



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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

REGION XV
MICHIGAN
OHIO

September 14, 2023

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

Steven P. Archibald
Superintendent of Schools
South Lyon Community Schools
345 South Warren
South Lyon, Michigan 48178

Re: OCR Docket No. 15-23-1735

Dear Superintendent Archibald:

This letter is to notify you of the disposition of the above-referenced complaint filed on [redacted content]¹, with the U.S. Department of Education, Office for Civil Rights (OCR), against [redacted content] (the District) alleging that the District discriminated against a student (the Student) based on disability. Following evaluation, OCR opened for investigation an allegation that in the spring of [redacted content], the District did not [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 of Education and as a public entity, the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and a District employee. Prior to completion of OCR's investigation, the District requested to resolve this matter pursuant to Section 302 of OCR's *Case Processing Manual*.

¹ The complaint was originally assigned OCR Docket No. 15-23-1664. After an unsuccessful attempt to mediate the complaint, OCR Docket No. 15-23-1664 was dismissed and, pursuant to OCR's Case Processing Manual at Section 201(a), the complaint was assigned to the instant docket number.

Facts

The Student was in the [redacted content] grade and enrolled in the District’s [redacted content] during the [redacted content] school year. The Complainant told OCR that the Student has been diagnosed with [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]. The Complainant stated that on [redacted content], she requested that the District evaluate the Student to determine [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] under Section 504. [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 content] [redacted content], the District held a Section 504 meeting and determined that the Student [redacted content] [redacted content] [redacted content] [redacted content] [redacted content] [redacted content].

[redacted paragraph]

OCR reviewed the notice of procedural safeguards that the District posts on its website. The notice states that one of the procedural safeguards is the right to “request and participate in an impartial due process hearing regarding the identification, evaluation, or placement of your child, including a right to be represented by counsel in that process and to appeal an adverse decision.” The procedural safeguards notice does not explain how to request an impartial due process hearing or who to contact to make such a request, and OCR could not find that information available anywhere else on the District’s website. Immediately following the statement regarding due process rights on the District’s website is information on the District’s Section 504 grievance procedure. The District also posts an informational video that discusses Section 504. The video is a slide show with a narrative accompanying each slide. One slide lists ten procedural safeguards, including the right to a due process hearing. The list on this slide does not include the right to pursue a grievance under Section 504. The narrative accompanying the slide discusses the right to pursue a grievance pursuant to the District’s grievance procedures but does not mention, reference, or provide information regarding impartial due process hearings.

[redacted paragraph]

[redacted paragraph]

[redacted paragraph]

Legal Standard and Analysis

Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.36, a recipient school district must develop and implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, and educational placement of persons who, because of a disability, need or are believed to need special instruction or related services. The system must provide for notice; an opportunity for the parents or guardian of the student to review relevant

records; an impartial due process hearing, with an opportunity for participation by the student’s parents or guardian and representation by counsel; and a review procedure. This obligation is commonly known as *due process*.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), separately requires recipients to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 regulation.

Examples of the types of complaints that are appropriately resolved through due process include: whether a student has a disability and is eligible for special education and or related services; whether a student with a disability requires further evaluation in order to devise an appropriate plan of services; or whether the scope of the evaluation or the current services is sufficient to meet the student’s individual educational needs. On the other hand, parents and others can attempt to resolve a range of other types of complaints, for example, complaints regarding disability-based harassment, different treatment, or a lack of accessible facilities or programs, through a district’s grievance procedure under 34 C.F.R. § 104.7(b).

A school district cannot satisfy the requirement to have due process procedures under 34 C.F.R. § 104.36 by relying on its grievance procedure under 34 C.F.R. § 104.7(b), nor can a district require a parent to pursue a FAPE-related complaint through the grievance procedure before a hearing under the system of procedural safeguards will be granted. Districts must ensure that they have due process procedures that are available to parents, as required.²

In the instant case, OCR has cause for concern that, when [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 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].

[redacted sentence]. The procedural safeguards the District publishes on its website do not specify how to request a due process hearing. The item immediately following due process information on the District’s procedural safeguards sheet on its website discusses the District’s grievance procedure. The Section 504 web page also includes a link to the District’s grievance procedure form, but includes no information on how to request a due process hearing. The District’s Section 504 informational video does not explain the distinction between a Section 504 grievance and a due process challenge to a District’s decisions regarding the identification, evaluation, or placement of a student under Section 504. The video lists due process hearing rights on a slide but the audio accompanying this slide discusses the District’s grievance procedure, which could cause confusion. OCR is therefore concerned that District’s information

² For more information, please see Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools, available at <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>.

regarding procedural safeguards is not clear or detailed enough to constitute sufficient notice of how to pursue a due process hearing.

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 14, 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 within seven calendar days of the date of this letter. For questions about implementation of the Agreement, please contact Dinola Phillips, who will oversee the monitoring and can be reached by telephone at (202) 987-1001 or by e-mail at Dinola.Phillips@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667 or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure