



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

June 4, 2015

Robert Lusk, Esq.  
Lusk & Albertson PLC  
40950 Woodward Avenue, Suite 350  
Bloomfield Hills, Michigan 48304-5129

Re: OCR Docket #15-15-1095

Dear Mr. Lusk:

This is to notify you of the disposition of the above-referenced complaint against Walled Lake Consolidated Schools (the District), which was filed on December 22, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR). The complaint alleged that the District discriminated against a student (Student) on the basis of disability. Specifically, the complaint alleged that the District failed to implement the Student's Individualized Education Program (IEP) by failing to XXXXX XXX XXXXXXX XXXXXXXXXXXX XXXXXX and record them in a log, and by failing to XXXXXXXXXXX XXXXXXX XX XXX XXXX XXX XXXXXXX XXXXXXXXXXXX XXXXXXX XXXXX XXXX XXXX.

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 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR also is 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 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 District is subject to these laws; thus, OCR had jurisdiction to investigate this complaint.

Because the regulation implementing Title II provides no greater protection than the Section 504 implementing regulation with respect to this case, OCR applied Section 504 standards. Based on the complaint allegations, OCR investigated the legal issue of whether the District failed to provide a free appropriate public education (FAPE) to a

qualified student with a disability, including the provision of related aids and services designed to meet his individual needs, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation, OCR interviewed the Complainant and District staff, and reviewed documentation submitted by the Complainant and the District. Prior to the completion of OCR's investigation, the District requested to voluntarily resolve the matter pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*, and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the issue raised in this complaint. We set forth below the applicable regulatory requirements, a summary of OCR's investigation to date, and a summary of the resolution.

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

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a 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 regarding educational setting, evaluation, placement, and procedural safeguards. Implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the FAPE standard.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a team determined were necessary to provide the student with FAPE. OCR then determines whether the district provided the student the agreed-upon services and, if not, whether this resulted in a denial of FAPE.

### **Summary of OCR's Investigation**

XXX-paragraph deleted-XXX

XXX-paragraph deleted-XXX

XXX-paragraph deleted-XXX

### **Voluntary Resolution Prior to Conclusion of OCR's Investigation**

As noted above, prior to the completion of this complaint investigation, the District expressed interest in resolving this complaint under Section 302 of the 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 allegation(s). 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 allegation(s) or the information obtained during the investigation and consistent with applicable regulations.

On June 1, 2015, the District signed the enclosed Agreement, which, when fully implemented, will resolve the complaint. The Agreement requires the District to maintain accurate and appropriate logs for the Student during the 2015-2016 school year, recording the Student's XXXXXX XXXXXXXXXXXX XXXXXX on a daily basis when the Student is attending school. The Student's XXXXXX XXXXXXXXXXXX XXXXXX XXXX XX XXXXXXXX XX XXX XXXXXXXXXXXX XXXXXXXXXXXX set forth in in his XXX XX, XXXX IEP, which was agreed to by the Student's parents and the District. The District will record the Student's XXXXXXXXXXXX in the log on the days XX XXXX XXX XXXXXXX XXXXXXX. The District will provide OCR with copies of the Student's XXXXXXX XXXXXXXXXXXX XXXX from the beginning of the XXXXXXXXXXXX school year through December 1, 2015.

In light of the signed Agreement, OCR finds that this allegation 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 allegation.

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 individual may file another complaint alleging such treatment.

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.

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.

We appreciate the cooperation of the District during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact me at (216) 522-7634.

We look forward to receiving the District's monitoring report by December 18, 2015. The report should be directed to Allison Beach's attention at [Allison.Beach@ed.gov](mailto:Allison.Beach@ed.gov).

Sincerely,

/s/

Donald S. Yarab  
Supervising Attorney/Team Leader

Enclosure