

David A. Comsa, JD
Deputy Superintendent HR/General Counsel
Ann Arbor Public Schools
2555 South State Street
Ann Arbor, Michigan 48104

Re: OCR Docket #15-13-1280

Dear Mr. Comsa:

On May 20, 2013, the U.S. Department of Education's Office for Civil Rights (OCR) received the above-referenced complaint filed against Ann Arbor Public Schools (the District), alleging that the District discriminated against a student (the Student) on the basis of disability and also discriminates against other students with disabilities. Specifically, the complaint alleged that:

1. under District policies, even if a student with a disability is selected for admission at the District's Community High School (CHS) through the lottery, and is recommended for placement at CHS by his or her Individualized Education Program (IEP) team, he or she may enroll only if CHS offers the disability-related services the student's IEP team recommends; and
2. in xxxx xxxxx the District prohibited members of the Student's IEP team from recommending CHS as a placement option for xxxx

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. In addition, OCR 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 at 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 institution, the District is subject to Section 504 and Title II.

The Complainant provided OCR with documentation related to enrollment at CHS that provided, in part, "Students with special needs may enroll at [CHS] only if the recommendations of the IEPC can be accommodated within our program." The Complainant also informed OCR that certain members of the Student's IEP team were not permitted to provide input regarding the Student's placement for the xxxxxxxx school year.

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. In addition, Section 504 requires that placement decisions be made by a group of persons knowledgeable about the student, the meaning of evaluation data, and the placement options.

In an effort to promptly resolve this complaint, the District submitted an agreement to OCR, dated December 2, 2013. The agreement provides that by February 3, 2014, the District will modify all letters, informational materials, the District's Web site, and other information provided to parents about the District's lottery for admission to CHS to eliminate any statements advising or suggesting that special education services are not available at CHS or similar statements that might discourage students with disabilities from applying for enrollment at CHS. The agreement further provides that by February 3, the District will develop and submit to OCR for review written procedures for assigning students with disabilities to CHS that will ensure that students with disabilities whose lottery numbers entitle them to placement at CHS will have equal access to the specialized and unique programs and curricula available there. The agreement states that within 30 days of OCR's notification to the District that its procedures have been appropriately modified, the District will provide written notification to parents of students with disabilities that, effective the 2013-2014 school year, the attendance of students with disabilities at CHS through the lottery will be governed by these procedures and where copies of the procedures can be obtained. In addition, the agreement requires the District to ensure that written information provided to parents with CHS applications and on the District's web page is consistent with the District's new procedures.

The agreement also provides that by xxxxxxxx xx xxxxx the District will notify the Student's parent via letter that, should xxx wish to xxxxxxxx the Student in the District, the District will reconvene the Student's IEP team and ensure that each member of the IEP team is provided with an opportunity to provide meaningful input on any decisions regarding the Student's placement.

The agreement, once implemented, will resolve the concerns OCR identified regarding this complaint. The provisions of the agreement are aligned with the issues raised in the complaint and are consistent with the applicable regulations. OCR will monitor implementation of the agreement.

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 Complainant may file another complaint alleging such treatment. The Complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

OCR will monitor the District's implementation of the attached agreement. The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further the District understands that during the monitoring of this Agreement, OCR may visit the District, interview staff and students and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. Part 104, and Title II at 28 C.F.R. Part 35 which were at issue in this complaint.

The District further understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. Part 104, and Title II at 28 C.F.R. Part 35.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Thank you for your and the District's cooperation during the investigation of this complaint. Mr. xxxxxx xxxxxx will be coordinating OCR's monitoring of the agreement. Mr. xxxxxx can be contacted at (216) 522-xxxx or xxxxxxxxxxxxxx@ed.gov. Should you have any questions about this letter, please contact me, at (216) 522-xxxx or by e-mail at xxxxxxxxxxxxxx@ed.gov.

Sincerely,

/s/

Brenda Redmond
Acting Team Leader

Enclosure