



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

August 25, 2015

Xx xxxxx xxxxxx xxxxxxxx
XXXXXXXXXX xx xxxxxxxx xxxxxxxxxxxxxx
Royal Oak Public Schools
800 DeVillen Avenue
Royal Oak, Michigan 48073

Re: OCR Docket #15-15-1126

Dear xx xxxxxxxx xxxxxx:

This letter is to notify you of the disposition of the complaint filed on xxxxxxxx xx xxxxx, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Royal Oak Public Schools (District), alleging discrimination against a student (Student) on the basis of disability. Specifically, the complaint alleged that the District failed to xxxxxxxxxx xxxxxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxx, as required by the Student’s Section 504 Plan.

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). 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). 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. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR initiated an investigation into the following legal issue: whether a recipient school district failed to provide a qualified student with a disability with a free appropriate public education (FAPE) in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

Prior to the completion of OCR’s investigation, the District expressed an interest in voluntarily resolving the complaint allegations. During the course of its investigation, OCR interviewed the Complainant and obtained and reviewed data produced by the District in response to OCR’s data request. To date, OCR has not completed its investigation of the complaint allegations.

Summary of OCR’s Investigation to Date

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

She said the provision of the Student's Section 504 services varied depending upon the particular class and instructor. She said that some teachers were better at providing the Section 504 services than other teachers. She also noted that the Student was scheduled for an upcoming re-evaluation during the spring of xxxx.

OCR reviewed the data submitted by the District. The District's data contained a Section 504 plan for the Student that matched the one provided by the Complainant as well as a superseding Individualized Education Program (IEP) that had been developed pursuant to a xxxxxxx xxxxx evaluation of the Student.

[xxx---paragraph redacted---xxx]

OCR also reviewed the Student's progress reports, e-mail communications between the Complainant and various District employees, and e-mail communications between various District employees related to the Student and the Complainant. The documents showed that teachers received hard copies of the Student's Section 504 plans from his school's guidance counselor and confirmed the Complainant's statements that the Student did receive at least some of the services contained in his Section 504 plan and IEP.

[xxx---paragraph redacted---xxx]

The District did not provide to OCR a log or any written record of services provided to the Student and so the documents do not substantiate precisely when and whether the required services were consistently provided to the Student. Moreover, with respect to the District's provision of xxxxx xxxxxx the documentation supports that District did not have a clear understanding of how to implement this service to the Student. Furthermore, at least two District administrators sent e-mails that appear to question the validity of the provision due to the fact that it was not contained in a list of recommended accommodations.

Applicable Regulatory Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires a recipient school district to provide a FAPE to each qualified student with a disability within the district's jurisdiction. For the purposes of this requirement, an appropriate education 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 students without disabilities are met and that are based upon adherence to procedures that satisfy the setting, evaluation, placement, and procedural safeguards requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. If the placement, aids, and services identified by a school district as necessary to meet a student's individual needs were not provided, OCR determines the district's reason for failing to do so and whether the failure to provide the services for the student resulted in a denial of a FAPE.

Resolution and Conclusion

As noted above, before OCR completed its investigation, the District expressed an interest in resolving the complaint allegations pursuant to Section 302 of OCR’s Complaint Processing Manual (the Manual).

On August 17, 2015, the District signed the enclosed resolution agreement (Agreement), which, once fully implemented, will resolve any compliance concerns raised by the complaint allegations and the information obtained by OCR to date, in accordance with Section 504. In summary, the resolution agreement requires the following: 1.) the District will re-convene the Student’s Section 504 and/or IEP team, including the Student’s parents, to determine what compensatory education or other remedial services the Student requires for any time period the Student did not receive xxxxxxxxxxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxx to determine whether it resulted in a denial of FAPE to the Student, and if so, will develop a plan to provide any necessary remedial education or services; 2.) the District will provide Section 504 training to District staff and administrators, including, at a minimum, the Student’s principal, the Superintendent, and to high school teachers who are responsible for the implementation of Section 504 plans and IEPs.

Based on the information above, OCR is closing this complaint effective the date of this letter. 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 Complainant 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, 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 District’s cooperation during the investigation of this complaint. The OCR contact person for the monitoring of this agreement is xx xxxxxx xxxxxx, who may be reached at (216) xxx-xxxxx or by e-mail at xxxxxxx.xxxxxxx@ed.gov. We look forward to receiving the District’s first monitoring report by September 30, 2015.

Sincerely,
/s/
Xxxxxx xxxxxxx
Supervisory Attorney/Team Leader