



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

February 28, 2014

Sherry D. O. Tayler, Esq.
Dickinson Wright PLLC
500 Woodward Avenue
Suite 4000
Detroit, Michigan 48226

Re: OCR Docket #15-13-1340

Dear Ms. Taylor:

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 on July 19, 2013, against the Redford Union School District (the District), on July 19, 2013. The complaint alleged that the District discriminated against a student (the Student) on the basis of his disability. Specifically, the complaint alleged that the District failed to respond appropriately when the Student's parent complained to the District that the Student had marks and bruises on him after riding the bus.

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, and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education and by public entities, respectively. As a recipient of such financial assistance and as a public school system, the District is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

Because Title II confers no greater rights than Title II in this instance, OCR applied Section 504 standards during its investigation. During the investigation, OCR obtained and reviewed documentation submitted by the District and the Student's parents and interviewed the Student's parent, the District's director of student services, and an employee of the private company that provides transportation services to the District through a contractual relationship.

Prior to OCR completing its investigation and reaching any findings, the District agreed to voluntarily resolve the complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM) by signing the enclosed resolution agreement. 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.

Summary of OCR’s Investigation to Date

[XXX-Paragraph deleted-XXX]

[XXX- Paragraph deleted-XXX]

[XXX- Paragraph deleted-XXX]

OCR interviewed the District’s director of student services (Director), who oversees the provision of special education and/or related services to students with disabilities in the District. The Director told OCR that a private company (contractor) provides transportation services for students in the District and that the supervisor was an employee of the contractor, not of the District.

[XXX- Paragraph deleted-XXX]

[XXX- Paragraph deleted-XXX]

The District provided OCR with a copy of the contractual agreement that governs the contractor’s provision of transportation services to District students. The contract provides that the contractor shall provide all transportation services for all District students, including special needs students. The contractor is responsible for hiring, screening, testing, and training of bus personnel, including bus aides who are required, based on the individual needs of students or particular students’ IEPs, to provide services to students. The contract provides that the District retains the right to review and monitor the delivery of transportation services for special education students to insure compliance with applicable legal requirements and the District’s special education plan.

[XXX- Paragraph deleted-XXX]

During the course of the investigation, OCR examined the District’s grievance procedure for Section 504. The procedure, which identifies the Director of Student Services as the Section 504 Coordinator who receives and investigates complaints, requires complaints to be made informally and on a verbal basis prior to submitting a formal grievance. The procedure states that the Coordinator will further investigate and reply in writing to the complainant within five business days. However, the procedure does not set forth the major stages of the initial formal investigation that is to be conducted, nor does it provide an assurance that the investigation will be adequate, reliable, and impartial. The procedure states that the final District decision may be appealed to OCR and that inquiries about the procedure should be directed to OCR’s headquarters. The Director stated that she found the grievance procedure in the Board policy book in the main office but that, to her knowledge, it is not posted or disseminated anywhere else.

Applicable Regulatory and Policy Standards

A recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education (FAPE) to each qualified person with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. 34 C.F.R. 104.33(a). An appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met. 34 C.F.R. 104.33(b). A recipient may place a person with a disability or refer such a person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of 34 C.F.R. § 104.33. However, the recipient remains responsible for ensuring that the appropriate education requirements of the Section 504 regulation are met with respect to any person with a disability so placed or referred. 34 C.F.R. § 104.33(b)(3). If a recipient places a person with a disability in a program it does not operate as a means of complying with these requirements, the recipient must ensure that adequate transportation to and from the program is provided at no greater cost that would be incurred by the person or his or her parents or guardians that if the person were placed in a program the recipient operates. 34 C.F.R. § 104.33(c)(2).

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b), also provides that a recipient school district, in providing any aid, benefit, or service, may not, directly or through contractual or other arrangements, on the basis of disability deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford the person an opportunity to participate in or benefit from the aid, benefit, or service that was not equal to that provided to others; provide different aid, benefits, or services to a person with a disability unless such action is necessary to provide the person with aids, benefits, or services as effective as those

provided to others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Disability harassment can constitute a form of discrimination through different treatment under Section 504. Disability harassment is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying the student's participation in or receipt of benefits, services, or opportunities in the institution's program. When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student's rights under Section 504. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student's ability to participate in or benefit from the educational program. When disability harassment limits or denies a student's ability to participate in or benefit from an educational institution's programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires a recipient 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 Section 504. The Title II regulation contains a similar provision at 28 C.F.R. § 35.107(b). OCR considers a number of factors in evaluating whether grievance procedures meet these 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; and
6. an assurance that the school will take steps to prevent recurrence of any harassment/discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

Grievance procedures may include informal mechanisms for resolving complaints to be used if the parties agree to do so. OCR has frequently advised recipients, however, that it is not appropriate for a student who is complaining of discrimination to be required to work out the problem directly with the individual alleged to be discriminating against him or her. In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Although not required under Section 504, many institutions provide an opportunity to appeal the findings or remedies in a grievance. In such cases, OCR evaluates the grievance process, inclusive of the appeal level, to determine whether, as a whole, the process is both prompt and equitable. A grievance process should not specify that a student work through the process and only file a complaint with OCR afterwards, as a complainant is free to file a complaint with OCR at any time. Finally, OCR recommends, and

many institutions include, a provision advising that retaliation against any individual who files a complaint or participates in the grievance process is prohibited.

Voluntary Resolution

On January 26, 2014, the District entered into the enclosed resolution agreement (the Agreement), which, once fully implemented, will resolve the complaint. Should the District fail to fully implement the Agreement, OCR will reopen its investigation of the complaint and take appropriate action to ensure the District's compliance with Section 504 and Title II.

The Agreement requires the District to revise its Section 504 grievance procedure to: 1) clarify that it applies to complaints alleging discrimination carried out by employees, other students, or third parties; 2) provide notice and contact information for how to file a complaint; 3) state that the informal opportunity to resolve complaints is voluntary; 4) include designated and reasonably prompt timeframes for major stages of the complaint process; 5) ensure the adequate and impartial investigation of complaints; and 6) provide assurance that the District will take steps to prevent recurrence of harassment and correct the discriminatory effects.

In addition, the Agreement requires the District to develop a reporting procedure to ensure that the private transportation contractor will communicate all complaints regarding transportation services, within a reasonable timeframe, to appropriate District staff members for review, investigation, and appropriate response. The Agreement further requires the District to: 1) adopt and implement the revised grievance procedure and provide notice to employees, students, and parents; 2) adopt and implement the new reporting procedure and provide a copy to relevant staff and contractors; and 3) provide training to relevant District and non-District staff members who are responsible under the reporting procedure for receiving, communicating, or investigating complaints concerning transportation services to District students with disabilities.

Finally, the Agreement requires the District to review and maintain documentation for all complaints regarding transportation of District students with disabilities received by the District or the private transportation provider for the XXXX-XXXX school year and to evaluate the climate in which such transportation services are being provided.

Based on the above, OCR is closing this investigation effective the date of this letter. This concludes OCR's investigation of this matter. We will monitor the implementation of the Agreement. If the District does not fully implement the Agreement, OCR will reopen the investigation and take appropriate action to ensure the District's compliance with Section 504 and Title II.

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, a complainant may file another complaint alleging such treatment. A complainant may file a private suit in federal court whether or not OCR finds a violation.

The OCR contact person for the monitoring of the Agreement is Mr. Carl Miller, who can be reached at (216) 522-7624 or at Carl.Miller@ed.gov. We look forward to receiving the District's

first monitoring report by March 31, 2014. If you have questions or concerns about this letter, you should contact Ms. Julianne Gran by telephone at 216-522-2684 or at Julianne.Gran@ed.gov.

Sincerely,

/s/

Karla K. Ussery
Senior Attorney

Enclosure