



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

March 21, 2014

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XXXXXX XXXXXXXXXXXXXXXXXXXXXXXX
Okemos, Michigan XXXXXX-XXXX

Re: OCR Docket #15-13-1388

Dear xx xxxxxxxx:

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 xxxxxxxxxx xx xxxxx, against Caledonia Community Schools (the District). 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 provide the Student with the xxxxxx xxxxxxxx to allow xxx to xxxxx and xxxxxxxxxx and the computer xxxxxxxxxx, and implemented a Section 504 plan without the parent's input or knowledge or a meeting.

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.

Based on the complaint allegations, OCR opened an investigation into the following legal issues:

- whether the District afforded a qualified student with a disability, on the basis of disability, the opportunity to participate in or benefit from an aid, benefit, or service that was not equal to or as effective as that provided to others in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(b) and the Title II implementing regulation at 28 C.F.R. § 35.130;
- whether the District failed to provide a free appropriate public education (FAPE) to a qualified person with a disability in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33; and

- whether the District failed to take appropriate steps to ensure that communications with participants with disabilities were as effective as communications with others, in violation of the Title II implementing regulation at 28 C.F.R. § 35.160.

Applicable Legal Requirements

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(b)(1)(ii), prohibits a recipient from affording a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit, or service that is not equal to that afforded others. The regulation, at 34 C.F.R. § 104.4(b)(1)(iii), further prohibits a recipient from providing students with disabilities with aids, benefits and services that are not as effective as those provided to students without disabilities. The Title II implementing regulation contains similar requirements at 28 C.F.R. § 35.130(b)(1)(ii-iii).

Aids, benefits, and services, to be equally effective, must afford a person with a disability equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as persons without disabilities, in the most integrated setting appropriate to the person's needs. 34 C.F.R. § 104.4(b)(2). Furthermore, Title II of the ADA requires public entities to take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a).

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).

Finally, a determination of what is necessary to provide a student with a FAPE under Section 504 must be made by a group of people "knowledgeable about the child, the meaning of the evaluation data, and the placement options." 34 C.F.R. § 104.35(c)(3). The Section 504 regulation does not specify which people must attend placement meetings. The child's parents, however, are uniquely knowledgeable about their child's behavior and disability and must be provided a meaningful opportunity to provide input into placement decisions. Parental participation at the placement meeting is a practical and effective method of obtaining the information required by § 104.35(c) but is not required if parental input is obtained by other effective methods.

Summary of OCR Investigation

The complaint was filed on behalf of the Student, who was xxxx xxxx xxxxxx xxx xxxxxxxx xxxxxxxxxxxxxx. In its investigation of this complaint to date, OCR interviewed the Complainant and reviewed documents and information provided by the Complainant and the District.

However, before OCR interviewed District witnesses, the District expressed an interest in resolving the complaint pursuant to Section 302 of OCR’s Case Processing Manual.

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

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

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

OCR reviewed e-mails provided by the Complainant between District personnel and the Complainant during early xxxxxxxxxx xxxx. The e-mails referred to a disagreement between the District and the Complainant about how to amend or revise the Student’s Section 504 plan, and discussion about when to schedule a meeting. Before a 504 meeting was scheduled, however, the director notified the Complainant by e-mail that the District had revised the Section 504 plan based on available xxxxxxxxxxxxxx xxxxxxxx as well as the efficacy of the accommodations provided to date, and that a copy of the plan would be sent to the Complainant.

As stated above, prior to completing the investigation, the District asked to resolve the allegations pursuant to Section 302 of OCR’s Case Processing Manual (CPM).

Voluntary Resolution

Under Section 302 of OCR’s Case Processing Manual (CPM), a complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving 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 are to be consistent with applicable regulations.

On February 27, 2014, the District entered into the enclosed resolution agreement (the Agreement), which requires the District to send a letter to the Complainant stating that, should the Student re-enroll in the District, the District will provide the Student with an effective xxx xxxxxx within one calendar week of his re-enrollment. The District will also offer to convene the Student’s Section 504 team to amend the Student’s Section 504 plan, to evaluate the lost educational benefit due to any denial of an effective xxx xxxxxxxx to the Student, and to develop a written plan to provide the Student with any compensatory education; and will invite the Student’s parents to participate at the Section 504 meeting.

If the Student re-enrolls in the District, the District is required to, within one calendar week, provide the xxx xxxxxxxx to the Student, including both xxxxxxxxxxxxxx and xxxxxxxx xxxxxxxxxxxxxx, and provide written instructions to building personnel on the appropriate use of the xxx xxxxxxxx. The Director of Special Education shall monitor the Student’s use of xxxxxxxx in the classroom and with other school activities.

Whether or not the Student re-enrolls in the District, the Section 504 team is required to evaluate the lost educational benefit due to any denial of an effective xxx xxxxxxxx to the Student during

the xxxx-xxxx and xxxx-xxxx school years and, in the event of any lost educational benefit, develop a written plan to provide the Student with the compensatory education or other remedial services deemed necessary. The plan will identify the nature and amount of the services to be provided at no cost to the Student's parents, by whom, and when, and will become part of the Student's Section 504 plan.

If the Student re-enrolls in the District, the Section 504 team will amend the Student's Section 504 plan to require the District to provide the Student with an effective xxx xxxxxx, including both xxxxxxxxxxx xxx xxxxxxxxxxx xxxxxxxxxxx and/or other types of auxiliary aids and services the team deems necessary to afford the Student an equal opportunity to participate in and benefit from the District's programs and to provide the Student with communication as effective as that provided to others, giving primary consideration to the request of the Student and the Student's parents as required by the Title II implementing regulation at 28 C.F.R. § 35.160.

Finally, the agreement requires the District to promptly provide any compensatory education or other remedial services determined to be necessary to address any lost educational benefit resulting from the failure to provide an effective xxx xxxxx to the Student, at no cost to the Student's parents.

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 xx xxxxxx xxxxxxx, who can be reached at (216) xxx-xxxx, or at xxxxx.xxxxxxx@ed.gov. We look forward to receiving the District's next monitoring report by April 17, 2014. If you have questions or concerns about this letter, you should contact xx xxxxxxxx xxxx by telephone at 216-xxx-xxxxx, or at xxxxxxx.xxxx@ed.gov.

Sincerely,

/s/

Xxxxx x xxxxxxxx
Supervisory Attorney/Team Leader