



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 30, 2014

Mr. Clinton Keener
Superintendent
Bay Village City School District
Bay Village, Ohio 44140

Re: OCR Docket #15-14-1207

Dear Mr. Keener:

This is to notify you of the disposition of the above-referenced complaint that was filed on May 8, 2014, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Bay Village City School District (the District). The complaint alleged that the District discriminates against students with disabilities by subjecting them to a shortened school day.

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; thus, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation into the legal issues of: whether the District denied students with disabilities who received transportation related to their disability a free appropriate public education (FAPE) and/or subjected them to different treatment during the 2013- 2014 school year by dismissing them from classes 10 minutes early and thereby providing a shortened school day, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.33(a)-(b)(1) and the Title II implementing regulation at 28 C.F.R. § 35.130(a)-(b)(1)(ii) and (iv), as well as the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and (b)(1)(ii) and (iv) and the Title II implementing regulation at 28 C.F.R. § 35.130(a)-(b)(1)(ii) and (iv), respectively.

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 disabled person the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified disabled person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified disabled person 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 disabled persons or to any class of disabled persons unless such action is necessary to provide qualified disabled persons with aid, benefits, or services that are as effective as that 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 applicable to the issues raised in the compliance review does not provide greater protection than the applicable Section 504 regulations. 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. 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.

The regulation implementing Section 504 at 34 C.F.R. Section 104.37(a) requires that a recipient shall provide nonacademic and extracurricular services and activities, i.e., transportation, in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. Transportation of a student with a disability should not be provided in a manner that results in the student having a shorter school day than his/her nondisabled peers unless there has been a determination, through a process that comports with Section 504, that a shortened school day is necessary to meet the student's individual needs. The Title II implementing regulation is interpreted consistently with the standards set forth in the regulation implementing Section 504.

Summary of OCR's Investigation to Date

X---PARAGRAPH REDACTED---X

These students rode a bus exclusively for students with disabilities. The Complainant indicated that on May 7, 2014 she observed that students with disabilities at the middle school who receive special transportation related to their disability were departing school prior to the end of the regular school day so that they could be transported home. The complaint indicated that students at the middle school were being dismissed from class approximately eight to ten minutes earlier than their typical peers.

On May 29, 2014, OCR notified the District of the instant complaint. On June 5, 2014, the District responded to OCR. The District indicated that at the beginning of the 2013-2014 school year, as a result of learning that students at the elementary schools were arriving late in the morning or leaving early due to the routing of the bus, it added a van run and split up the students to ensure that students were receiving a full instructional day.

The District indicated that at Bay Middle School, it transports XXX students with disabilities to from school. In the fall of 2013, the District learned that the teachers and aides were preparing student for dismissal and sending them to the bus about ten minutes before the end of the school day. The District stated that aides reported to administrators that this was necessary because the students had to gather personal items and be at the front door waiting for the bus to make it on time. The District's Superintendent explained that the bus that transports special education students is first in the traffic line at the middle school, for practical reasons; for instance the students have to be escorted to the bus, and it is more practical for them to walk to the bus before the hallways are filled with 800 students exiting classrooms at the same time. However, the Assistant Superintendent and middle school principal intervened and told staff that the students did not need to leave as early as they were leaving to get to the bus. The administrators also told the transportation staff that the bus did not have to leave as early as it was departing to go to the high school. The District indicated that once administrators instructed staff to stop dismissing students as early as they were, it did not believe that there was any loss of instructional time for students with disabilities in comparison to other students.

The Superintendent indicated that when it was brought to his attention in May 2014 that students with disabilities were again being dismissed earlier than instructed, the matter was addressed again. Special education teachers and aides and bus personnel were instructed that the bus can wait for the students.

The District Superintendent indicated that at Bay High School, xxxx students are transported on the special education transportation route. The District indicated that when the issue of students with disabilities being dismissed early was brought to administrators' attention in May 2014, administrators at the high school also checked the dismissal times for students with disabilities at the high school. The high school administrators learned that these students were also being dismissed earlier than administrators understood was necessary to allow the bus to depart prior to the traffic congestion that occurs due to student and parent vehicles that arrive at the end of the school day.

In its June 5, 2014, response to OCR, the District indicated it that it had taken some steps to reduce the amount of time that students were being dismissed early and that it would be considering other options during summer 2014 to address the issue. The District informed OCR that the source of the problem stems from the congestion that occurs at the high school at the end of the day. The District indicated that the special transportation bus already has the longest route due to the fact that these students are spread out over the District and receive door to door service. The District informed OCR that it welcomed any guidance from OCR to assure compliance.

On September 16, 2014, OCR visited the District to observe the bus drop-off and pick-up times for students who ride on the special education bus routes. OCR observed how and when the bus arrives to each destination and when students board the bus. According to District representatives, who OCR spoke with during its visit, effective the 2014-2015 school year, the District changed the pick-up location at the high school, which has resulted in the bus driver being able to enter and exit the high school at a different location on the side of the high school building. As students without disabilities are provided with no District transportation, the sole lane of traffic becomes very congested and had delayed transportation for students with disabilities. The special education bus can, as a result in the change in boarding, therefore completely avoid being caught in the traffic congestion. According to District representatives and the Superintendent, this has resulted in students with disabilities at the middle and high school, who receive transportation related to their disability, being released at the same time (final bell) as all other students at the middle and high school.

OCR explained the specific issues raised in the complaint that remained a potential concern for OCR. The District indicated that it would like to resolve the complaint.

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 Section 504 and Title II. The agreement requires the District to: issue a written memoranda to all building administrators at all District school buildings, the special education director, transportation supervisor and all relevant special education teachers and transportation personnel responsible for students with disabilities who receive special education transportation at these schools to remind them that no student with a disability

may receive a shortened school day due solely to transportation or administrative convenience and that such students must be provided with a full instruction day; have the classroom teachers/aides at each school building and the transportation personnel, who are responsible for special education students who receive transportation related to their disability, immediately begin keeping daily logs showing the actual release time of students from their respective classrooms and bus pick-up times at the end of the school day; and designate an administrator at each school building to conduct random observation checks to ensure that the special education or other teachers and transportation personnel responsible for special education students who receive transportation related to their disabilities do not act in a manner that results in a shortened school day for such students, such as dismissing students from classrooms or picking students up to transport them on the bus prior to the time that all other students at the respective building are released at the end of the school day.

In addition, with respect to each of the students at issue, the Agreement requires the District to: identify the students currently enrolled in the District who received transportation related to their disability during the 2013-2014 school year at the middle school and high school where it was determined that students were dismissed from school prior to the final bell; conduct a meeting with the appropriate staff knowledgeable about each student dismissed early during the 2013-2014 school year, and invite the parent/guardian(s) to attend and or participate in that meeting, to determine whether compensatory education services are necessary to compensate any students for the time that students were released from class prior to the regular dismissal time to avail themselves of special education transportation provided by the District during the 2013 - 2014 school year; notify each student's parent, in writing, of the determinations made at the meeting(s), including, if applicable, the type and amount of compensatory services that will be provided at the District's expense; and notify each student's parent in writing of Section 504's procedural safeguards.

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

This concludes OCR's investigation of the complaint and should not be interpreted to address the University'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 staff and legal counsel during the resolution of this complaint. We look forward to receiving the District's first monitoring report, which is due by October 17, 2014. Please send any electronic monitoring correspondence to OCRCleMonitoringReports@ed.gov. Any monitoring reports submitted by regular mail may be addressed to xxxxxx xx xxxxxxxx who will be monitoring the District's implementation of this agreement. xxx xxxxxxx xxx xx xxxxxxxx xx xxxxx xxxxxxxxxxxx If you have any questions about this letter, you may contact me at xxxxx xxxxxxxxxxxx

Sincerely,

/s/

Karla K. Ussery
Senior Attorney

Enclosure