



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

xx. xxxxxxxx x xxxxxxxx

Miller, Canfield, Paddock and Stone P.L.C.
150 W. Jefferson Avenue, Suite 2500
Detroit, Michigan 48226

Re: OCR Docket #15-15-1085

Dear xx xxxxxxxx:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education's Office for Civil Rights (OCR) against South Redford School District (the District) on December 15, 2014, alleging that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that:

1. The District failed to implement the Student's Section 504 Plan and Behavior Intervention Plan when it failed to do the following during the 2014-2015 school year:

[x--- paragraph redacted --- x]

2. The District suspended the Student for more than ten days during the 2014-2015 school year without first determining whether his misconduct was related to his disability.

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). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing 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). Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the

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District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following issues:

- Whether the District failed to provide a qualified student with a disability with a free appropriate public education (FAPE), including the provision of related aids and services designed to meet the Student’s individual needs, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.
- Whether the District failed to conduct an evaluation of the Student prior to significantly changing his placement through the imposition of a series of out-of-school suspensions during the 2014-2015 school year, in violation of 34 C.F.R. § 104.35(a).

Background

[x--- paragraph redacted --- x]

OCR investigation of the complaint included reviewing data produced by the Student’s parent and the District, and interviewing the Student’s parent and District staff knowledgeable about the subject matter of the complaint. OCR also unsuccessfully attempted to contact the Student’s parent to provide the parent with an opportunity to respond to the information obtained from the District.

After a careful review of the information obtained during the investigation, OCR determined that the evidence is insufficient to conclude that the District failed to implement the Student’s Section 504 plan with respect to xxxxx xxxxx xxxxxxx xxxxx xxxxxxx xxxxxxx xxxxxxx xxxxxxx xxxxx xxx xxx xxxxxxxx. However, OCR determined that the District failed to implement the Student’s Section 504 plan with respect to xxxxx x xxxxx xxxxx xxxxxxxxxx xxxxx xx xxxxxxxxx the Student’s behavior and suspended the Student for more than ten days during the 2014-2015 school year without first determining whether his misconduct was related to his disability, in violation of Section 504 and Title II, as alleged. The District signed the enclosed resolution agreement that, once implemented, will fully address OCR’s finding in accordance with Section 504 and Title II. A summary of the applicable legal standards, OCR’s investigation, the bases for OCR’s determinations, and the terms of the agreement are presented below.

The District’s Alleged Failure to Implement the Student’s Section 504 Plan

- **Summary of OCR’s Investigation**

[x--- paragraph redacted --- x]

[x--- paragraph redacted --- x]

- The District's use of xxxxx xxxxxx and other xxxxxxxxxxxx to help with the Student's xxxxxxxxxxxxxxxx xxxxxx.

Although OCR's review of the Student's two plans, in place during the 2014-2015 school year, found that they both required School staff provide the Student with xxxxxxxxxxxxxxxx xxxx xxx xxxxxxxx, OCR's review also found that neither the September xxxx plan nor the February xxxx plan expressly required the use of xxxxx xxxxxx as a specific xxxxxxxxxxxxxxxx strategy. District witnesses denied or did not recall that xxxxx xxxxxx was ever discussed as a requirement of the Student's Section 504 plan. However, all of the teachers interviewed provided OCR with specific examples of the xxxxxxxxxxxxxxxx xxxx xxx xxxxxxxx they provided to the Student, including advising the Student to have individual folders for each class, providing the Student with a notebook for classes and reminding him where to store papers in his binder, and giving the Student reminders and extra support to make sure the Student was following instructions.

- The District's xxxxxxxx xx xxx xxxxxxxx xx xxxxx xxx xxxxxxxxxxx.

OCR's review of the Student's Section 504 plans did not require District staff to document their xxxxxxxx of the Student to xxxx xx xxx xxxxxxxx when he forgot to do so. The Student's teachers all denied that there were instances when they failed to xxxxx the Student in this regard. As noted above, OCR was unable to contact the Student's parent to provide her with an opportunity to respond to the District witnesses' positions that this element of the plans was adhered to.

- The District's use of a xxxxxxx xxxxxx xx xxxxxxxxxxx xxxxx to address the Student's xxxxxx, with referral to the Student Resource Center (SRC) as an xxxxxxxxxxxxxxxx to be deployed only after xxxxx xxxxx have been exhausted.

As for the requirement that the Student's teachers exhaust certain xxxxxxxxxxx xxxxx before referring the Student to the SRC, the District provided copies of the referral forms completed by the teachers when sending the Student to the SRC. These forms were compiled into a summary table, which listed the xxxxxxxxxxxxxxx xxxxx that were used before referral to the SRC. For the time period while the September xxxx plan was in effect, this table reflected that the Student was referred to the SRC xxxxxxx times. Only two of the entries (and their corresponding underlying referral forms) during this time frame indicated that all of the xxxxxxxxxxxxxxx xxxxx required by the BIP were exhausted. [x--- paragraph redacted---

With respect to the teachers' implementation of the plan element requiring the xxxxxxxxxxx xx xxxxxxxxxxx xxxxx before referring the Student to the SRC, the Student's teachers generally maintained to OCR that they xxxxxxx xxx xxxxx xxxxx set forth in the BIP, but that they were not required to document the steps taken on the SRC referral form. One teacher, however, told OCR that there may have been instances when he did not provide the Student with specific xxxxxxx xxxxx indicating which xxxxxxxxxxxxxxx xxxxx

was being xxxxxxxxxx, but maintained that he xxxxxxxxxx xxx xxxx xxxxxx. The assistant principal at the School told OCR that he did not recall whether all of the Student’s teachers were xxxxxxxxxx xxx xxxxxx, but he had conversations with the Student’s teachers and knew that at least some of the teachers were xxxxxxxxxx xxxx xx xxx xxxxxxx.

The assistant principal also told OCR that referrals to the SRC could increase disciplinary penalties for subsequent offenses.

- The District’s use of a xxxxxxx-xx/xxxxx-xxx sheet.

The District provided a sample xxxxxx sheet that showed how the District tracked the Student’s xxxxxx xxxxxx. The District provided information, including emails from the School’s counselor to the Student’s athletic coaches in September xxxxxx confirmed that staff were attempting to track the Student’s xxxxxx xxxxxxxxxxxxxxx. However, the District also provided information that the Student was resistant to the use of this particular intervention and would report that he did not have the xxxxxx sheet when asked for it by his teachers. All of the District witnesses reported that they completed the xxxxxx sheet for the Student when he presented it to them, which they all believed was the Student’s responsibility. As noted above, this element was not subsequently included in the Student’s February xxxxxx Section 504 plan.

- **Applicable Regulatory Standards**

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires a recipient school district to provide a free appropriate public education (FAPE) to each qualified student with a disability within the district’s jurisdiction. For the purposes of this requirement, an appropriate education 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 students without disabilities are met and that are based upon adherence to procedures that satisfy the setting, evaluation, placement, and procedural safeguards requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. If the placement, aids, and services identified by a school district as necessary to meet a student's individual needs were not provided, OCR determines the district’s reason for failing to do so and whether the failure to provide the services for the student resulted in a denial of a FAPE.

- **Analysis and Conclusions**

Here, the evidence is insufficient to conclude that the District failed to implement the Student’s Section 504 plans with respect to providing him with xxxxxx xxxxxxxxxx xxx xxxxxx xxxxxxxxxxxxxx to help with the Student’s xxxxxxxxxxxxxxxxxx xxxxxx; xxxxxxxxxxxxxx the Student to submit his xxxxxxxxxxxxxx; and use of the xxxxxx sheet.

With respect to providing the Student with xxxxxx xxxxxxxxxx and other xxxxxxxxxxxxxxxxxx strategies, OCR did not obtain any evidence to indicate that xxxxxx xxxxxxxxxx was a specific requirement of the Student’s Section 504 plans. Additionally, each of the Student’s

teachers identified specific tips and strategies that they provided pursuant to the Section 504 plan, and OCR did not obtain any other evidence to contradict the information offered by the Student’s teachers. Accordingly, OCR has determined that the evidence is insufficient to conclude that District failed to implement this plan element.

OCR also finds that the evidence is insufficient to conclude that District staff failed to xxxxxx the Student to turn in his xxxxxxxx or that they failed to use the xxxxx sheet. District staff all reported to OCR that they complied with these provisions of the Student’s Section 504 plan, and OCR did not obtain any evidence that contradicted the District’s position. With respect to the use of the xxxxx sheet, the evidence also shows that the Student failed to utilize this intervention by not presenting xxx xxxx to his teachers, and OCR notes that this specific provision was removed from the Student’s February xxxx Section 504 plan.

OCR finds, however, that the evidence is sufficient to conclude that the District failed to implement the Student’s Section 504 plan with respect to the xxxxxx xxxxxxxxxxxxxx xxxx, resulting in a denial of a FAPE to the Student. As noted above, one teacher acknowledged that he did not always provide the xxxxx required by the Student’s plan. Furthermore, the table summarizing the Student’s SRC referral forms shows that teachers did not document xxxxxxxxxxx of all of the xxxxxxxxxxx xxxxx required by the plan. Though some teachers stated that they did not believe it was required to document the xxxxxxxxxxx xxxx they had already tried before referral, the SRC referral form specifically solicits that information, and the use of those forms serves as a basis for student discipline, and removal from the general education classroom. As will be discussed in greater detail below, the Student was subjected to a series of out-of-school suspensions. Accordingly, based on the above, OCR concludes that the District failed to implement the Student’s xxxxxx xxxxxxxxxxxxxx xxxxx, which resulted in a denial of FAPE, in violation of Section 504, as alleged.

Alleged Failure to Conduct a Manifestation Determination Review

- **Summary of OCR’s Investigation**

The Student’s parent alleged that the Student had received a series of suspensions during the 2014-2015 school year that exceeded ten days in aggregate without receiving a manifestation determination before the eleventh day of suspension was imposed.

The District provided a “Discipline Tracking Record” that shows that the Student had accumulated ten days of out-of-school suspension by xxxxxxx xx xxxx. The behaviors for which the Student had been disciplined included, disruption, throwing things in class, property damage, and the use of inappropriate language. The Student accumulated xxx more days of suspension for a xxxxxx x xxxxx, offense (xxxxxxxxxxxxxxxx/xxxxxxxx/xxxxxxxx), and accumulated additional suspensions for conduct occurring on xxxxxxxx x xxxxx (xxxxxxxx/xxxxxxxx xxxxxxxx), xxxxxxx xx xxxx (xxxxxxxx xxxxxx), and xxxxxxx xx xxxx (xxxxxxxx).

The District also provided documentation, and District witnesses confirmed that a manifestation determination was conducted on xxxxxxxx xx xxxx, and was that the xxxxxxxx xx meeting was the only manifestation determination conducted for the Student during the 2014-2015 school year.

- **Applicable Regulatory Standards**

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a recipient, before taking any action with respect to the initial placement of a student with a disability in a regular or special education program or any subsequent significant change in placement to evaluate that student. Under Section 504, when a student with a disability is suspended or expelled for more than ten consecutive school days, the exclusion constitutes a significant change in placement. Additionally, a series of suspensions that are each ten days or fewer in duration but which total more than ten days may create a pattern of exclusion that constitutes a significant change in placement. The determination of whether a series of suspensions creates a pattern of exclusion is made on a case-by-case basis based on a number of factors, including the length of each suspension, the proximity of each suspension to one another, and the total time the student is excluded from educational services.

In the disciplinary context, the evaluation that must take place prior to a significant change in placement is commonly referred to as a “manifestation determination,” i.e., a determination made by a group of persons knowledgeable about the student and the evaluation data of whether the misconduct is related to the student's disability. If it is determined that the student’s misconduct was caused by the student’s disability, the evaluation team must continue the evaluation to determine whether the child’s current educational placement is appropriate. If it is determined that the misconduct was not caused by the student’s disability, the student may be excluded from school in the same manner as similarly situated students without disabilities are excluded.

Under Section 504, when there is no significant change in placement, a recipient is not required to determine whether the student’s behavior is a manifestation of his disability and may discipline the student in the same manner as it would discipline a student without a disability.

- **Analysis and Conclusion**

Here, it is undisputed that the District imposed a series of suspensions on the Student, which totaled more than 10 days. The suspensions were imposed over the course of xxxx months from xxxxxxxxxxxx xxxx to xxxxxxxx xxxxxx. It is also undisputed that the District failed to conduct a manifestation determination before imposing more than ten days of out-of-school suspension to determine whether the Student’s misconduct was related to his disability. Accordingly, OCR finds that the evidence is sufficient to conclude that the District violated Section 504 when it failed to hold a manifestation determination prior to imposing a tenth day of suspension or the series of other suspensions occurring from xxxxxxxxxxxx xxxx xx xxxxxxxx xxxx.

Additional Issues Raised During OCR’s Investigation

During the course of OCR’s investigation, OCR reviewed the District’s Section 504 policy, which contained a section pertaining to complaint and grievance procedures. The policy states that the grievance process “starts with a meeting at the building level” and that “[i]f the issue does not reach satisfactory resolution, [a] parent should file a written grievance with the District 504 coordinator.” The Coordinator issues written findings, and if the parent is not satisfied, the parent can request “an impartial due process hearing” resulting in written recommendations from an impartial hearing officer. If the “due processing hearing does not resolve the issue, the parent may file a complaint with the OCR.” OCR also noted that the contact information for the District’s Section 504 coordinator is missing from the policy in several places.

This information raises the issue of whether the District has adopted grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 and Title II regulations, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.7(b) and the Title II implementing regulation at 28 C.F.R. § 35.107(b). The Section 504 implementing regulation at 35 C.F.R. § 104.7(b) states that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II regulation at 28 C.F.R. § 35.107(b) provides that a public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by Title II.

When evaluating a recipient’s grievance procedures under Section 504 and Title II, OCR considers a number of factors to determine if the grievance procedures meet regulatory requirements, including whether the procedures provide for:

1. Notice of the procedures, including where complaints may be filed.
2. Application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties.
3. Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence.
4. Designated and reasonably prompt timeframes for the major stages of the complaint process.
5. Notice to the parties of the outcome of the complaint.

6. An assurance that the school will take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate.

The Section 504 implementing regulation, at 35 U.S.C. § 104.8(a), also requires a recipient to provide a notification that identifies a responsible employee designated to coordinate the recipient's efforts to comply with Section 504.

OCR noted compliance concerns during its review of the District's Section 504 grievance procedure. Specifically, the grievance procedure appears to only apply to students; it does not indicate that it applies to complaints alleging discrimination carried out by teachers, other students, and/or third parties; it does not provide for the adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses; does not set forth designated and reasonable prompt timeframes for the major stages of the investigation; does not provide for notice to all of the parties of the outcome of the investigation; confuses the impartial due process hearing for the identification, evaluation, and placement of students with the grievance procedure; requires complainants to exhaust an internal process before having the opportunity to file a complaint with OCR; and fails to conclude the actual contact information for the District's designated Section 504 coordinator.

Based on the above, OCR has determined that the District has failed to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 and Title II regulations.

Resolution and Conclusion

On June 11, 2015, the District provided OCR with the enclosed signed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. In summary, the resolution agreement requires the District to convene the Student's Section 504 team to determine (1) whether his xxxxxxxx xxxx, xxxxxxxx, xxx xxxxxx xxxx conduct was a manifestation of his disability; and, if so (2) determine what compensatory education is necessary for the Student in light of his absences; and (3) determine what compensatory education is necessary for the Student in light of the District's failure to implement the Student's Section 504 plan with respect to the xxxxxx xxxxxxxxxxxxxxxx xxxxxx. The agreement also requires the District to revise its Section 504 grievance procedure and, once approved by OCR, adopt and publish the revised procedure, and train District staff on it.

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 another complaint alleging such treatment.

The complainant may file a private suit in federal court, whether or not OCR finds a violation.

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.

If you have questions regarding this letter, please contact me at (xxx) xxx-xxxxx

The OCR contact person for the monitoring of the agreement is xx. xxxxxxx xxxxxxx, who may be reached at (xxx) xxx-xxxx or by e-mail at xxxxxx.xxxxx@ed.gov. We look forward to receiving the District's first monitoring report, which should be directed to xx xxxxxxx.

Sincerely,

/s/

Lisa M. Lane
Supervisory Attorney/Team Leader

Enclosure