



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 13, 2015

Robert A. Lusk, Esq.
Lusk & Albertson
40950 Woodward Avenue, Suite 350
Bloomfield Hills, Michigan 48304-5129

Re: OCR Docket #15-15-1039

Dear Mr. Lusk:

This is to notify you of the disposition of the above-referenced complaint that was filed on October 27, 2014, with the U.S. Department of Education, Office for Civil Rights (OCR), against the Anchor Bay School District (the District). The complaint alleged that the District discriminated against a student (Student) on the basis of disability. Specifically, the complaint alleged that the Student was removed from the District preschool program in XXXXXXXX XXXX because of his disability-related XXXX XX XXXXXXXXXXXX XXXXXXXX.

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 school district, 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 issue of whether the District excluded a student with a disability from participation in, denied him the benefits of, or otherwise subjected the student to discrimination under its preschool education program in violation of Section 504's implementing regulation at 34 C.F.R. §104.38.

Background

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Applicable Legal Standards

The Section 504 regulation provides, at 34 C.F.R. § 104.38, that a recipient that provides preschool education may not, on the basis of disability, exclude qualified persons with a disability and shall take into account the needs of such persons in determining the services to be provided.

The requirements of the Section 504 implementing regulation at 34 C.F.R. §§ 104.32-104.36, which apply to public elementary or secondary education programs, are inapplicable to preschool programs, although a recipient may have obligations to preschool children with disabilities under the Individuals with Disabilities Education Act (IDEA), which OCR does not enforce.

Summary of OCR's Investigation to Date

During its investigation, OCR interviewed the Student's parent and reviewed documentation submitted by the District and the parent. OCR also interviewed the District's Special Education Director and the Director of Elementary Education. Prior to OCR's completion of staff interviews and obtaining information about eligibility requirements for enrollment in the District's various preschool programs, the District requested to voluntarily resolve this matter.

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Voluntary Resolution Prior to Conclusion of Investigation

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 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: Send a memorandum to

all preschool program administrators and staff advising them that the District will not, on the basis of disability, exclude any qualified person with a disability from its preschool programs. The memorandum will also advise administrators and staff that the District shall take into account the needs of such persons enrolled in its preschool program in determining the services to be provided to them; and incorporate a statement into any description of its preschool programs including, but not limited to, any course guide, website listing, newsletters, etc., that it will not exclude any qualified person with a disability from any of its preschool programs on the basis of disability. OCR determined that individual remedial measures were not necessary or appropriate to the resolution of this complaint based on the information obtained to date from the District and the Student's parents.

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 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 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 May 29, 2015. Please send any electronic monitoring correspondence to OCRCleMonitoringReports@ed.gov. Any monitoring reports submitted by regular mail may be addressed to Allison Beach, who will be monitoring the District's implementation of this agreement. Ms. Beach may be reached at (216) 522-2666. If you have any questions about this letter, you may contact me at (216) 522-7634.

Sincerely,

/s/

Page 4 – Robert A. Lusk, Esq.

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure