



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Kathryn Perrico, Esq.
Smith Peters Kalail Co, L.P.A.
3 Summit Park Drive, Suite 400
Cleveland, Ohio 44131

Re: OCR Docket #15-15-1065

Dear Ms. Perrico:

This is to notify you of the disposition of the above-referenced complaint against Boardman Local Schools (the District), which was filed on xxxxx, with the U.S. Department of Education's Office for Civil Rights (OCR). The complaint alleged that the District discriminated against a student (Student) on the basis of disability. Specifically, the complaint alleged that the District was on notice that the Student had xxxxx since the beginning of the xxxxx school year and xxxxx to determine xxxxx eligibility for services as a student with a disability. The complaint also alleged that in xxxxx, the District refused to allow the Student xxxxx, and in xxxxx.

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 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. 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.

Because the regulation implementing Title II provides no greater protection than the Section 504 implementing regulation with respect to this case, OCR applied Section 504 standards. Based on the complaint allegations, OCR investigated the legal issue of whether the District failed to properly identify a student with a disability and provide him with appropriate disability-related services in violation of the regulation implementing 34 C.F.R. § 104.35.

During its investigation, OCR interviewed the Complainant and reviewed documentation submitted by the Complainant and the District. Prior to the completion of OCR's investigation, the District requested to voluntarily resolve the matter 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 Legal and Policy Standards

The Section 504 regulation states, at 34 C.F.R. § 104.35(a), that a recipient school district 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.

Summary of OCR's Investigation

The allegations in this complaint center around events occurring just prior to and throughout the first half of the xxxxx school year, when the Student was enrolled in the xxxxx, first at the District's xxxxx and then, from xxxxx, at xxxxx. The Student has been diagnosed with xxxxx.

According to the Complainant, although the District had not xxxxx school year states that xxxxx has xxxxx; a review of the Student's cumulative file confirms this, and shows that the xxxxx. The Complainant told OCR staff that sometime in the beginning of the xxxxx school year, he informed xxxxx that the Student sometimes xxxxx. He said that he also spoke with xxxxx about the Student's condition, and xxxxx.

The Complainant explained that when the Student has xxxxx. The Complainant said that on xxxxx, he told xxxxx about a xxxxx that the Student was currently experiencing, and that the Student would need xxxxx, but xxxxx would not allow the Student to xxxxx. The Complainant stated that a second incident occurred on xxxxx, when the Student received a xxxxx. The Complainant told OCR that he was not xxxxx. He explained that the Student was xxxxx. According to the Complainant, during this time, the Student was xxxxx. Thus, the Complainant contacted xxxxx to request that the Student xxxxx, but according to the Complainant, xxxxx would not compromise xxxxx.

Documents the District provided to OCR, including the xxxxx of the conversations he had with the Complainant in xxxxx, indicate that on xxxxx, the Complainant stated that

the Student would xxxxx because the Complainant, xxxxx. The notes do not indicate that they discussed the Student's xxxxx. The notes do indicate, however, that when xxxxx told the Complainant that the Student xxxxx, the Complainant xxxxx, and xxxxx. The notes further indicate that the Student did xxxxx.

The xxxxx show that by xxxxx, when the Complainant brought the Student into school xxxxx, the Complainant indicated that he would like the Student to receive services under Section 504, xxxxx.

Xxxxx at the District recorded in xxxxx notes that the Complainant contacted xxxxx on xxxxx. The notes further indicate that on xxxxx, the Complainant spoke with the xxxx. In both instances, xxxxx at the District with whom the Complainant spoke informed him that if xxxxx under Section 504. On xxxxx, the Student xxxxx.

From xxxxx, through xxxxx, the District took no action to evaluate the Student because it was waiting for the xxxxx. On xxxxx, the xxxxx received a letter from the Complainant xxxxx. In the letter the Complainant explained the nature of the Student's xxxxx, and the xxxxx, and stated xxxxx school year. Finally, he stated that he xxxxx. In addition, the Student's xxxxx.

X—paragraph omitted –X

The Complainant stated that the Section 504 team began the process of evaluating the Student to determine his eligibility for placement on a Section 504 plan in xxxxx, and by xxxxx, the Student had a Section 504 plan in place.

X—paragraph omitted –X

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 xxxxx, the District signed the enclosed Agreement, which, when fully implemented, will resolve the complaint. The Agreement requires the District to reconvene the Student's Section 504 team, including the Student's parent(s), to determine what compensatory education or other remedial services the Student requires for the time period that the District had not conducted a timely evaluation of the Student as required by Section 504. If the team determines that the Student is entitled to compensatory

education or other remedial services, it will develop a written plan for providing the services to be provided at no cost to the Student's parent(s), by whom and when, and will

become part of the Student's Section 504 plan. The District will provide the Student's parents with a meaningful opportunity to provide input into these determinations, notice of the determinations made, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree.

Additionally, the Agreement requires the District to draft and adopt policies and procedures to ensure its timely identification, evaluation, and placement of students with disabilities pursuant to Section 504; provide notice to teachers, staff, and parents/students of its obligations under Section 504 and Title II and of its Section 504 policies and procedures; and provide training to the District's Section 504 coordinator and all of its administrators at the Market Street Elementary School on Section 504 and Title II and on the OCR-approved District policies and procedures described above.

Conclusion

In light of the signed Agreement, OCR is closing its 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 complaint and resume its investigation of the complaint allegation.

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.

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.

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.

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, we 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 the cooperation of the District during the investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact me at (216) xxx-xxxx, or by e-mail at Kelly.M.Johnson@ed.gov.

For questions about implementation of the Agreement, please contact Ms. Ann Millette who will be monitoring the District's implementation of the Agreement, at (216) xxx-xxxx, or by e-mail at Ann.Millette@ed.gov. We look forward to receiving the District's first monitoring report by xxxxx.

Sincerely,

/s/

Kelly M. Johnson
Supervising Attorney/Team Leader

Enclosure