



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

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

September 22, 2015

Mr. John Felske  
Superintendent  
Muskegon Public Schools  
349 West Webster Avenue  
Muskegon, MI 49440

Re: OCR Docket #15-15-1215

Dear Mr. Felske:

This is to notify you of the disposition of the above-referenced complaint that was filed on March 26, 2015, with the U.S. Department of Education, Office for Civil Rights (OCR), against the Muskegon City School District (the District). The complaint alleged that the District discriminated against a student (Student) on the basis of disability (xxxxxxx xxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxxx xxxxxxxx). Specifically, the complaint alleges that beginning on XXXXXXXX XX, 2014, the District failed to timely and appropriately evaluate the Student for a disability and that the District failed to provide the parent with information regarding applicable procedural safeguards from the time the Student's parent requested the evaluation through the present. The complaint further alleges that the District has failed to adopt appropriate grievance procedures for complaints of disability discrimination.

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 allegations, OCR opened an investigation into the legal issues of whether the District failed to appropriately and timely evaluate and determine the educational placement of a student with a suspected disability in violation of Section

504's implementing regulation at 34 C.F.R. § 104.35; and whether the District has adopted grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 or Title II regulations, as required by 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b).

### **Background**

In her complaint, the complainant alleged that the District failed to respond to the Parent's written request to evaluate the Student on XXXXXXXX XX, 2014. She also alleged that the District's Section 504 grievance procedures are inconsistent and have outdated contact information for OCR.

### **Applicable Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), provides that a recipient shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for:

- notice to students and employees of the procedure, including where complaints may be filed;
- application of the procedure to complaints alleging discrimination, including discriminatory harassment, carried out by employees, other students, or third parties;
- adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- notice to the parties of the outcome of the complaint; and
- an assurance that the school will take steps to prevent recurrence of any discrimination and to correct its effects on the complainant and others, if appropriate.

### **Summary of OCR's Investigation to Date**

During its investigation, OCR reviewed documentation submitted by the Complainant and the District, and interviewed the Complainant. Before OCR completed its investigation, the District expressed an interest in resolving the complaint pursuant to Section 302 of the *Case Processing Manual*.

OCR received a copy of a Final Decision issued by the Michigan Department of Education (MDE) Office of Special Education, dated XXX XX, 2015, after fully investigating a complaint filed by the Complainant against the District. Allegation 1 of

the MDE complaint asked “whether the District responded appropriately to a parent request for an initial evaluation in late XXXXXXXX 2014.” Allegation 4 of the MDE complaint asked “whether the District provided the parent with procedural safeguards.” These two allegations are identical to the first allegation of Complainant’s OCR Complaint. MDE found the District noncompliant as to both Allegations 1 and 4. The District provided OCR with documents that demonstrate that it has already complied with MDE’s recommended remedy in response to its findings.

Section 110(a)(2) of the CPM reads, “OCR will close an allegation where the allegation filed with OCR has been resolved by another federal, state, or local civil rights enforcement agency or through a recipient’s internal grievance procedures, including due process proceedings, and the allegation was investigated, any remedy obtained is the same as the remedy that would be obtained if OCR were to find a violation of the complaint and there was a comparable resolution process under comparable legal standards.”

As a remedy to MDE’s noncompliance findings, the District provided the Student with compensatory education that consisted of XXXXXX XXXXX XX XXXXX XXX XXXXXX services, XXXX hours of school XXXXXX XXXX services, and XXXXX hours of specialized instruction. The District also provided OCR with the Agenda, sign-in sheets, and training materials that demonstrate that it trained staff on the timely evaluation of students with disabilities and requirements regarding procedural safeguards. As compensatory education and staff training would have been the same remedies that OCR would have obtained were it to find the District not in compliance with Section 504 and Title II based on Complainant’s first allegation, OCR will close that allegation.

Based on Complainant’s other allegation, that the District does not have complaint Section 504 grievance procedures, OCR reviewed the District’s procedures. OCR discovered the following ways that the District’s procedures do not comply with the requirements of Section 504: the procedures OCR located on the District’s website differed from those provided to OCR in response to the Data Request; the procedures did not specify that they cover actions taken by third parties; out-of-date contact information was provided for OCR; and they do not include an assurance that the school will take steps to prevent recurrence of any discrimination and to correct its effects on the complainant and others, if appropriate.

### **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 revise its Section 504/Title II grievance procedures and provide notification of the revised procedures to all parents, students, and District employees.

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 during the resolution of this complaint. We look forward to receiving the District's first monitoring report, which is due by November 30, 2015. Please send the first monitoring report to Vincent Cheverine, who will be monitoring the District's implementation of this agreement. Mr. Cheverine may be reached by telephone at (216) 522-2676 and by email at [Vincent.Cheverine@ed.gov](mailto:Vincent.Cheverine@ed.gov). If you have any questions about this letter, you may contact me at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab  
Supervisory Attorney/Team Leader

Enclosure