



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

October 6, 2015

Xx xxxxxx xxxxxx
Superintendent
Farmington Public Schools
32500 Shiawassee Road
Farmington Hills, Michigan 48336

Re: OCR Docket #15-15-1237

Dear xx xxxxxxxxx:

This letter is to inform you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on xxxx xx xxxx, against Farmington Public Schools (the District). The complaint alleged that the District discriminated against a student (the Student) based on his disabilities. Specifically, the complaint alleged that throughout the xxx xxxxxx xxxxx xxxxxxxxxxxxxx xxxx xxxx xxxx xxxxx xxxxx xxxxx xxxxxxxxxxx xxxxx xxx xx xxx xxxxxxx xxxxxx xxxxxx xxxxxx x xxxxxx xx xxxxxxx xxxxxx

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 entity, the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint. Based on the complaint allegations, OCR investigated:

- whether the District failed to evaluate a student who, because of disability, needs or is believed to need special education or related services, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.35; and
- whether the District failed to effectively 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 in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.36.

During the course of this investigation, OCR obtained documentation regarding the above allegations from the Student’s parent and from the District. OCR also interviewed the District employees and the Student’s parent and provided the Student’s parent with the opportunity to

The Department of Education’s mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

respond to information provided by the District. After a careful review of the information obtained, OCR has determined that the evidence is sufficient to support a finding, in part, that the District discriminated against the Student based on disability in violation of Section 504 or Title II as alleged. We set forth below the reasons for OCR's determination.

Summary of OCR's Investigation

The allegations in this complaint center around events occurring during the xxxx xxxxx school year. From xxx xxxxx xxxxx to the end of the school year, the Student attended the xxxxx grade at the District's xxxxx xxxxx xxxxxxxx (the school). Until xxxxx xxxx xxxxx, the Student had not been identified as having a disability, nor had he received services as a student with a disability.

- **Allegations Regarding Evaluation and Procedural Safeguards**

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

On xxx xxxxx xxxxx, the District completed its evaluation and commenced a meeting with the Individualized Education Program (IEP) team to go over the evaluation results and discuss placement options. The IEP team met again on xxxx xx xxxxx, and put the Student on an IEP. They decided at that meeting that because it was so late in the xxxx xxxxx school year, they would not change the Student's classroom placement, but they would provide him with services identified in his IEP at the beginning of each school day. They further decided that at the beginning of the xxxx xxxx school year they would put the Student in a xxxx xxxx class.

According to the Student's mother, the District did not give her any information regarding xxxxxxxx xxxxxxxxxx at the time of the xxxxxxxx or original IEP in xxxx. She acknowledged, however, that the District gave her xxxxxxxx xxxxxxxxxx in xxxx xxxx, after the District received notice of the complaint with OCR.

[xx paragraph xx]

- **District's Response to the Allegations**

The District denies that it should have xxxxxxxx the Student prior to its receiving his xxxx xxxxxxxx. The District stated that the Student did not xxxxx xxx xxxx xxxxxxxx during the xxxx xxxxx school year prior to the xxxxxxxxxx to raise concerns that he might have a disability. When the District learned of his diagnosis it sought xxxxxx xxxxxxxx xxxxxxxx xxx xxxxxxxx xxxxx xxxx xxxxxxxx, which it did. Thus, the District's response to the allegation is that the Student's evaluation and placement was timely.

[xx paragraph xx]

In response, the Student’s parent acknowledged that the District provided this information regarding procedural safeguards on xxxx xx xxxx, but denies receiving it earlier than that date.

- **Unified Services Team**

Information the District provided regarding its Section 504 policies and procedures included a document entitled “Section 504 Staff Manual” and a summary, entitled “504 Procedures Guide.” The procedures guide states that “students demonstrating patterns of concern for school personnel in either academic or behavioral areas will be referred to UST/MTSS team for intervention and tracking of support, including parent contact and input.” Although the Section 504 Staff Guide states that pre-referral procedures are not intended to impede any necessary referrals for consideration of eligibility under the IDEA or Section 504, the statements of the school’s principal (who is identified as the District’s representative for plan development and implementation) and other staff members suggest that their understanding and practices regarding UST are otherwise.

District staff said that grades are the primary trigger for determining whether a student needs the services of the UST, although a parent might ask for help or a teacher might refer a Student for UST. The principal said approximately twenty students at the school participate in the program, although other witnesses estimated the group to be twice that size.

The principal and others stated that UST was a precursor to evaluating a student and the principal stated that it was a “pre-special education intervention team.” He stated that the District does not want to send students immediately into special education; they want to make sure they have

disabilities first, so the UST does everything they can before putting the student in special education. The principal and one of the Student's teachers also described UST as providing parental-type mentoring support, in which staff assigned to a student have discussions with teachers, ensure that students are doing their homework and studying for tests.

The school psychologist and building consultant both explained that the UST (now called student support team) employs collaborative problem solving for students who are struggling in a variety of areas, including grades (most frequently) and behavior, whether they receive special education or not. They said the UST works to identify the primary issues for each student and then tries interventions.

The UST committee consists of two school counselors, a social worker, a school psychologist, a teacher consultant, the assistant principal, and anywhere from three to five staff members who attend UST meetings when they can, which occur two or three times a month. At the meetings the committee either focuses on a few particular students or runs through the list of all UST participants, and discusses the structures the District can put in place to help the students with their behavioral or academic problems.

District staff members said that there is no time limit for how long a student can receive the services of the UST, but the school only has the students for two years, so that would be the maximum time period. Generally, however, the teacher consultant said that one twelve-week term is sufficient to evaluate whether students are responding to interventions, and if they are not, the UST changes the interventions.

- **The District's Section 504 Policies, Procedures, and Practices**

The District's Section 504 resource guide and staff manual were the only two documents the District provided to reflect its Section 504 policies and procedures. In addition, OCR reviewed the information the District provides on its webpage, which consists entirely of the following:

504 Eligibility

Section 504 of the Rehabilitation Act of 1973 (commonly referred to as "504") guarantees certain rights to parents/guardians of students with disabilities. Farmington Public Schools attempts to identify students who may be eligible under Section 504 and inform parents/guardians of these rights.

By way of very brief summary, parents/guardians have the right to request that a student be evaluated for eligibility under Section 504. If a student is found eligible, a Section 504 Accommodation Plan is developed, with parental participation. The entire process is typically completed within thirty (30) school days.

Farmington Public Schools has developed a document titled Procedural Safeguards which explains the rights of parents/guardians under Section 504. The document is available on-line by following this link:

http://www.farmington.k12.mi.us/district/specialeducation/504_procedural_safeg

[uards.pdf](#). A copy of the Procedural Safeguards may also be requested from any building principal. For further information, please contact: Child Find Department, (248) 785-2060 [ages 5 and under] Student's Building Administrator [ages 6 and above]

The procedure guide and staff manual are, for the most part, consistent with the requirements of Section 504 and its implementing regulation, with the following exceptions: the procedure guide states that “when a student does not qualify for an IEP, offer a 504 plan as a next best option,” and “when a child is exited from an IEP, the case will be referred to the 504 coordinator by the IEP team for possible 504 plan (for existing IEP).”

There also seemed to be some confusion among the District staff regarding Section 504 eligibility, because numerous staff members, including those responsible for overseeing Section 504, stated that Section 504 was only for students who were not eligible for special education services.

Additionally, District staff, including the director of institutional equity and the school psychologist, stated that the District does not make a diagnosis for xxxx. If they suspect that a student has xxxx, they may evaluate to determine whether that student has learning disabilities or exhibits the characteristics of xxxx. Several District staff members stated that if, after going through this process, the District is concerned that the Student might have xxxx, it may note the characteristics that are indicative of xxxx to the parent or guardian and suggest that the parent or guardian consult with a medical practitioner. Several staff members said they were tentative about even mentioning xxxx to parents or guardians.

The District's 504 Procedure Guide also states that “a parent/guardian may, but is not required to, provide medical evaluation data or records to the [District] in connection with a Section 504 evaluation,” and that “should a medical evaluation be thought to be necessary, in order to make an eligibility determination, [the District] is required to provide that evaluation at no cost to the parent/guardian of the student” Again, however, District staff members expressed a different practice than what is reflected in the procedure guide. District staff uniformly stated that the District does not make an xxxx diagnosis, and with one exception, District staff members said that the District does not offer to pay for the medical diagnosis that is required before the District will provide services to a Student with xxxx under Section 504 or IDEA. The one exception was the director of special education, who said that if a parent or guardian does not have the means to pay for a private medical assessment and the District believes it is necessary, the District will pay for the costs of obtaining the diagnosis, however, she is not sure if this is conveyed to parents or guardians.

The Section 504 Staff Guide includes a distinction between modifications and accommodations, suggesting that modifications to course content and curricula are available only to students receiving services under IDEA, not Section 504. District staff members expressed a similar understanding of this distinction. Additionally, the Section 504 Staff Guide includes a grievance procedure that does not clearly state that the informal resolution process is optional.

Finally, neither the 504 Procedure Guide nor the Section 504 Staff Guide are readily available, and the only information on the District's website regarding services for students with disabilities is the brief overview cited above.

Legal Standards and Analysis

- **Alleged Failure to Evaluate**

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), states that recipients must evaluate any student who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the student in regular or special education, and prior to any significant change in the student's placement. A person with a disability in this context is defined as any person who has a physical or mental impairment which substantially limits one or more major life activities. 34 C.F.R. § 104.3(j)(1)(i).

Students have a civil right to FAPE, including an evaluation for disability, if needed. It is a violation of the evaluation requirements set forth in the Section 504 regulations if a school district suspects a student has a disability, but delays the evaluation.

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

[xx paragraph xx]

Moreover, the District acknowledged that it did not compensate or offer to compensate the Student's parents for any costs they incurred in having the Student xxxxxxxx xxx xxxx. Again, this is consistent with what appears to be the District's standard practice with respect to xxxxxxxx xxxxxxxx, or at least for xxxx diagnoses.

The evidence therefore supports a finding that the District failed to timely evaluate the Student to determine whether he required services under Section 504.

- **Alleged Failure to Provide Procedural Safeguards**

Recipient school districts are required to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of students who, because of 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 of the student to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian and representation by counsel, and a review procedure. 34 C.F.R. § 104.36.

[xx paragraph xx]

Thus, with respect to this allegation, the evidence is insufficient to support a finding that the District failed to provide the Student or his parents with their procedural safeguards.

- **The District's Section 504 Policies and Procedures**

The District's policies and procedures do not accurately reflect the District's actual practices with respect to Section 504. With respect to the UST, the District must ensure that this, as well as other intervention methods, do not slow down or impede its evaluation of students who they believe may have disabilities and need services under Section 504. It must also actively implement the provision in its cover letter to its Section 504 Staff Manual regarding the District's obligations with respect to medical evaluations it considers necessary to make eligibility determinations, including the District's responsibility to cover the costs of those evaluations. Additionally, the grievance procedures must clarify that the informal process for resolving grievances is optional, and that services the District provides under Section 504 may include special education, modification to curriculum, or other services as determined on a case-by-case basis based on the individual needs of each student. Finally, the District should formalize the policies and procedures and make them available on its website and in other publications.

Based on the foregoing, OCR concludes that there is sufficient evidence to support a finding that the District failed to timely evaluate a student who it believed to need special education or related services, as required by Section 504 and its implementing regulation at 34 C.F.R. § 104.35. The evidence is insufficient to support a finding that the District failed to provide the Student's parents with information regarding procedural safeguards in violation of Section 504's implementing regulation at 34 C.F.R. § 104.36.

Resolution

In order to resolve the complaint, the District signed the enclosed resolution agreement on xxxxxxxx xx xxxx, which, once implemented, will fully address the complaint allegations in accordance with the requirements of Section 504 and Title II. The agreement requires the District to: 1) offer to reimburse the Student's parents for the out-of-pocket costs they incurred related to their xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx xxxxxxxxxx xxxx xxxxxx xxxxxxxx school year and obtaining the xxxxxxxx xxxxxxxx xxxxxxxxxx xxxxxxxx xxxxxxxx xxx xxxxxxxx xxxxxx; 2) reconvene the Student's IEP team, including the Student's parents, to determine what, if any, compensatory education or other remedial services the Student requires for the time period during his enrollment at the District during the xxxx xxxxxx school year and, if necessary, develop a written plan for providing the services to be provided at no cost to the Student's parents; 3) provide the Student's parents with a meaningful opportunity to provide input into these determinations, notice of the determinations made, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree; 4) draft and adopt policies and procedures to ensure its timely identification, evaluation, and placement of students with disabilities pursuant to Section 504, including students with xxxx, and students who may require special education; 5) provide notice to teachers, staff, and parents/students of its obligations under Section 504 and Title II and of its Section 504 policies and procedures,

particularly with respect to xxxx; 6) clarify that students may receive special education services under Section 504 and that the informal process in its Section 504 grievance procedures is optional; and 7) provide notice of the revised Section 504 policies and procedures, and training to the District's Section 504 coordinator and all of its administrators on Section 504 and Title II and on the OCR-approved District policies and procedures described above.

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. OCR will monitor the District's implementation of the agreement. Should the District fail to fully implement the agreement, OCR will take appropriate action to ensure the District's full compliance with Section 504 and Title II.

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.

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.

We appreciate your efforts and those of District staff as we investigated and resolved this complaint. We look forward to receiving the District's first monitoring report by xxxxxx xx xxxx. The report should be directed to xxxx xxxxxxxx, who will be monitoring the District's implementation of the agreement. Xx xxxxxxxx can be reached at xxx xxxx xxxxx, orxxxx xxxxxxxx. If you have any questions about this letter or OCR's resolution of this case, you may contact me at xxxxxxxxxxxx xx xxxxxxxxxxxx.

Sincerely,

/s

Xxxx xxxxxxxxxxxx
Supervisory Attorney/Team Leader

Enclosure