

Mr. Daniel J. Hoying  
Associate Legal Counsel  
Cincinnati Public Schools  
Education Center  
2651 Burnet Avenue  
Cincinnati, Ohio 45219

Re: OCR Docket #15-15-1040

Dear Mr. Hoying:

This letter is to notify you of the disposition of the above-referenced complaint filed against the Cincinnati Public School District (the District), which the U.S. Department of Education's Office for Civil Rights (OCR) received on xxxxx. The complaint alleged that the District discriminated against a student with a disability (the Student) on the basis of disability. Specifically, the complaint alleged that the District failed to implement the Student's Section 504 plan from xxxxx, to xxxxx.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act, 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 recipients of Federal financial assistance from the U.S. Department of Education (the Department) and by public entities, respectively. As a recipient of Federal financial assistance from the Department and as a public school system, the District is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following legal issue: Whether the District denied a qualified student with a disability a free and appropriate public education in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

### **Summary of OCR’s Investigation to Date**

During OCR’s investigation, OCR interviewed the Complainant and reviewed documentation she provided. OCR also reviewed documentation and information provided by the District.

The complaint involves the xxxxx, who is a xxxxx grade student in the District with xxxxx. The Student attended the xxxxx, a school within the District, from xxxxx through xxxxx. The District provided xxxxx with a Section 504 plan beginning in the xxxxx school year. The Complainant enrolled her xxxxx in the xxxxx in the District in xxxxx.

According to the Complainant and documents she submitted to OCR, she contacted the District xxxxx, to request a team meeting to xxxxx Section 504 plan to address xxxxx at the xxxxx. The Complainant received a response from the District stating that the xxxxx did not have xxxxx, and asking if the Complainant would forward xxxxx. According to information provided by the Complainant, the Section 504 coordinator for the xxxxx met with the Complainant on xxxxx, regarding her xxxxx Section 504 plan. The Complainant stated she provided xxxxx during that meeting. The Section 504 coordinator for the xxxxx then convened a team meeting to discuss and revise the Student’s Section 504 plan on xxxxx. According to the Complainant, the team xxxxx the plan at the xxxxx meeting. The Complainant also told OCR that she xxxxx.

The Complainant alleges that the District denied her xxxxx a FAPE from xxxxx, to xxxxx. The Complainant explained that she did not believe the plan was implemented during this time. Specifically, she said that her xxxxx did not receive the following: xxxxx. She said her xxxxx was given xxxxx during the time at issue in the complaint, but was not given xxxxx, as required by the plan. She said he received xxxxx on homework xxxxx, because the teacher gave all students xxxxx in that course during the xxxxx semester. She also said that xxxxx, but she acknowledged that she was able to get the information off of the Blackboard computer system each night.

X—paragraph deleted – X

According to the District, the District’s enrollment form that parents complete when enrolling a student xxxxx specifically asks the parent to indicate whether the Student has a Section 504 plan or IEP. The District informed OCR that, in this case, the Student’s parent xxxxx. The District acknowledged that xxxxx the duty to provide FAPE to such a student, and stated that the purpose of requesting such information was to provide extra safeguard against delays in the provision of services. The District reasoned however, that xxxxx, District staff would have asked for xxxxx, resulting in less delay in providing the Student’s services.

On xxxxx, before the conclusion of OCR’s investigation, the District expressed an interest in voluntarily resolving the allegations in these complaints under Section 302 of OCR’s Case Processing Manual (CPM).

### **Applicable Legal Standards and OCR Policy**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a

Free and Appropriate Public Education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or the severity of the person's disability. An appropriate education for purposes of FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards.

## **Resolution**

Prior to the completion of this complaint investigation, the District asked to resolve this complaint under Section 302 of OCR's Case Processing Manual (CPM). The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and consistent with applicable regulations.

The District has signed the enclosed resolution agreement (Agreement), which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. The Agreement requires the District to convene the Student's Section 504 team to determine: whether the District failed to provide the Student with any aids or services required by his Section 504 plan from xxxxx to xxxxx, such that xxxxx was denied a FAPE and; if so, determine what compensatory or remedial services are necessary to remedy that denial of FAPE.

In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing this complaint as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will reopen the complaint and resume its investigation of the complaint allegations.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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. Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

The Complainant may file a private suit in Federal court whether or not OCR finds a violation.

We appreciate your cooperation during the resolution of this complaint. We look forward to receiving the District's first monitoring report, which is due by xxxxx, or within two weeks of

the District's determination as to whether compensatory and/or remedial services are necessary for the Student, whichever is sooner. Please send any electronic monitoring correspondence to [OCRCleMonitoringReports@ed.gov](mailto:OCRCleMonitoringReports@ed.gov). Any monitoring reports submitted by regular mail may be addressed to Vanessa K. Coterel, who will be monitoring the District's implementation of this agreement. Ms. Coterel may be reached at (216) xxx-xxxx. If you have any questions about this letter, you may contact me at (216) xxx-xxxx, or at [Kelly.M.Johnson@ed.gov](mailto:Kelly.M.Johnson@ed.gov).

Sincerely,

/s/

Kelly M. Johnson  
Supervisory Attorney/Team Leader