



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

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

**REGION XV  
MICHIGAN  
OHIO**

June 25, 2018

Mr. Robert Lusk, Esq.  
Lusk Albertson PLC  
409 East Jefferson Avenue, Fifth Floor  
Detroit, Michigan 48226

Re: OCR Docket #15-15-1031

Dear Mr. Lusk:

This letter is to inform you of the disposition of the above-referenced complaint filed against Dearborn Public Schools (the District), which the U.S. Department of Education's Office for Civil Rights (OCR) received on October 22, 2014. The complaint alleged that the District discriminated against students at the District on the basis of disability. Specifically, the complaint alleged the following:

1. From XXXX XXXX to XXXX X XXXX, the District failed to communicate important information to the parents and students enrolled in the XXXXX XXXXXXX XXXXXXX (XXXX program) for deaf and hard of hearing students at the District's XXXXX Elementary School (the School), including welcoming information at the beginning of the school year such as the school calendar, the daily school schedule, bus schedules, the identity and contact information for administration and staff, emergency contact information, and robocall emergency notifications.
2. The District assigned substitute teachers to the XXXXX program's pre-kindergarten-kindergarten classroom (pre-K-K classroom) at the School on XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, and XXXX X XXXX, who did not know American Sign Language (ASL), and who therefore could not communicate with the students in the XXXXX program.
3. The District failed to provide a sign language interpreter to assist in the pre-K-K classroom on XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, XXXX X XXXX, and XXXX X XXXX, resulting in the students in that classroom being denied equal access to information communicated in the classroom.

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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education

(the Department). 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, which prohibit 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 these complaint allegations.

Based on the complaint allegations, OCR investigated the following issues:

- whether the District, on the basis of disability, excluded qualified individuals with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination under any of its programs or activities, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130;
- whether the District failed to take appropriate steps to ensure that communications with individuals with disabilities were as effective as communications with others, in violation of Title II's implementing regulation at 28 C.F.R. § 35.160; and
- whether the District failed to provide qualified students with disabilities with a free appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation, OCR interviewed the Complainant and District staff and administrators. OCR also reviewed documents that the Complainant and District provided. After a careful review of this information, OCR has determined that the evidence is sufficient to support a finding that the District failed, in part, to take appropriate steps to ensure that its communications with individuals with disabilities were as effective as its communications with others, in violation of Title II and its implementing regulation, and excluded individuals with disabilities from participation in and full enjoyment of the District's programs, in violation of Title II and Section 504 and their implementing regulations. OCR also found that while on a few occasions at the beginning of the XXXX-XXXX school year the District failed to provide the pre-K-K classroom of the XXXXX program with substitutes who knew ASL, and sign-language interpreters, the evidence is insufficient to support that these failures denied the students a FAPE in violation of Section 504. The bases for OCR's determination are discussed below.

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

X---two paragraphs redacted---X

- **Alleged Failure to Communicate Important Information to XXXXX Program Parents/Guardians and Students**

X---twelve paragraphs redacted---X

- **Assignment of Substitute Teachers in the Pre-K-K Classroom**

X---five paragraphs redacted---X

- **Sign Language Interpreters in the Pre-K-K Classroom**

X---five paragraphs redacted---X

- **MDE Complaints**

The District also provided OCR with copies of MDE’s decisions, dated December 15, 2014, and December 19, 2014, which addressed related issues. In the December 15 decision, MDE determined that the District’s employment of substitute teachers in the pre-K-K classroom in the beginning of the XXXX-XXXX school year did not violate any State law or regulatory requirements, even if the substitute teachers did not know sign language or hold relevant content area certification.<sup>1</sup> However, MDE also found that, in failing to provide three students with individual interpreter services (not an allegation that OCR investigated), the District did deny those students a FAPE. The December 19 final decision similarly found that the District failed to provide the Complainant’s son with an ASL interpreter on four days between XXXXXX and XXXXXXXX XXXX, thereby denying him a FAPE. In both cases MDE ordered corrective action.

### **Applicable Regulatory Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual 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 under any program or activity which receives Federal financial assistance. The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(ii) and the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii) prohibit a recipient or public entity from affording a qualified person with a disability an opportunity to participate in or benefit from its aids, benefits, or services that is not equal to that afforded to others.

In addition, the regulation implementing Title II, at 28 C.F.R. § 35.160(a), requires public entities to take appropriate steps to ensure that their communications with applicants, participants, members of the public, and companions with disabilities are as effective as their communications with others. Further, a public entity must furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of the public entity. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is

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<sup>1</sup> Michigan State law provides that a substitute teaching permit allows a person who does not hold a valid Michigan teaching certificate to be employed as a substitute teacher on a day-to-day basis when the regular teacher is temporarily absent. The substitute permit is not valid for a regular or extended teaching assignment, which is defined as an assignment to the same classroom for more than 90 calendar days. Michigan Department of Education, State Board of Education, State Certification Code, Regulation 390.1143.

taking place. In determining what types of auxiliary aids and services are necessary, a public entity must give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. 28 C.F.R. § 35.160(b).

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a free appropriate public education (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 the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards.

## **Analysis**

- **Allegations Regarding Effective Communication and Denial of Benefits**

The evidence is insufficient to support a finding that the District failed to provide the XXXXX program students and parents/guardians with the same packet of introductory information that it provided to the students in the School's general education classes at the beginning of the XXXX-XXXX school year. The XXXXXX stated that she sent the same packet of information to all the parents/guardians of students enrolled in the School, including the XXXXX program parents. There is no evidence, other than the Complainant's assertion, to support that the District did not send the information to the XXXXX program students and their parents/guardians. The XXXXXX also identified a number of other methods the District used to convey the same information that was in the welcome packet, including posting information on the District's website and sending it home with students on the first day of school. According to the XXXXXX, the Complainant was the only parent who said she did not get the information.

With respect to robocalls, the XXXXXX of the School informed OCR that the School did not have speech-to-text capabilities to translate information provided via robocall at the building level. The District acknowledged that it did not ask its deaf and hard of hearing parents and guardians for their most effective method of communication at the building level to ensure their receipt of information sent out by each building, and that it did not have a protocol for communicating building-level information (in lieu of robocalls) to deaf and hard of hearing individuals to ensure that they had access to the information.

In addition, based on the information provided, the District does not have a specific procedure for identifying deaf and hard of hearing individuals who need sign language interpreters or other assistance to communicate with District personnel. The XXXXXX of the School stated that she would find interpreters within the building when the need arose. This informal method does not ensure that interpreters are available when needed or that the interpreters are qualified to provide the services elicited from them. Moreover, deaf and hard of hearing individuals have no way of knowing that the District will obtain an interpreter when necessary, or any other assurance that

they will be able to communicate with School employees. The District acknowledged that it did not have a service that would permit deaf and hard of hearing individuals to make or receive telephone calls with District employees.

Based on the above, OCR concludes that the evidence is sufficient to find that the District did not meet the effective communication requirements of the Title II regulation at 28 C.F.R. § 35.160 with respect to its communication with parents/guardians, students, and other members of the public with disabilities, and that because the parents/guardians who were deaf or hard of hearing may not have had access to information the District shared in robocalls or at meetings at the School, these parents/guardians were treated differently and denied the benefit of District communications shared by individuals who did not have hearing impairments, in violation of Section 504 and its implementing regulation at 34 C.F.R. § 104.4(b)(1)(ii).

With respect to communications with pre-K-K students, the evidence shows that, on at least four occasions out of 27 school days in XXXX XXXX, the substitute teacher in the pre-K-K classroom did not know sign language. The evidence also shows that there were instances where the District did not have a sign language interpreter in the classroom, or the interpreter was not in the classroom for the entire school day. The District's records are not consistent with the MDE's final determination regarding the specific days that the District did not have an interpreter in the classroom. The District administrators could not recall specific days when there was no interpreter in the classroom. However, the documents the District did provide suggest that there was no sign language interpreter on XXXXXXXX XX and that the School only had an interpreter for two hours on XXXXXXXX XX. MDE stated in its findings that the District and the Complainant agreed that on XXXXXXXX XX there was no sign language interpreter for the Student and he therefore did not attend school that day. The District records indicate that there were two sign language interpreters at the School on XXXXXXXX XX; however, again, the records do not indicate which classroom(s) the interpreters were assigned to that day. The inability of the District to provide clear documentation of the personnel in the pre-K-K classroom and their sign language proficiency during the two-month time period when it was using a substitute teacher in that classroom indicated that it did not have a system in place for tracking its need for ASL-proficient substitute teachers and interpreters and ensuring their availability.

Although the evidence is unclear as to specific dates and times when there was no sign language interpreter in the classroom, it is clear that it happened on at least two occasions, and that for at least part of one day there was neither an interpreter or a substitute teacher who knew sign language in the classroom. Regardless of the specific times and dates, the evidence is sufficient to permit the conclusion that the District did not always have a substitute or interpreter in the classroom who was proficient in ASL from XXXXXXXX XX through XXXXXXXX XX.

OCR concludes that the evidence is sufficient to establish that the District did not always effectively communicate with students in the pre-K-K XXXXX program classroom in the first six weeks or so of the XXXX-XXXX school year, and therefore the District's actions constitute a violation of the Title II regulation at 28 C.F.R. § 35.160 and the Section 504 regulation at 34 C.F.R. § 104.4(b)(1)(ii).

- **Allegation Regarding Denial of FAPE**

To the extent that the District's failure to provide interpreters to individual students as required in their IEPs denied any of the students in the classroom a FAPE, MDE addressed that allegation through its complaint investigations.

OCR did, however, investigate whether the alleged failure to provide adequate substitute teachers and sign language interpreters to assist the substitute teachers in the classroom at the beginning of the XXXX-XXXX school year resulted in a denial of FAPE for the students in the pre-K-K classroom. However, OCR has determined that the evidence is insufficient to support a violation finding regarding this issue. Of the 27 school days the students went without a permanent teacher, there were four or five days at most when the District did not have a substitute teacher in the pre-K-K classroom who knew sign language. During most of those days there was an interpreter in the classroom. OCR finds that the District's failure to provide a substitute teacher who knew sign language in these few instances did not constitute a denial of FAPE to the students in the pre-K-K classroom. Similarly, the few instances where the District did not have an interpreter in the classroom are insufficient to constitute a denial of FAPE.

## **Resolution and Conclusion**

In summary, OCR concludes that the evidence is sufficient to find that the District did not meet the effective communication requirements of the Title II regulation at 28 C.F.R. § 35.160 with respect to its communication with parents/guardians, students, and other members of the public and also sufficient to find that it excluded individuals with disabilities from participation in and full enjoyment of the District's programs, in violation of Title II and Section 504 and their implementing regulations at 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130. The evidence is insufficient to support a finding that the students in the pre-K-K classroom were denied FAPE in violation of the Section 504 regulation at 34 C.F.R. § 104.33.

To resolve the compliance findings with respect to the District's effective communication with persons with disabilities, the District submitted the enclosed resolution agreement (the Agreement) dated June 18, 2018. Under the terms of the Agreement, the District will adopt or revise its effective communication procedures and, once approved, adopt, implement, and publicize the revised procedures, and train staff on the revised procedures and on Title II and Section 504 requirements regarding communications with individuals with disabilities. OCR 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.

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, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

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

OCR appreciates your and the District's cooperation during the investigation of this complaint. If you have questions or concerns about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at [Brenda.Redmond@ed.gov](mailto:Brenda.Redmond@ed.gov).

Sincerely,

/s/

Brenda Redmond  
Supervisory Attorney/Team Leader

Enclosure