



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Scott Mandel, Esq.
Foster Swift
313 South Washington Square
Lansing, Michigan 48933

Re: OCR Docket #15-15-1178

Dear Mr. Mandel:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on March 2, 2015, with the U.S. Department of Education, Office for Civil Rights, against the Saginaw City Schools (the District). The complaint alleged that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that starting in approximately xxxxxxxx xx xxxxxxxx, 2014, and continuing throughout the 2014-2015 school year, the District failed to timely evaluate the Student to determine whether he was a student with a disability. The complaint also alleged that the District failed to notify the Student's parents of their procedural safeguards with respect to the District's decision not to evaluate the Student during the 2014-2015 school year.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 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 U.S. Department of Education (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 and as a public entity, the District is subject to Section 504 and Title II. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated: whether the District failed to properly evaluate a student with a disability and provide him with appropriate disability-related services in violation of the regulation implementing Section 504 at 34 C.F.R. §104.35, and whether the District failed to provide notice of the procedural safeguards to challenge the District's determination not to evaluate the Student through an impartial due process hearing, in violation of the Section 504's implementing regulation at 34 C.F.R. § 104.36.

During the course of OCR’s investigation, OCR interviewed the Student’s parent (the parent) and the District’s special education director (director) about the events that served as the basis for the complaint. OCR also reviewed documentation submitted by the Student’s parent and the District. Additionally, OCR conducted a follow-up interview with the director and gave the parent an opportunity to respond to information provided by the District. Based on the information obtained, OCR has found sufficient evidence to support a conclusion that the District violated Section 504 and/or Title II, as alleged, when it failed to properly evaluate a student with a disability and provide him with appropriate disability-related services in violation of the regulation implementing Section 504 at 34 C.F.R. §104.35. However, OCR has found that the evidence is insufficient to support a conclusion that the District violated Section 504 and/or Title II, as alleged, by failing to provide notice of the procedural safeguards to challenge the District’s determination not to evaluate the Student through an impartial due process hearing, in violation of the Section 504’s implementing regulation at 35 C.F.R. § 104.36. The reasons for OCR’s determinations are explained below.

Alleged Failure to Evaluate the Student

- **Summary of OCR’s Investigation**

[x--- paragraph redacted ---x]

[x--- paragraph redacted ---x]

Data provided by the District shows that, on xxxxxxxx xx xxxx, the parent submitted a consent for an initial evaluation form, on which she had circled the word “xxxxxxxxxx” on the signature line and written “xxxx xxxxxxx.” That form was not signed. By e-mail, dated xxxxxxxx xx xxxx, the director informed the parent that a signed consent form was required before the Student could be evaluated. The parent told OCR that she provided the District with a signed form on or about xxxxxxxx xx xxxx, although she was not certain that her signed consent form had been received. The Student’s parent provided a copy of a signed consent form, dated xxxxxxxx xx xxxx, to OCR. The document is entitled “Section 504 Referral and Consent Form.” The signed consent form included xxxxxxxxxxxx xxxxxxxx from the Student’s parent that included questions about what specific evaluations would be done of the student and who would be the team members who would have access to the Student’s information.

The director initially told OCR that she had never received such a signed consent form from the Student’s parent, and thus the District did not conduct an evaluation. However, data provided by both the Student’s parent and the District showed that the director acknowledged receipt of the signed consent form described above from the Student’s parent by email dated xxxxxxxx x xxxx. Specifically, the director’s xxxxxxxx x email to the Student’s parent stated that the District had “received and reviewed the signed Release and Section 504 Referral and Consent form.” In addition, in the xxxxxxxx x email, the director both acknowledged and responded to the questions that the Student’s parent had included on the signed consent form, discussed above. In a follow-up interview with OCR, the director checked her hard copy file and determined that, at the time of the initial OCR interview, she had been looking at the xxxxxxxx xx form, but that a signed consent form had, in fact, been received on xxxxxxxx xx.

The director informed OCR that there was never a Section 504 meeting or other evaluation of the Student because the Student's parent did not provide information from the Student's doctor about the Student's xxxxxxxxxxxxxxxx xxxxxx, on a signed form, stating that the Student had a physical illness. Instead, the intervention team (IT) met to develop an accommodation plan through the IT process at the end of xxxxxx and provided the Student with accommodations through that process. In an xxxxxx xx xxxx, email, the principal told the Student's parent that the meeting held about the Student's accommodations was an IT meeting, not a Section 504 meeting. He stated that they had never received a physician's diagnosis to qualify the Student for a Section 504 plan and that a xxxxxxxxxxxxxx x input was not sufficient.

During OCR's investigation, OCR reviewed the District's Section 504 policies and procedures (procedures) in place during the 2014-2015 school year. The procedures were revised in January 2015; thus, OCR reviewed the procedures in place for both years. OCR did not review the procedures to determine overall compliance with Section 504, but solely for the purpose of determining whether the District's procedures required parents to provide a medical report from a doctor, prior to conducting an evaluation. OCR found nothing in the evaluation procedures for either year requiring that a parent provide the District with a medical report from a doctor.

- **Applicable Legal Standards**

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 a student with a disability 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 (educational setting), 104.35 (evaluation and placement), and 104.36 (procedural safeguards).

The Section 504 regulation at 34 C.F.R. § 104.35(a) requires recipient school districts to conduct an evaluation in accordance with the requirements of 34 C.F.R. § 104.35(b) of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines an individual with a disability as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment. Major life activities includes, but is not limited to, things such as walking, bending, breathing and normal cell growth or other major bodily functions.

Section 504 mandates that recipients afford children with disabilities meaningful access to an education. A violation of 34 C.F.R. §§ 104.33 and 104.35 can be found where a recipient has failed to ensure that qualified persons with disabilities are evaluated and provided access to meaningful educational services without unreasonable delay. Although the Section 504 regulation does not set forth specific timeframes by which districts must complete evaluations of

students, OCR considers state-required timeframes for evaluations as well as districts' own internal guidelines to determine whether the evaluation has been completed within a reasonable time. The Michigan Administrative Rules for Special Education (MARSE), at R 340.1721b, require that, within 10 school days of receipt of a written request for any evaluation, a district must provide the parent with written notice and request written parental consent to evaluate. This section further requires that the time from receipt of parental consent for an evaluation to a notice of an offer of a FAPE or a determination of ineligibility be no more than 30 school days, unless an extension is agreed to by the parent and the district in writing.

The Section 504 regulation at 34 C.F.R. § 104.35(c) provides that in making placement decisions, the recipient shall draw upon information from a variety of sources. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. A medical diagnosis cannot suffice as an evaluation for the purpose of providing FAPE. The results of an outside independent evaluation may be one of many sources to consider. The weight of the information is determined by the committee given the student's individual circumstances. Additionally, a recipient must ensure that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

- **Analysis and Conclusion**

The evidence shows that the Student's parent requested a Section 504 evaluation and provided a signed consent form, as required, because the request was for an initial evaluation. The District acknowledged receiving a signed consent form. However, as noted above, the special education director stated that an evaluation for a Section 504 plan was never conducted (1) because she alleged the signed consent form had never been received and (2) because the Student's parent never provided a signed medical evaluation from the Student's doctor, which the director believed was required prior to the initial evaluation. As the evidence shows that the Student's parent provided the District with the signed consent form, and that there is no such obligation for the Student's parent to provide specific medical information in order to request a Section 504 evaluation, OCR finds that the District failure to evaluate the Student in the absence of this information constitutes a violation of the regulation implementing Section 504 at 104.35.

Alleged Failure to Provide Procedural Safeguards

- **Summary of OCR's Investigation**

The Student's parent also alleged that she never filed a due process complaint challenging the District's failure to evaluate the Student because she never received a notice from the District of her procedural rights. However, documents submitted by the Student's parent to OCR show that the District's notice of procedural rights was emailed to her on xxxxxxxx xx xxxx. The Student's parent acknowledged to OCR that she received forms from the director explaining to her the District's Section 504 process, but that she did not recall whether due process was covered by those forms.

- **Applicable Legal Standards**

The Section 504 regulation states, at 34 C.F.R. § 104.36, that a recipient school district shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of a disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

Under Section 504, if a parent requests an evaluation, the district may (1) evaluate the student within a reasonable amount of time; or (2) decline to evaluate the student because the district does not believe that the student has a disability within the meaning of Section 504. In the latter case, the procedural safeguards requirement of 34 C.F.R. § 104.36 requires the district to provide notice to the parent of its determination and resulting refusal to evaluate and the parent's right to challenge the district's decision through an impartial due process hearing.

- **Analysis and Conclusion**

Based on the foregoing, OCR finds that the facts were not as alleged and that the Student's parent was provided a notice of her procedural rights. Thus, OCR finds insufficient evidence that the District failed to provide the parent of her procedural rights, in violation of 34 C.F.R. § 104.36, as alleged.

Resolution and Conclusion

To resolve the above-described compliance findings, the District submitted the enclosed resolution agreement (the Agreement), that was signed on November 25, 2015, to OCR on December 2, 2015. Under the terms of the Agreement, the District will convene the Student's Section 504 team (the Team), including the Student's parent(s), the director of special education or her designee, and relevant teachers and administrators to determine (1) whether the Student was a Student with a disability during the 2014-2015 school year; and (2) whether the District's failure to evaluate the Student for a Section 504 plan during the 2014-2015 school year, resulted in a denial of a free and appropriate public education (FAPE) to the Student. The District will also provide training by a competent authority on the District's obligations to students with disabilities under Section 504, including the District's obligation to evaluate student without requiring parents to provide medical evaluations. The training will be provided to all District personnel responsible for identifying, evaluating, and placing students with disabilities, including the special education director and the principal.

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 alleging such treatment. 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.

If you have any questions about this letter or OCR's resolution of this case, please contact me at xxx xxx xxxx or by e-mail at xxxx.x.xxxx@ed.gov. For questions about implementation of the Agreement, please contact xx xxxxxx xxxxx who will be monitoring the District's implementation, by e-mail at xxxxxxxx.xxxxxx@ed.gov or by telephone at xxx xxx xxxx. OCR has received a copy of the District's first monitoring report, which is under review.

Sincerely,

/s/

Xxxx x xxxx
Supervisory Attorney/Team Leader

Enclosure