



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

February 24, 2014

Xx xxxxxx xxxxxxxx
Superintendent
Youngstown City School District
20 West Wood Street
Youngstown, Ohio 44503

Re: OCR Docket #15-13-1360

Dear xx xxxxxxxx:

This is to notify you of the disposition of the above-referenced complaint, which was filed on xxxxxxxx xx xxxx, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against the Youngstown City School District (the District). The complaint alleged discrimination on the basis of disability, specifically, that the District failed to conduct a timely and appropriate evaluation of a student with a disability, taking into consideration information about xxxxxxxx xxxxxxxxxxxx xxxxxxxx and xxxxxxxx xxxxxxxx, and that the District failed to conduct a manifestation determination when the student was xxxxxxxx in xxx xxxx.

Based on the allegations, OCR commenced an investigation to examine the legal issues of whether the District conducted a timely and appropriate evaluation of a student with suspected disabilities in conformity with the requirements of the Section 504 implementing regulation at 34 C.F.R. §§ 104.35(a) and (c) and whether the District failed to conduct a reevaluation of a student prior to suspending her in a manner that constituted a significant change in placement in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35(a).

In its investigation to date, OCR interviewed the Complainant, the District's Special Education Director, and the District's legal counsel, and reviewed documentation submitted by the District. OCR also reviewed the report of an independent hearing officer (IHO report) issued xxxxxxxx xx xxxx, following Complainant's request for a due process hearing filed in xxxxx xxxxx, concerning separate but related issues.

[xxx---paragraph redacted---xxx]

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 school system, the District is subject to these laws.

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. The regulation states, at 34 C.F.R. § 104.35(c), that in interpreting evaluation information and making placement decisions, a recipient shall draw upon a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, establish procedures to ensure that information is documented and carefully considered, and ensure that a placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

A series of suspensions may qualify as a significant change in placement, so that a manifestation determination is required. A manifestation determination is a reevaluation triggered by a disciplinary exclusion of more than 10 days. The student's educational team should reevaluate 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

Prior to the completion of this complaint investigation, the District asked to resolve this complaint under 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 terms of the agreement, the District will reevaluate the Student to determine whether xxxxx has xxxxxxxxxxxx disabilities as defined by Section 504 and Title II, as amended; and, if so, what special education and/or related aids and services the Student needs to receive a FAPE under the School's program. If the IEP Team determines that the Student has xxxxxxxxxxxx

disabilities that would require services in addition to those already provided in the Student's IEP, the District will determine what compensatory services it will provide to ensure that the Student.

The District has also agreed to xxxxxxxx the Student's xxxxxxxxxxxxxx xxxxxxxx for the xxxx-xxxx school year with respect to xx xxxxxx and xxx xx xxxxxx xxxxxxxxxxxxxx. Because the District has agreed to xxxxxxxx the Student's xxxxxxxxxxxxxx xxxxxxxx for the xxxx xxxxx school year, and no additional remedy is available other than compensatory education services which will be determined by the reevaluation described above, OCR will not require the District to conduct a manifestation determination as part of the agreement.

In light of the signed Agreement, OCR finds that this complaint is resolved, and we are closing our 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 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, please contact xx xxxxxxxx xxxxxxxx, at (216) xxx-xxxx or at xxxxx.xxxxxx@[ed.gov](mailto:xxxxx.xxxxxx@ed.gov).

We look forward to receiving the District's first monitoring report by. The report should be directed to xx xxxxxxxx attention.

Sincerely,

/s/

Xxxxx x xxxxxxxxxxx
Team Leader

Enclosure

cc: xxxxxx x xxx xxxxxxxx xxx