

Peter W. Ryan  
Attorney  
Ryan Law Offices  
307 East "C" Street  
P.O. Box 638  
Iron Mountain, Michigan 49801

Re: OCR Docket #15-14-1177

Dear Mr. Ryan:

This letter is to notify you of the disposition of the complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against the Rudyard Area Schools (the District). The complaint alleged that the District discriminated against a Student (the Student) on the basis of disability. Specifically, the complaint alleges that during xxxxx, the District failed to implement provisions of the Student's IEP and discriminated against the Student based on xxxxx.

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 based on 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 at 28 C.F.R. Part 35. Title II prohibits discrimination based on disability by public entities. As a recipient of Federal financial assistance from the Department and as public entity, the District is subject to these laws.

Based on the complaint allegations, OCR opened an investigation into the legal issues of: whether the District denied a qualified student with a disability a free appropriate public education (FAPE) and failed to provide her appropriate disability-related services in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.33; and, whether the District excluded a student from participation in, denied a student the benefits of, or otherwise discriminated against a student in any program or activity operated by the District, in violation of 34 C.F.R. § 104.4.

### **Applicable Legal and Policy Standards**

The regulation implementing Section 504 at 34 C.F.R. Sections 104.4(a) and (b)(1)(i)-(iv) provides 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. A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, 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 a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or provide different or separate aid, benefits, or services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide them with aid, benefits, or services that are as effective as those provided to others.

The regulation implementing Title II includes similar provisions at 28 C.F.R. Sections 35.130(a) and (b)(1)(i)-(iv). The standards adopted by Title II were designed not to restrict the rights or remedies available under Section 504. The Title II regulation provisions applicable to the issues raised in the complaint do not provide greater protection than the applicable Section 504 regulation provisions. Therefore, OCR applied the Section 504 standards when analyzing the issues raised herein.

The regulation implementing Section 504 at 34 C.F.R. Section 104.33(a) and (b)(1) requires a recipient to provide each qualified person with a disability in its jurisdiction a free appropriate education (FAPE), regardless of the nature or severity of the person's disability. A FAPE is defined as 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.

### **Summary of OCR's Investigation to Date**

The Student was enrolled in the District's xxxxx school year. The Complainants informed OCR that the Student is an individual with xxxxx and has a 504 plan. The Complainants indicated that during xxxxx the District did not follow the 504 plan with respect to the provisions requiring it to: xxxxx. In addition, the Complainants indicated that the District discriminated against the Student based on xxxxx disability by xxxxx.

On xxxxx, OCR notified the District of the instant complaint and issued a data request to the District on xxxxx. By letter dated xxxxx, the District provided a response to OCR's data request. During discussions with OCR about OCR's processes, the District's xxxxx that the District would like to resolve the complaint and xxxxx with OCR. On xxxxx, the District xxxxx notified OCR that the District's xxxxx. On xxxxx, the District's xxxxx provided OCR documentation indicating that xxxxx. The letter xxxxx.

OCR subsequently contacted xxxxx.

### **Voluntary Resolution Prior to Conclusion of Investigation**

As noted above, before OCR completed its investigation, the District expressed interest in resolving the complaint pursuant to Section 302 of the *Manual*. The *Manual* provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving the complaint. This does not constitute an admission of liability on the part of a recipient such as 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.

The District has signed the enclosed resolution agreement, which, once implemented, will fully address the information obtained during the investigation in accordance with the regulations implementing Section 504 and Title II. The agreement requires the District: to send the parents of the Student a letter notifying the Student's parents that, xxxxx, the District will convene a meeting of the persons knowledgeable about the Student (504 team) in order to amend or revise, as necessary, the Student's Section 504 plan to appropriately reflect the entirety of regular or special education and related aids and services that xxxxx requires to meet xxxxx individual educational needs as adequately as the needs of persons without disabilities are met. Such amendments and or revisions will specifically include any related aids and services provided exclusively or primarily by the school nurse.<sup>1</sup>

In addition, the Agreement requires that if the Student's xxxxx, the District will: within three days xxxxx provide notice to the Student's parents or guardians of a proposed date to reconvene a 504 meeting and an opportunity to participate or otherwise provide meaningful input into the development of a 504 plan for the Student; within seven calendar days of the xxxxx, convene a 504 meeting which will be conducted in accordance with the procedural requirements of Section 504 and which will address the areas of concerns raised in this complaint by the Complainants; and will provide the Student's parents with notice of the determinations made during the 504 meeting, as well as the procedural safeguards afforded them under Section 504, including their right to challenge the District's determinations about the Student's 504 plan through requesting an impartial due process hearing in accordance with the Section 504 implementing regulation at 34 C.F.R. § 104.36.

In light of this agreement, OCR considers the allegations in the complaint to be 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 case and take appropriate action to ensure the District's full compliance with Section 504 and Title II.

### **Conclusion**

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<sup>1</sup> While the District submitted to OCR an executed Resolution Agreement that included this provision, the District also submitted a copy of a letter addressed to the Student's parents dated xxxxx, demonstrating that the District has already completed this requirement of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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.

The complainant may file a private suit in federal court whether or not OCR finds a violation.

We appreciate the cooperation of District's legal counsel during the resolution of this complaint. We look forward to receiving the District's first monitoring report, which is due by xxxxx. Please send any electronic monitoring correspondence to [OCRCleMonitoringReports@ed.gov](mailto:OCRCleMonitoringReports@ed.gov). Any monitoring reports submitted by regular mail may be addressed to me; I will also be monitoring the District's implementation of this agreement. You may also reach me with any questions at (216) 522-xxxxx.

Sincerely,

/s/

Denise C. Vaughn  
Senior Attorney

Enclosures