



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Jennifer K. Johnston, Esq.
Thrun Law Firm, P.C.
P.O. Box 2575
East Lansing, Michigan 48826

Re: OCR Docket #15-13-1328

Dear Ms. Johnston:

This is to notify you of the disposition of the above-referenced complaint that was filed on July 3, 2013, with the U.S. Department of Education's Office for Civil Rights (OCR), against the Battle Creek Public Schools (the District). The complaint alleged that the District discriminated against a student (the Student) on the basis of disability (multiple disabilities). Specifically, the complaint alleged that since January 2013, the District has failed to identify and evaluate the Student as an individual with disability, has disciplined the Student repeatedly, and ultimately expelled the Student for behaviors that are related to the Student's 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 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from 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 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.

Based on the allegations, OCR commenced an investigation to determine whether the District failed to properly identify a student with a disability and provide the student with appropriate disability-related services in violation of the regulation implementing Section 504 at 34 C.F.R. §§ 104.32, 104.33, and 104.35.

In its investigation to date, OCR interviewed the Complainant, spoke to District's legal counsel, and reviewed documentation submitted by the Complainant and the District, including the District's newly-revised Section 504 policies.

The Complainant told OCR that the Student is a qualified individual with a disability with multiple diagnoses. Before moving into the District at the beginning of the XXXX-XXXX school year, the Student was attending school outside Michigan and was receiving special education under an Individualized Education Program (IEP).

Upon moving into the District, the Student received special education services until XXXXXXXX XXXX, when the District convened an IEP team and determined that the Student was ineligible for special education. After that, the Student remained at the District in a co-taught special education class, but did not receive services.

In XXXXXXXX XXXX, the Complainant was told that the District would develop a Section 504 plan for the Student. From winter break XXXX XXXXX XXXXXXXX XXXX, the Complainant requested a meeting for the Student to develop a Section 504 plan, but the District never set one up. On XXXXXXXX XX, XXXX, the Student was suspended from school for assaulting a teacher and other misconduct. The Complainant contacted the District again and a Section 504 meeting was scheduled for XXXXXXXX XX, XXXX. On XXXXXXXX XX, XXXX, the Complainant received an email from the District stating that all members were not available to meet on XXXXXXXX XX. On XXXXXXXX XX, XXXX, the Student was permanently expelled for assaulting a District staff member, and the District did not attempt to reschedule the Section 504 meeting after that.

The Complainant filed a due process complaint against the District on XXX X, XXXX. After a hearing, the administrative law judge (ALJ) concluded in a written opinion dated XXXXXXXX XX, XXXX, that the Complainant did not establish that the Student was eligible for special education, but found that there was a need for additional information. The ALJ ordered that the Student be further evaluated and that the IEP team be reconvened.

The Student's IEP team met in XXXX XXXX, and again found the Student to be ineligible for special education. According to counsel for the District, the IEP team also met another time with the same result. Counsel told OCR that the Student has returned to the District and, as of XXXXX X, XXXX, the parents and the District had been attempting to schedule a Section 504 meeting to develop a Section 504 plan for the Student.

The regulation implementing Section 504, at 34 C.F.R. § 104.32, provides that a recipient school district must annually identify and locate qualified individuals with disabilities within its jurisdiction who are not receiving a public education and notify them of the district's obligations under Section 504.

Under the regulation implementing Section 504, at 34 C.F.R. § 104.33, school districts are required to provide a free, appropriate public education (FAPE) to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

The Section 504 regulation states, at 34 C.F.R. § 104.35(a), that a recipient school district shall conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any action regarding the person's initial placement or any subsequent significant change in placement. A series of suspensions may qualify as a significant change in placement, so that a manifestation determination is required. A manifestation determination is a re-evaluation triggered by a disciplinary exclusion of more than 10 days. The student's educational team should re-evaluate the student to determine, using appropriate evaluation procedures that conform to the requirements of the Section 504 regulation, whether the misconduct was caused by the student's disability. If the team determines that the student's misconduct is a manifestation of the student's disabling condition, the group must continue the evaluation, following the requirements of 34 C.F.R. § 104.35 regarding evaluation and placement, to determine whether the student's educational placement is appropriate and what, if any, modifications to that placement are necessary. If, on the other hand, the group determines that the conduct is not a manifestation of the student's disability, the student may be excluded from school in the same manner as similarly situated students without disabilities are excluded. The manifestation determination should be made as soon as possible after the disciplinary action is administered and, in any event, before the eleventh day of the suspension or removal.

Voluntary Resolution

Before the conclusion of OCR's investigation, the District expressed interest in voluntarily resolving this complaint allegation pursuant to Section 302 of OCR's Case Processing Manual (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 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.

Under the terms of the voluntary agreement signed by the District (the Agreement), the District will reconvene the Section 504 or IEP team (Team), including the Student's parents, for the Student to determine whether, beginning on XXXXXXXX X, XXXX, the Student had a mental or physical impairment that substantially limited one or more major life activities, and whether, as a result of such mental or physical impairment, the Student was entitled to receive FAPE under Section 504. If the Team determines 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 for the time period from XXXXXXXX X, XXXX, to the present, when the District failed to evaluate the Student to determine whether he was a qualified individual with a disability under Section 504 and failed to provide him with FAPE. Additionally, should the team determine that the Student would have been eligible for services under Section 504, the Team will conduct a manifestation determination to determine whether the Student's conduct that resulted in the Student's suspension(s) and expulsion after XXXXXXXX X, XXXX, were the result of behavior related to the Student's disability and, if so, determine what compensatory education or other remedial services the Student requires as a result of the suspension(s) and expulsion. The Team will then develop a written plan that will become part of the Student's Section 504 plan (or IEP) for providing the Student with the compensatory education or other remedial services deemed necessary. The plan will also identify the nature and amount of the services to be provided at no cost to the Student's parent(s), by whom, and when.

The District has also agreed to expunge from the Student's disciplinary records any suspensions or expulsions for conduct determined to be a manifestation of the Student's disability.

Moreover, the District agreed to provide notice of its newly-adopted Section 504 policies and procedures and where they are located, publish the new policies and procedures, and provide training to all of its administrators and other District staff who have responsibilities for implementing portions of students' Section 504 plans or a role in the identification, evaluation, and placement of students that have or are suspected of having a disability under Section 504.

In light of the signed Agreement, 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.

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. A complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate the cooperation of the District during the preliminary 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 XXXXXXXX.XXXXXXX@ed.gov or at (216) 522-XXXX, or XXXXXXX X. XXXXXXX at XXXXXXXX.XXXXXXX@ed.gov or at (216) 522-XXXX.

Page 5 – Jennifer K. Johnston, Esq.

We look forward to receiving the District's first monitoring report by April 25, 2014. The report should be directed to Mr. XXXXXX's attention.

Sincerely,

XXXXXX XXXXXX

Acting Supervising Attorney/Team Leader

Enclosure