



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Timothy J. Mullins, Esq.
Giarmarco, Mullins & Horton, P.C.
Tenth Floor Columbia Center
101 West Big Beaver Road
Troy, Michigan 48084-5280

Re: OCR Docket No. 15-15-1217

Dear Mr. Mullins:

This letter is to inform you of the disposition of the above-referenced complaint filed against Mason Public Schools (the District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on March 30, 2015, which alleged that the District discriminated against a student (the Student) based on XXX disability and race. Specifically, the complaint alleged that the following occurred during the 2014-2015 school year:

1. The District discriminated against the Student based on disability by failing to appropriately implement provisions in XXX Individualized Education Program (IEP), specifically the provisions related to (i) XXX one-on-one aide; (ii) speech therapy; and (iii) the provision of food and medication.
2. The District discriminated against the Student based on race (African American) by not implementing services in XXX IEP, as outlined in allegation #1.

OCR is responsible for enforcing 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 by recipients of Federal financial assistance, 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. OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department and as a public school system, the 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) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33; and
- whether the District, on the basis of race, denied a student any service or benefit provided under the program; provided services or benefits that were different from or provided in a different manner from services or benefits provided to other students; restricted the student in the enjoyment of any privilege or advantage enjoyed by others; and/or treated the student differently from others in determining whether she satisfied any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3(b)(1)(i), (ii), (iv), and/or (v).

Summary of OCR's Investigation

To date, OCR has investigated this complaint by interviewing the Student's parent (the parent), reviewing documents and written information provided by the parent, and reviewing some documentation produced by the District. Before OCR completed its investigation, the District expressed an interest in voluntarily resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) and OCR determined that it is appropriate to resolve this complaint with an agreement. Accordingly, OCR is not making a finding with regard to the District's compliance with Section 504, Title II, or Title VI in this letter.

- **Background Information**

During the 2014-2015 school year, the Student was in the XXX grade at the District. The District had identified the Student as a student with a disability under the category XXXXXXXX XXXXX XXXX, and the Student was on an IEP. The parent stated to OCR that the Student has XXXXXXXX, which is a XXXXX condition that causes several life-threatening medical problems.

The parent withdrew the Student from the school in XXXXXXXX 2015. According to the District, the Student is not enrolled in the District for the 2015-2016 school year.

- **Implementation of the Student's IEP**

The parent alleged that the District was not implementing provisions in the Student's IEP, specifically the provisions related to (i) XXX one-on-one aide; (ii) speech therapy; and (iii) the provision of food and medication. With respect to a one-on-one aide, the parent told OCR that, on three occasions during the 2014-2015 school year, XXX visited the Student's class and during those visits there were times when the Student was left alone at the table while District staff was attending to other students. The parent told OCR that it was XXX understanding that an aide was to be with the Student at all times.

With respect to the Student's speech therapy services, the parent said, per the IEP, the Student was supposed to receive XXXXXX speech therapy sessions XXX XXXXX XXX XXXX XXX XXXXXX XXXXXXXX. XXX said, per the IEP, District staff was supposed to X--- partial paragraph redacted---X.

Concerning the Student's food and medication, the parent said, per the IEP, the Student was supposed to have X--- partial paragraph redacted---X.

The District provided OCR with a copy of the Student's IEP, which provided for the following supplementary aids and services: X--- partial paragraph redacted---X.

- **Different Treatment Based on Race**

The parent also alleged that the District discriminated against the Student based on race by not implementing the services in XXX IEP. The parent told OCR, and the District's documentation confirmed, that the Student's class was made up of XX students: one African American student (the Student), XX Hispanic XX,¹ and three XX non-Hispanic students. The parent said XX did not know if the other students in the class were receiving all of the services in their IEPs. X alleged, however, that students of other races were provided with speech therapy during the time periods designated on the Student's calendar as times when X was supposed to be receiving those services.

Applicable Legal Standards and OCR Policy

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 procedural requirements of 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards, including notice.

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.

The Title VI regulation, at 34 C.F.R. § 100.3(a), states that no person shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program operated by a recipient. The Title VI implementing regulation, at 34 C.F.R. § 100.3(b)(1), states specific prohibited discriminatory acts by recipients. It states, in relevant part, that a recipient under any program may not, directly or through contractual or other arrangements, on ground of race, color or national origin:

¹ According to District documentation, XXXX XXXXX XX white/Hispanic.

- (i) deny an individual any service, financial aid, or other benefit provided under the program;
- (ii) provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

* * *

- (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program; or
- (v) treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program.

Conclusion

As noted above, prior to the completion of OCR's investigation, the District expressed interest in resolving the allegations in the complaint pursuant to Section 302 of OCR's CPM, which 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. On March 17, 2016, the District submitted the enclosed signed Agreement to OCR. The provisions of the signed Agreement are aligned with the complaint allegations and the information obtained to date during the investigation and consistent with applicable regulations. When fully implemented, the signed Agreement will resolve the allegations in the complaint.

In light of the signed Agreement, OCR finds that the 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 take appropriate action to ensure the District's compliance with the Section 504 and Title VI regulations.

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.

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

We look forward to receiving the District's first monitoring report by April 15, 2016. For questions about implementation of the Agreement, please contact Erin Barker-Brown, who will be monitoring the District's implementation, by e-mail at Erin.Barker-Brown@ed.gov or by telephone at (216) 522-4978. For questions about this letter, please contact me at (216) 522-7640.

Sincerely,

/s/

Sacara M. Martin
Supervisory Attorney/Team Leader

Enclosure