. The complaint alleged that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that in [redacted content], a substitute teacher did not [redacted content] as required by the Student's Section 504 plan.

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 will investigate the following issue to determine whether the District discriminated against your son on the basis of disability: 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.

Summary of Investigation to Date

During its investigation to date, OCR reviewed information provided by the Complainant and the District. The Student was enrolled in one of the District's [redacted content] during the [redacted content] school year. The District confirmed that the Student is an individual with a disability and that he had a 504 plan in effect at the time of the incident that gave rise to this complaint. OCR reviewed the Student's 504 plan [redacted content]:

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[redacted paragraph]

[redacted content] stated that the Student's 504 plan provides that [redacted content]. [redacted content], when a substitute teacher (the Substitute) was instructing the Student's class, the Substitute did not follow that provision of the 504 plan [redacted content]. [redacted sentence]. [redacted sentence]. [redacted content] maintained that if the Substitute had followed the Student's 504 plan [redacted content] would not have occurred.

The District stated that at the beginning of each school year, the District's expected practice is for each teacher to develop a substitute folder that contains: a class roster; seating chart; helper students who can answer questions; emergency/crisis plans; health alerts; students who have IEPs/504 plans and their accommodations; teachers who can answer questions for the substitute; and other unique situations for each classroom. Each building principal communicates this practice to staff at the beginning of the year; however, there is no written memo or document regarding this practice, including during the [redacted content] school year at the Student's [redacted content].

The District confirmed that on [redacted content], the Student's classroom had a substitute teacher. The District provided the substitute folder and lesson plans that the Student's regular classroom teacher created for substitute teachers and which this Substitute used that day. The first page of the folder directed the Substitute to read the [redacted content] and then listed the day's lesson plan. [redacted sentence]. [redacted sentence].

OCR reviewed documentation from the District, including the Principal's handwritten notes [redacted content]. [redacted sentence]. [redacted sentence].

[redacted paragraph]

[redacted paragraph]

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 September 26, 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.

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 November 15, 2023. For questions about implementation of the Agreement, please contact attorney Alysa Kociuruba, who will oversee the monitoring and can be reached by telephone at (202) 987-1837 or by e-mail at Alysa.Kociuruba@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,

Denise C. Vaughn Team Leader

Enclosure