



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

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Re: OCR Docket #15-15-1229

Dear xx xxxx:

This letter is to notify you of the disposition of the complaint filed against the xxxxxxxx xxxxxxxx School District (the District) with the U.S. Department of Education's Office for Civil Rights (OCR) on xxxx xx xxxx. The complaint alleges that the District discriminated against a District student (the Student) based on disability during the 2014-2015 school year. Specifically the complaint alleges that:

1. [xx paragraph xx]
2. [xx paragraph xx]

OCR is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation, at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability

by recipients of Federal financial assistance from the Department and by public entities, respectively. As a recipient of Federal financial assistance from the Department and as a public school system, the District is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint.

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

1. whether the District denied a qualified student with a disability a free appropriate public education (FAPE) in violation of the Section 504 implementing regulation at 34 C.F.R § 104.33; and
2. whether the District, on the basis of disability, subjected a student to a hostile environment, i.e., harassment that was sufficiently severe, pervasive, or persistent, so as to interfere with, or limit the student from participation in, deny the student the benefit of, or otherwise subject the student to discrimination under any program or service of the District, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and the Title II implementing regulation at 28 C.F.R. § 35.130(a).

During OCR’s investigation, OCR interviewed the Student’s parent. Additionally, OCR reviewed data provided by the District and interviewed several District staff including the assistant principal, the principal, the xxxxx xxxxxx xxx xxxxxxx xxxxx xxxxxx xxxxxxx xxxxx xxxxxxx xxxxx. OCR also reviewed documents and information provided by the District.

After carefully reviewing this information, OCR has determined that the evidence is insufficient to support a finding that the District failed to promptly and appropriately respond to harassment based on disability or that the District failed to xxxxx xxxxxx xxxxxx xxxxxxx xxxxxx. OCR determined, however, that the District denied the Student FAPE when it failed to provide the Student with xxxxx xxxxxxx xxxxxxxxxxx, as alleged. To resolve this violation the District signed a resolution agreement addressing the compliance concerns.

Summary of OCR’s Investigation

[xx paragraph xx]

A. Alleged failure to implement Section 504 plan

The District provided OCR with copies of the Student’s Section 504 plans entered into on xxxxxx xx xxxx , and xxxxxxx xx xxxxxx, which were both in effect for the 2014-2015 school year. The Section 504 plans provided the Student with identical accommodations. OCR asked the principal and the xxxxxx xxxxxx xxxxxx, who were members of the Student’s Section 504 team in December 2014, how the disputed provisions were intended to be implemented.

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

B. Alleged Failure to Respond to Disability-based Harassment

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

Applicable Legal Standards

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.

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires a recipient school district to provide a free appropriate public education (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. The Section 504 implementing regulation at 34 C.F.R. § 104.33(b)(2) specifies that implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting Section 504’s FAPE requirements. 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.

Disability-based harassment under Section 504 or Title II is intimidating or abusive behavior toward a student because of disability that is so severe, pervasive, and/or persistent as to create a hostile environment that interferes with or denies a student’s participation in a district’s education program or activities. When disability harassment limits or denies a student’s ability to participate in or benefit from a recipient’s programs, the recipient must respond by promptly investigating the incident and responding appropriately. Where the recipient learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

While disability harassment must involve the bullying or harassing of a student “on the basis of disability,” any bullying of a student with a disability that results in the student not receiving meaningful educational benefit constitutes a denial of FAPE that must be remedied, regardless of the nature of the bullying or harassment. Section 504 imposes on a recipient an ongoing obligation to provide FAPE to students with disabilities, and that

obligation exists whether or not school officials know or reasonably know about harassment or bullying of a student with a disability that may be causing a denial of FAPE.

A. Alleged failure to implement the Student’s Section 504 plan

The evidence is sufficient to conclude that the District failed to implement the Student’s Section 504 plan with respect to some of the plan elements at issue, resulting in a denial of a FAPE to the Student.

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

B. Alleged Disability Harassment

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

Resolution

The District has signed the enclosed Agreement, which, once implemented, will fully address the complaint allegation in accordance with Section 504 and Title II. The terms of the Agreement require the District, by December 1, 2015, to send a letter to the Student’s parent indicating that if the Student’s reenrolls in the District, the District will convene a group of knowledgeable persons, including the parent, to determine whether compensatory education services or other remedial services are necessary to address the District’s failure to provide testing in a distraction free environment, and the provision of homework packets during the 2014-2015 school year. If the District determines that compensatory education or remedial services are necessary, the District will draft a written plan for the provision of the services deemed necessary, which will identify the nature and amount of services to be provided, at no cost to the Student’s parents, by whom, and when. Additionally, if the 504 team determines that modifications to the 504 plan are necessary to provide FAPE based on currently available evaluation data and any additional information gathered by the District or that the parents wish to provide, the District will modify the plan as necessary.

The agreement also requires the District to submit documentation to OCR showing the letter sent to the Student’s parent, the list of participants to any meeting, any revisions or

clarifications to the 504 plan, an explanation for decisions made, the information considered; and a description of and schedule for providing any compensatory and/or remedial services (if any) to the Student.

Finally the Agreement requires that by **June 15, 2016**, the District will provide documentation to OCR of the dates, times and locations that compensatory and/or remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).

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. A complainant may file a private suit in federal court whether or not OCR finds a violation.

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 another complaint alleging such treatment.

If you have any questions about this letter or the resolution of the complaint, you may contact me by telephone at xxx xxx xxxx. For questions about implementation of the Agreement, please contact xx xxxxx xxx xxxxxx, who will be monitoring the District's implementation, by telephone at xxx xxx xxxx or by e-mail at xxxxx xxxxxx xxxx. We look forward to receiving the District's first monitoring report on **December 15, 2015**, which will include a copy of the letter issued to the parent.

Sincerely,

/s

Xxxx xx xxxxxxxxxxx
Supervisory Attorney/Team Leader

Enclosure