



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 23, 2015

XXXXXXX x xxxxxx
Grand Rapids Public Schools
P.O. Box 117
Grand Rapids, Michigan 49501-0117

Re: Case No. 15-15-1157

Dear xx xxxxxx:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Grand Rapids Public Schools (the District) with the U.S. Department of Education’s Office for Civil Rights (OCR) on xxxxxxxx xx xxxx, which alleged that the District discriminated against a student (the Student) based on his disability. Specifically, the complaint alleged that, during the 2014-2015 school year, the District:

1. failed to provide the Student with all of the services in xxxx Section 504 plan, including xxxxxxxx xxxxxxx xxxxx xxxxxxx xxxxxx xxxxxx xxxxxx xxxxx xxxxxxxxxx xxxxx; and
2. xxxxxxxxxxxxxxxx the Student on multiple occasions without conducting a manifestation determination to assess whether the underlying conduct was the result of a disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 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 school system, the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

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

- whether the District failed to provide a qualified student with a disability with a free and appropriate public education (FAPE), including the provision of related aids and services designed to meet the student’s individual needs, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33; and

- whether the District failed to conduct an evaluation of the Student prior to significantly changing his placement, in violation of 34 C.F.R. § 104.35(a).

Summary of OCR’s Investigation

To investigate this complaint, to date, OCR interviewed the Student’s parent and reviewed the documentation provided 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 issues raised in the complaint.

- **Background Information**

[xxx---paragraph recated---xxx]

- **Implementation of the Student’s Section 504 plan**

The parent alleged that the District was not providing the Student with all of the services in his Section 504 plan.

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

The second list, under the heading “Accommodations, Adaptations, and Related Services,” includes the same services listed above, with the exception of “xxx xxxxxxxxx.” This list also includes “xxxxxx xxxxx xxxxx xxxxx xxxxx.” The parent and the District provided OCR with the same 504 plan documents; however, in the District’s copy, “xxxxxxx xxxxxx” is redacted on both lists.

OCR notes that xxxxxxxx xx xxxxx xxxxxxx xxxxxxxxx xx xxxx, is the relevant time period during which the Student’s Section 504 plan was in place while the Student was enrolled at the District elementary school.

- **Failure to Conduct a Manifestation Determination**

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

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

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

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

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

Applicable Legal Standards and OCR Policy

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, including notice.

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 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. School districts must reevaluate a student with disabilities periodically and before any significant change in placement. Under OCR policy, any suspension, exclusion, or expulsion that exceeds 10 days or any series of shorter suspensions or exclusions that in the aggregate totals more than 10 days and creates a pattern of exclusions constitutes a significant change of placement that would trigger the district's duty to reevaluate a student under 34 C.F.R. § 104.35(a). OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

The student's educational team should re-evaluate the student to determine, using appropriate evaluation procedures that conform to the requirements of the Section 504 regulation, whether the misconduct was caused by the student's disability. If the team determines that the student's misconduct is a manifestation of the student's disabling condition, the group must continue the evaluation, following the requirements of 34 C.F.R. § 104.35 regarding evaluation and placement, to determine whether the student's educational placement is appropriate and what, if any, modifications to that placement are necessary. If, on the other hand, the group determines that the conduct is not a manifestation of the student's disability, the student may be excluded from school in the same manner as similarly situated students without disabilities are excluded. The manifestation determination should be made as soon as possible after the disciplinary action is administered and, in any event, before the eleventh day of the suspension or removal.

Conclusion

As noted above, prior to the completion of OCR's investigation, the District expressed interest in resolving the allegations in the complaint pursuant to Section 302 of OCR's CPM. The CPM, at Section 302, 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 September 22, 2015, the District submitted the enclosed Agreement to OCR, which, when fully implemented, will resolve the allegations in the complaint.

In light of the signed Agreement, OCR finds that the complaint is resolved, and 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 take appropriate action to ensure the District's compliance with the Section 504 regulation.

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 harmed individual may file a complaint alleging such treatment.

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

We look forward to receiving the District's first monitoring report by October 30, 2015. For questions about implementation of the Agreement, please contact xxxxxxx xxxxx, who will be monitoring the District's implementation, by e-mail at xxxxxxx.xxx@ed.gov or by telephone at (216) xxx-xxxx. For questions about this letter, please contact me at (216) xxx-xxxx.

Sincerely,

/s/

XXXXXXXX x xxxxxxxx
Supervisory Attorney/Team Leader

Enclosure