



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

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REGION XV
MICHIGAN
OHIO

May 27, 2015

Cheryl T. Maimona, Esq.
Pepple & Waggoner, Ltd.
Crown Centre Building
5005 Rockside Road, Suite 260
Cleveland, Ohio 44131-6808

Re: OCR Docket #15-15-1013

Dear Ms. Maimona:

This letter is to notify you of the disposition of the complaint filed on October 9, 2014, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Reynoldsburg City Schools (the District), alleging that the District discriminated against students on the basis of disability. Specifically, the complaint alleged that the District failed to provide students with disabilities their disability-related services pursuant to a Section 504 plan or Individualized Education Program (IEP) during a work stoppage at the District that began on September 19, 2014, and lasted through October 9, 2014.

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. OCR also is 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. The District is a recipient of Federal financial assistance from the Department and a public entity. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation into whether the District failed to provide a free appropriate public education (FAPE) to qualified students with disabilities, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.33.

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OCR reviewed information provided by the Complainants and the District. Prior to the completion of OCR's investigation, the District requested to voluntarily resolve the issues of the complaint pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*, and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the issue raised in this complaint. We set forth below the applicable regulatory requirements, a summary of OCR's investigation to date, and a summary of the resolution.

Applicable Regulatory Requirements

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or the severity of the person's disability. An appropriate education for purposes of 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 students with disabilities as adequately as the needs of nondisabled students are met, and that are developed in accordance with procedural requirements of 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards. Implementation of an IEP in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the FAPE standard.

Pursuant to Appendix A of the Section 504 regulation, the quality of the educational services provided to students with disabilities must equal that of the services provided to nondisabled students. Thus, the teachers of students with disabilities must be trained in the instruction of persons with the disability in question and appropriate materials and equipment must be available.

The Section 504 regulation at 34 C.F.R. § 104.35 states that a recipient 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 further provides that, in making placement decisions, the recipient shall draw upon information from a variety of sources, including aptitude and achievement tests and teacher recommendations. Additionally, a recipient must ensure that placement decisions are made by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a team determined were necessary to provide the student with FAPE. OCR then determines whether the district provided the student the agreed-upon services and, if not, whether this resulted in a denial of FAPE.

The CPM, at Section 110(h)(2), permits OCR to close allegations that have been resolved by another federal, state, or local civil rights enforcement agency. However, this provision only applies where all allegations were investigated, any remedy obtained is the

same as the remedy that would be obtained if OCR were to find a violation of the complaint, and the entity provided a comparable resolution process under comparable legal standards.

Summary of OCR's Investigation to Date

Reynoldsburg is a first-ring suburb of Columbus, Ohio. The District, as reported on its website in February 2015, serves approximately 7,000 students in six elementary schools, four middle schools, and four high school academies. Approximately 12 percent of the population is students with disabilities; the District reported that, as of September 11, 2014, 260 students were served under Section 504 plans and, as of September 19, 834 students were receiving services under IEPs. From September 19, 2014, to October 9, 2014, the teachers at the District went on strike for a total of 15 instructional days.

- **Provision of FAPE to Students with Disabilities during Strike**

Based on the documentation provided by the District, in anticipation of the strike, the District contracted with a strike management firm for alternative teaching staff and security personnel, including 360 temporary replacement teachers. The contract did not specify the credentialing of the temporary teachers or any criteria or metric to be utilized in determining assignment of the temporary staff within the District. However, in preparation for the strike, administrators held at least 10 preparation sessions aimed at addressing staffing issues. Retired administrators were also brought in to these meetings to assist with the preparation.

Administrators utilized the document "Procedures for School Personnel in the Event of a Teacher Work Stoppage" (work stoppage procedures), which provided concrete requirements for the operation of schools during the strike. The copy of the work stoppage procedures provided to OCR was not completed; the document included blanks that were not filled in and sets of options where none were selected. OCR was not provided a copy of the document specific to the work stoppage in September and October 2014. The work stoppage procedures did have the stated goal to keep District schools open and "functioning at the highest level of effectiveness possible." The document outlined how District personnel were to interact with the media, assigned responsibility and duties for various District and building level operations, and outlined how employee leave was to be documented (authorized/unauthorized) in various scenarios. The document also offered a general guideline that principals were to see to the necessary staffing of all programs, in collaboration with the administration, with priority given to "classroom coverage and the teaching of basic skills."

The District also provided OCR a checklist, titled "[District] Checklist for Teacher Strike." The checklist identified several topics to be addressed in the weeks leading up to a work stoppage. The topics included testing and attendance, student discipline, extracurricular athletics programs, and breakfast and lunch programs. With regard to the topic "Special Education students," the checklist noted "transportation issues," "parent

communication,” “students with special medical needs during the day,” and “#/building.” However, the version of the checklist provided to OCR was blank. The District did not provide OCR documentation of any planning related to the noted areas for students with disabilities with regard to the September-October 2014 work stoppage. The District also provided OCR with a copy of a “Checklist for Receipt of Materials from Special Education Teacher,” which could be used to document whether a specifically identified teacher provided certain materials to the building principal. The materials that could be documented included files containing IEPs and Evaluation Team Reports (ETRs), lesson plans and aide plans, counseling case files, student-specific behavior plans, student-specific medical plans, and other classroom equipment. OCR noted that the form did not specifically identify Section 504 plans. OCR was also only provided a blank copy of this checklist.

The District provided copies of contracts with other service providers, who provided direct therapy services including speech language services, occupational therapy, physical therapy, and nursing services. The contracts called for consultants or independent contractors to provide the actual services to students. The contracts were all entered into near in time to the strike, some before, some during, and some immediately after; however, OCR could not determine from the contracts what scope of services the consultants may have provided during the strike.

The District also provided OCR with information regarding six complaints that had been filed with the Ohio Department of Education (ODE) alleging the District failed to provide adequate special education services during the work stoppage. Of these complaints, after investigation, ODE found no violation in three, ODE found a violation requiring corrective action by the District in one, and two were withdrawn by the complainants as a result of settlement agreements between the District and the ODE complainants. Both settlement agreements provided for compensatory education for the students at issue in the complaints.

The District asserted to OCR that because the September-October 2014 teacher strike occurred during the last three weeks of the first-quarter grading period, the end of the first grading period was extended through the end of what was traditionally the second-quarter grading period to provide students with more time to complete any online or classroom assignments.

Voluntary Resolution Prior to Conclusion of OCR’s Investigation

As noted above, prior to the completion of this complaint investigation, the District expressed interest in resolving this complaint under Section 302 of the 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 allegation(s). 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 allegation(s) or the information obtained during the investigation and consistent with applicable regulations.

On May 19, 2015, OCR received the enclosed Agreement, which, when fully implemented, will resolve the complaint. The Agreement requires the District to send a letter to the parents of students who had a Section 504 plan or IEP in place as of October 10, 2014, notifying them that the District intends to determine whether compensatory education or other remedial services are required for the student as a result of the September-October 2014 work stoppage. The District will convene groups of knowledgeable persons to develop written compensatory education plans and the District will provide each student's parent with notice of the determinations made, and notice of the procedural safeguards available to them. Further, the District will revise and submit to OCR for review and approval its work stoppage procedures to include a specific discussion of how to prevent service disruption for students with Section 504 plans and IEPs in the event of a future teacher strike or other work stoppage. Once OCR approves the work stoppage procedures, the District will make them publicly available.

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 take further appropriate action to ensure compliance with Section 504 and Title II.

Conclusion

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 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, the harmed individual may file another complaint alleging such treatment.

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

We appreciate your cooperation and that of the 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, you may contact Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634. For questions about implementation of the Agreement, please contact Chandra Baldwin, who will be monitoring the District's

implementation of the Agreement, at Chandra.Baldwin@ed.gov or at (216) 522-2669. We look forward to receiving the District's first monitoring report by July 15, 2015. Should you choose to submit your monitoring reports electronically, please send them directly to Ms. Baldwin's e-mail address.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure