



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

December 10, 2014

Kevin J. Foley, Esq.
Foley & Robinette, P.C.
13349 Reeck Court
Southgate, Michigan 48195

Re: OCR Docket #15-14-1232

Dear Mr. Foley:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on May 27, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR) against the Riverview Community School District (the District). The complaint alleged the District discriminated against a student (the Student) on the basis of disability when it failed to evaluate xxx xxx x xxxxxxxx xxx xxxx during the xxxxxxxxx school year.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Section 504 and Title II 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 entity, the District is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR initiated an investigation into the following legal issues:

- Whether the District failed to provide a free appropriate public education (FAPE) to a qualified student with a disability in violation of Section 504's implementing regulation at 34 C.F.R. § 104.33.
- Whether the District failed to properly and timely identify, evaluate, and place a student as an individual with a disability in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35.

In investigating the complaint allegations, OCR interviewed the Complainant and the District's Special Education Director. OCR also reviewed documentation submitted by the District. Prior to conclusion of OCR's investigation the District requested to resolve that allegation pursuant to Section 302 of OCR's Case Processing Manual. A summary of the information obtained to date and a statement of the applicable legal standards is included below.

The Student was in the xxxxxx xxxx at the District during the xxxxxxxxx school year. The complaint alleged that on xxxxxxxx xx xxxx the Student's parent requested that the Student be evaluated to determine xxx eligibility for special education services. The Student's xxxxxx and xxxxxxxxxxxx stated that a meeting was held on xxxxxxxx xxx xxxx and that it was "sort of" an xxx team meeting." The xxxxxx xxx xxxxxxxxxxxx told OCR that they were given a list of resources at the conclusion of the xxxxxx xx meeting, but were unclear about what, specifically, they were given.

The District's Special Education Director told OCR that the District has unsuccessfully attempted to obtain information from the Student's xxxxxx and xxxxxxxxxxxx that would assist it in accurately assessing the Student's needs. The Special Education Director also told OCR that the District had the Student xxxxxxxxxxxx evaluated by x xxxxxx xx xxx xxxxxxxxx xxxxxxxx xxxxxxxxxxx but that the District has been unable to obtain the results from that xxxxxx despite its efforts to do so.

Based on OCR's investigation thus far, it is clear that the Student has not had the benefit of a completed evaluation to determine xxx eligibility for services; however, it is unclear at this time what is responsible for the delay.

Applicable Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.4(b)(1)(i) prohibits recipients of Federal financial assistance from denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service provided by the recipient. Subpart D of the Section 504 regulation, at 34 C.F.R. Part 104, specifies the particular requirements applicable to the education of qualified students with disabilities by recipient public elementary and secondary school districts. At 34 C.F.R. § 104.33(a), the regulation requires such school districts to provide a free appropriate public education to each qualified student with a disability who is within the recipient's jurisdiction. An appropriate education is defined as special or regular education and related aids and services that are designed to meet the individual needs of the student with disabilities to the same extent that those of students without disabilities are met and that are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. 34 C.F.R. § 104.33(b)(1).

Voluntary Resolution

As noted above, prior to the conclusion of OCR's investigation into this allegation, the District requested to resolve this issue with an agreement pursuant to Section 302 of OCR's Case Processing Manual. 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.

As such, the District signed the enclosed resolution agreement on December 2, 2014, wherein it committed to, by January 30, 2015, convene a xxxxxxxx xxx xx xxxxxxxxxxxxxxxx xxxxxxxxx xxxxxxxx team to determine whether, beginning on xxxxxxxx xx xxxx the Student should have been identified as a student with a disability and entitled to services under Section 504. Should the Student's team determine that the Student would have been eligible for services under Section 504, the team will then determine what compensatory education or other remedial services the Student requires and develop a plan for providing the Student with compensatory education.

Conclusion

In light of the signed Agreement, which is enclosed, OCR finds that this complaint is resolved, and OCR is closing its investigation 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 harmed individual may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation. OCR appreciates the courtesy and cooperation we received from the District during our investigation of this complaint. If you have any questions regarding this letter, please contact me at (216) 522-xxxx or at xxxxxxxxxx@ed.gov.

We look forward to receiving the District's monitoring report by January 30, 2015. Please forward the District's monitoring reports to OCRCleMonitoringReports@ed.gov. Should you have any questions regarding the monitoring of this complaint, please contact xxx xxxxxx xxxxxx at (216) 522-xxxx or xxxxxxxxxxxx@ed.gov.

Sincerely,

/s/

Lisa M. Lane
Supervisory Attorney/Team Leader

Enclosure