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OFFICE FOR CIVIL RIGHTS
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

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July 18, 2024

Dr. Jeffrey D. Menzer
Superintendent
Colonial School District
318 East Basin Road
New Castle, DE 19720
jeffrey.menzer@colonial.k12.de.us

Re: Colonial School District Compliance Review Number 03-23-5001

Dear Dr. Menzer:

This letter is to notify you of the resolution of the above-referenced compliance review of the Colonial School District (the District) initiated in July 2023 by the Office for Civil Rights (OCR) of the U.S. Department of Education (Department). This compliance review examined whether the District treats students with disabilities differently with regard to access to Advanced Placement (AP) courses. In addition, OCR assessed whether the District discriminates against students with disabilities by establishing policies and procedures, or operating practices, that result in excluding them from Advanced Placement courses.

OCR conducted this compliance review pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Because the District is a recipient of Federal financial assistance from the Department and a public entity, OCR has jurisdictional authority to conduct this compliance review.

In conducting this compliance review, OCR reviewed documentation and information provided by the District, including the District's enrollment information, course catalog, course selection guide, course selection form, and narrative response. OCR also interviewed the Director of Student Services, lead guidance counselor, High School Math Supervisor, Deputy Principal of Academics, three Advanced Placement teachers, three general education teachers, the Supervisor of College & Career Readiness, the Section 504 Coordinator, and the High School principal. Below is a summary of OCR's findings and concerns.

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SUMMARY OF CONCERNS

OCR has a concern that the District has and has for years had notice that students with disabilities enroll in AP courses at rates well below their High School enrollment but has taken no steps designed to ensure equal access to this high rigor coursework for these students. OCR also has a concern that the data reported by the District to OCR's [Civil Rights Data Collection](#) (CRDC) for the 2017-2018 school year does not match the data the District reported to OCR in this compliance review, including for overall enrollment in the District and the percent of students with a disability enrolled in the District.

Because OCR identified compliance concerns during its investigation of this compliance review, OCR determined that it was appropriate to resolve this compliance review pursuant to Section 302 of the [Case Processing Manual](#) (CPM).

LEGAL STANDARD

The regulations implementing Section 504 at 34 C.F.R. § 104.4(a) and (b), and Title II at 28 C.F.R. § 35.130(a), provide, in pertinent part, that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of the services, programs, or activities of the recipient or public entity, or otherwise be subjected to discrimination under any program or activity of the recipient or public entity. The regulations prohibit recipients from: (a) denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (b) affording a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; (c) providing a qualified individual with a disability with an aid, benefit, or service that is not as effective as that provided to others; (d) providing different or separate aid, benefits, or services to disabled persons or to any class of disabled persons unless such action is necessary to provide a qualified individual with a disability with aid, benefits, or services that are as effective as those provided to others; (e) aiding or perpetuating discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipients program or activity; (f) denying a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or (g) otherwise limiting a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. 34 C.F.R. § 104.4(b)(i)-(vii); 28 C.F.R. § 35.130(b)(1)(i)-(vii).

In determining whether a recipient subjected students to different treatment on the basis of disability in violation of Section 504 and Title II, OCR looks to whether there were any apparent differences in the treatment of similarly situated students on the basis of disability. If different treatment is found, OCR evaluates the recipient's explanation for any differences in the treatment of similarly situated students to determine if the explanation is a legitimate, nondiscriminatory explanation and whether it is merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the students in a manner that was consistent with its established policies and procedures and whether there is any other evidence of discrimination based on disability.

In addition, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(4) prohibits recipients from utilizing criteria or methods of administration that have the effect of subjecting qualified persons with disabilities to discrimination on the basis of disability, or that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to persons with disabilities. The regulation implementing Title II, at 28 C.F.R. § 35.130(b)(3) includes similar requirements.

FACTUAL SUMMARY

Background

According to the District's 2020-2021 Civil Rights Data Collection (CRDC) data, the District is the 6th largest school district in the state of Delaware.

The District has eight Elementary Schools, three Middle schools, and one High School. The District also operates the [John. G. Leach School](#) that serves students ages three to twenty-one who have physical disabilities, moderate to severe cognitive disabilities or serious health impairments. There are no leveled classes at the Middle School level. However, at the High School, students may choose among college preparatory, honors, and AP courses.

According to the High School [website](#), the AP curriculum is administered by the College Board and consists of standardized High School courses that are roughly equivalent to undergraduate college courses. After completing an AP course, students typically take the AP exam in that subject, which can earn them college credits and accelerated placement in college. The District told OCR that all of its AP teachers are certified AP instructors and have completed College Board/AP training.

Enrollment

The District reported to OCR that, during the 2017-2018 school year, it had an overall student enrollment of 9,819 students, of whom 1,846 (18.8%) were students with disabilities. During that same year, the High School had an enrollment of 2,070 students, of whom 370 (17.8%) were identified as students with disabilities. Of the 2,070 High School students, the District reported that 344 students were enrolled in one or more AP course, nine (2.6%) of whom were students with disabilities.

OCR notes that for the 2017 Civil Rights Data Collection (CRDC) data, the District reported different data: for that CRDC report, the District reported its total enrollment for the 2017-2018 school year was 9,873, of whom 2,358 (23.9%) were students with a disability. During that same school year, the District reported in the CRDC that the High School had an enrollment of 2,079 students, of whom 334 students were enrolled in one or more AP courses, of whom only 2 (0.6%) were students with a disability. The District's reported data for the 2020-2021 school year also appears to be anomalous: for that year the District reported that only 123 (1.25%) of its total 9,818 students were students with disabilities and that only 2 (0.65%) of its total 308 students enrolled in one or more AP courses were students with disabilities.

During the 2023-2024 school year, the District reported to OCR that it has an overall student enrollment of 8,778 students, of whom 2146 (24.4%) are identified as students with disabilities. The enrollment at the High School is 2424, of whom 612 (25%) are identified as students with disabilities. The District reported 279 students are enrolled in one or more AP course, but only 25 (8.9%) are students with a disability.

Publication of Information regarding AP courses

The High School publishes a list of all AP courses on its [website](#). According to the website, the High School offers 24 AP courses, two of which are online courses (AP Microeconomics and AP US Government and Politics). Information about the AP courses offered at the High School is also published online in the High School's [Course Catalog](#), which details the specific AP courses available at the High School and describes the process for completing an AP course and taking the AP exam. In addition, publicly available information regarding the High School's AP course offerings is available online through the [Course Selection Guide](#) and the [Course Selection Webpage](#). The course selection webpage includes a PowerPoint presentation and video on the course selection process. The PowerPoint explains that students have conferences with their teachers in February and that students will use a [Course Selection Form](#) to discuss their choices with teachers during the conferences. The Course Selection Form states that final selections are approved by the guidance counselor. OCR last accessed each of these online resources on July 15, 2024.

Outreach

District staff interviews confirmed that the District does not conduct specific outreach to promote AP courses to students with disabilities. However, the Supervisor of College & Career Readiness (the Supervisor) told OCR that prior to 2019, the District identified overall low AP enrollment as an issue, which, in his opinion, may explain why enrollment of students with disabilities in AP courses during the 2017-2018 school year was also very low. The Supervisor also told OCR that prior to 2019, the District did not make a concerted effort at the Middle School level to recruit and inform students about AP courses. However, starting in 2019, he and other District staff began a "roadshow" at the Middle School to present information about High School courses during student assemblies and parent information sessions. While COVID-19 paused that effort, once classes resumed in-person, the roadshow resumed.

The District provided documentation to OCR showing that the District discussed the High School's AP program at the August 29, 2023 Freshman Day Parent Meeting and the Middle School Touring presentation for rising Freshman, described above as the "roadshow." It also provided OCR with the PowerPoint utilized during these meetings, in which a slide is dedicated to describing the AP program. The District also has AP/Dual Enrollment representation at its Fall Showcase, which is an event for all students.

More generally, District staff interviews confirmed that outreach is also done individually by teachers, who promote information about available AP courses to their classes generally, and in making student recommendations for AP courses, as described in more detail below. The Supervisor told OCR that the District relies heavily on teacher encouragement for students to take AP courses.

AP course selection/criteria

According to District staff interviews, course selection is a team decision involving the student, their parent/guardian, teachers, and the guidance counselor. Students, their current teachers, and guidance counselor meet to discuss each student's schedule for the following year. As a collective group, they look at how students performed during the current year and in previous years to determine the level of work for the upcoming school year that would be appropriate. The District does not maintain a specific policy or procedure governing the identification/referral, testing/evaluation, and/or selection/assignment of students to AP courses. All High School students are afforded the opportunity to enroll in AP courses through an open enrollment system. In order to enroll in an AP course, students complete the course selection form, meet with their teacher to discuss their course selection, and then meet with their guidance counselor to finalize the course selections. Standardized testing, eligibility criteria, or teacher recommendations are not required. However, according to the District and District staff interviews, teachers do the majority of recommendations for students to take AP courses. When a student discusses course selections with a teacher, if the teacher recommended that a student not take an AP course, that recommendation can be overridden by the student and/or their parent/guardian.

District staff acknowledged that there is no specific training provided to teachers or guidance counselors regarding course selections and how to identify students to recommend for AP courses. Generally, the teachers interviewed by OCR told OCR that they take into consideration a student's grades, attendance, work ethic, whether they are performing at or above grade level, test scores and whether they have demonstrated an ability and interest in doing the classwork. All of the AP teachers interviewed by OCR confirmed that they currently have, or have had, students with disabilities in their class. None of the District staff interviewed could recall an instance when a student with a disability requested to take an AP course and was impeded from doing so. In fact, several teachers interviewed could recall recommending to a student with a disability that they should take an AP course, but the student themselves opted not to because they did not think they would do well.

All District staff interviewed confirmed that they have attended multidisciplinary team meetings for students with disabilities. However, none interviewed confirmed that they participated in a multidisciplinary team meeting in which AP courses were discussed or recommended by the multidisciplinary team.

Support for Students in AP courses

The District supports all students in AP courses by providing all students with "AP Prep Info" and staff who work with students prior to the start of their AP course. With regard to students with disabilities, the District maintains that it takes a collaborative approach with staff, the student, and the student's family for course selection. Specifically, guidance counselors and AP teachers are included in IEP/Section 504 meetings and any changes to the IEP/Section 504 Plan or level of course work is made by the student's multidisciplinary team and the School supports this process by providing coverage for staff to attend meetings. In addition, the District maintains that students with disabilities have their accommodations or supports discussed with their teachers through their annual

meetings, and the Special Education Coordinator or guidance counselor work directly with the students with disabilities to address issues as they arise. The District also maintains that it is flexible with assigning para-professional staff to provide support, as needed, in AP sections when it is required/needed for a student with a disability. AP teachers are made aware that a student has an IEP and/or Section 504 Plan with a notation in the class lists that they receive, and they must sign-off acknowledging that they have received a copy of the IEP and/or 504 Plan.

With regard to the AP exams, the District pays for the AP exam fees for students, and there is no charge for students to take an AP course. The District employs an AP Coordinator who works with students with disabilities to coordinate accommodation requests for the AP exam with the College Board. District staff interviewed by OCR confirmed that students with disabilities have received accommodations from the College Board to take AP exams.

District staff observations/recommendations

During OCR's interviews with District staff, OCR asked staff to explain why they believe enrollment of students with disabilities in AP courses was disproportionately low in the 2017-2018 school year, and what steps they believe the District could take to improve enrollment of students with disabilities in AP courses. The [redacted content] opined that the District could do more to increase the rate of participation of students with disabilities in AP courses by teachers not always relying on the student or parent to express an interest and instead suggest it more to their students. Similarly, one of the [redacted content] teachers recommended that teachers and guidance counselors should do more to encourage students with disabilities to enroll in AP courses and to make sure that parents are aware of the AP course offerings. The Supervisor of Curriculum and Instruction said that the District relies heavily on teacher encouragement, and that is where the District could improve its efforts to be more inclusive in the messaging. He also said that the District could do more to ensure consistent messaging to guidance counselors about inclusivity around AP courses.

One of the [redacted content] teachers told OCR that some teachers will not promote AP courses or will only promote AP courses to their honors and AP classes where there are already fewer numbers of students with disabilities. This teacher expressed that more could be done for promotion and messaging by teachers at the college preparatory level.

ANALYSIS

In this compliance review, OCR examined whether students with disabilities are afforded the same opportunity as students without disabilities to access AP courses offered at the High School, as available data indicate that the percentage of students with disabilities enrolling in AP courses was significantly less than their representation in the High School enrollment. As part of this review, OCR assessed whether the District has established policies and procedures, or operating practices, that have the discriminatory impact of excluding students with disabilities from AP courses.

OCR's investigation found that since the 2017-2018 school year, the District has made a concerted effort to increase student participation in its AP course offerings. These efforts include outreach at

the Middle School for students and parents, holding freshman parent meetings, and providing information about the AP course offerings at a Fall Showcase. In addition, the District operates neutral policies with respect to eligibility for AP courses, applicable to all students. Over time, the overall number and percentage of students with disabilities enrolled in AP courses have increased, as has the total number of students with disabilities enrolled in the District High School. Specifically, for the 2023-2024 school year, 8.9% of the students who participate in AP courses are identified as students with a disability, which is a marked increase from 2.6% in the 2017-2018 school year. During the 2017-18 school year, the District had a 15.2% difference between the 17.8% of High School students who were identified as students with disabilities and the 2.6% of students of AP course takers who were students with disabilities. During the 2023-24 school year the District has reduced that difference by 0.9%: 25% of High School students are identified as students with disabilities and 8.9% of AP course takers are students with disabilities, yielding a current 16.1% difference.

OCR recognizes that the data the District reported in this compliance review differs from the data the District reported for the 2017-18 CRDC and that the data the District reported for the 2020-21 CRDC appears anomalous compared to the other data the District reported for surrounding years in this compliance review. These data disparities raise concerns regarding District recordkeeping in compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.61 (incorporating 34 C.F.R. § 100.6(b)) which requires districts to keep records and accurate compliance reports in order to enable OCR to ascertain whether the district is in compliance with the regulations.

In addition, the evidence produced to date raises a concern that although the District has had notice, for years, that students with disabilities participate in AP courses at rates well below their enrollment rates, the District has not taken steps specifically designed to ensure equal access to these high rigor courses for students with disabilities. As the District noted during investigation, it has and has had notice that students with disabilities participate in AP courses and honors courses at dramatically lower rates than their enrollment rates, and District staff identified a variety of steps the District could take, but has not yet tried, to ensure itself that students with disabilities have equal access to AP course taking. District staff acknowledged, for example, that staff tend to promote AP course taking specifically among students enrolled in those courses in which students with disabilities under-enroll.

In addition, interviews with District staff revealed that the District relies heavily on teacher and guidance counselor recommendations for AP course selection, without providing any guidance or training to teachers and guidance counselors regarding best practices for ensuring the inclusion of students with disabilities, and without the operation of specific guidelines or practices for course assignment or enrollment eligibility for AP courses.

Before OCR concluded investigation, the District requested to resolve the compliance review pursuant to Section 302 of the OCR CPM to address the concerns OCR has identified to date.

CONCLUSION

The District signed the enclosed Agreement on July 15, 2024, which, when fully implemented, will address the compliance concerns OCR identified in this compliance review. Specifically, the Agreement requires that the District:

- Develop a record-keeping system to identify the number of students with disabilities who participate in the High School's AP course offerings and ensure accurate reporting of data to OCR's Civil Rights Data Collection;
- Complete a review and assessment of its AP course offerings at the High School for the 2023-2024 school year and develop recommendations for ensuring equal access to AP courses for students with disabilities;
- Provide notice to all parents and guardians of 8-11th grade students reminding them of the availability of AP courses, and the contact information for staff to contact;
- Review its communication with students and parents, including students with disabilities and their parents, regarding the availability of AP courses and develop a protocol for ensuring that all students in 8-11th grade and their parents are provided with notice of the availability of AP courses, how to enroll in these courses, and the significance given to AP courses by colleges in the admissions process;
- Complete an evaluation of its academic counseling services at the Middle School and High School levels and make changes, as necessary, to ensure that students with disabilities receive counseling that informs them of available AP course options; and
- Provide training to all Middle School High School guidance counselors and teachers regarding the eligibility requirements for AP courses, and the importance of inclusion of students with disabilities in AP course enrollment.

OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the compliance review. This letter 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. The complainant 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, or participates in an OCR proceeding. 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

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We thank you for your cooperation in this matter. If you have any questions, you may contact Tashell Jenkins, Team Attorney, at 202-987-1045, or at Tashell.Jenkins@ed.gov.

Sincerely,

/s/

Beth Gellman-Beer
Regional Director
Office for Civil Rights, Philadelphia