



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

October 16, 2015

Mr. Shawn Lewis-Lakin
Superintendent
Royal Oak Public Schools
800 Devillen
Royal Oak, Michigan 48073

Re: OCR Docket # 15-15-1246

Dear Mr. Lewis-Lakin:

This letter is to notify you of the disposition of the complaint filed on April 20, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Royal Oak Public Schools (the District), alleging that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that during the 2014-2015 school year, the District failed to implement provisions of the Student's Individualized Education Program (IEP) requiring:

- a. [xx sentence redacted xx]
- b. [xx sentence redacted xx]
- c. [xx sentence redacted xx]
- d. [xx sentence redacted xx]
- e. [xx sentence redacted xx]
- f. [xx sentence redacted xx]

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

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assistance from the Department and as a public entity, the District is subject to these laws and OCR therefore had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR began an investigation to determine whether the District failed to provide a qualified student with a disability with a free and appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33.

OCR interviewed the Student's parent, the Student's XXXX teacher, and special education teacher. In addition, OCR reviewed documentation submitted by District. Based on this information, OCR determined that the evidence was insufficient to support the assertion that the District failed to implement the Student's IEP as it relates to the provision of reduced XXXX homework assignments, in violation of Section 504 and Title II.

With respect to the remaining claims (b-f) alleging failure to implement the Student's IEP in XXXXX and XXXXXX, prior to OCR's completion of its investigation, the District voluntarily agreed to resolve the complaint pursuant to Section 302 of OCR's Case Processing Manual (the Manual). On October 14, 2015, the District signed the attached resolution agreement (Agreement), which once implemented, will address the complaint allegations and any compliance concerns OCR has identified to date. A summary of OCR's investigation to date is presented below.

OCR's Investigation to Date

During the 2014-2015 school year, the Student was in the XXth grade and was receiving services pursuant to an IEP. The District provided OCR with a copy of the Student's IEP dated XXXXX X, 2014, which was amended on XXXXX XX, 2014. An annual IEP meeting was held and a new IEP was developed on XXXXX XX, 2015, which was substantially similar to the amended 2014 IEP. The April IEP was also subsequently amended in XXXXX XX, 2015.

According to the IEP, the Student has difficulty paying attention in class which impacts his progress in the general education curriculum. His distractibility negatively impacts his ability to attend to classroom activities and to successfully complete assignments and assessments. The Student receives services in the general education curriculum; his IEP provides for approximately 18 supplementary aids and services in Instruction and Assessment, Curriculum Supports and Adjustments, Supports and Modifications to the Environment, and Other Supports, Accommodations, and Modifications. All of the provisions alleged to have not been implemented by the District were included in the supplemental aids and services section of the IEP.

The complaint alleged that several provisions of the Student's IEP were not implemented by the Student's XXXXX, XXXXX, and XXXXX teachers.

Applicable Legal Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires a District to provide a qualified student with a disability with a free and appropriate public education (FAPE). The

regulation states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met, and are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36. The regulation further states at § 104.33 that implementation of an IEP developed in accordance with the Education of the Handicapped Act is one means of meeting this standard.

Alleged Failure to Implement the Student's IEP in His XXXXX Course

(a) Failure to reduce the Student's XXXXX homework assignments

The complaint alleged that the XXXXX teacher failed to reduce XXXXX assignments as required by the Student's IEP. The Student's parent told OCR that the XXXXX teacher did not reduce the number of problems on his homework assignments, so the Student reduced them himself. The parent acknowledged that the Student received full credit for the work. The Student's parent asserted, however, that the XXXXX teacher was supposed to reduce the assignments because he knows which problems are redundant and could assure that the Student is exposed to all of the subject areas in the lesson.

OCR reviewed the Student's XXXX 2014 IEP and the XXXXX XX amendment. The IEP requires "reduced number of items on XXXXX homework." Specifically, it states "eliminate problems when multiple problems of the same concept or skill are being addressed in homework assignment." Unlike other provisions of the IEP that identify the District staff person responsible for implementing that provision, (i.e., teacher, special education teacher, or Student) this provision does not identify who is responsible for doing so.

OCR interviewed the Student's special education teacher who was also the Student's caseload manager. As caseload manager, the teacher was responsible for communicating with the Student's teachers, the Student, and his parent, and acting as a liaison between the parent and teachers. The special education teacher also helped teachers implement the Student's IEP. At the beginning of the 2014-2015 school year, she provided each of the Student's teachers with an "IEP at a glance," and reviewed his IEP with them so that they would know how to implement it.

With respect to the reduced items on homework assignments, the special education teacher stated that this provision was supposed to make the Student's classes more manageable by helping him to keep up with the pace of the class without making him do as much work. The special education teacher stated that, generally, the classroom teacher would be the one to reduce the

homework assignments. However with regard to this provision, the XXXXX teacher reduced the amount of work by allowing the Student to choose whether he wanted to do the even or the odd problems. The special education teacher stated that the IEP does not indicate that the teacher has to decide how an assignment is to be reduced. She noted that the Student prefers to draw as little attention as possible about his accommodations. She stated that the XXXXX teacher's method was an easy way to reduce the number of problems. The special education teacher stated that she had not received any complaints from the Student's parent about the XXXXX teacher's method of reducing the homework.

OCR interviewed the Student's XXXXX teacher who indicated that he was the Student's teacher for XXXXX for the 2014-2015 school year, and the Student's XXXXX teacher from XXXXX through XXXXX of the 2013-2014 school year. The XXXXX teacher also submitted a written statement to OCR explaining that the Student did not do multiple problems covering the same concept or skill, and that all skill areas were covered in his reduced homework assignments.

The XXXXX teacher explained that in the XXXXX textbook, problem sets tend to be very redundant and back to back problems cover the same ideas and concepts. He explained that assigning the Student every other problem was the quickest and most effective way to reduce his assignments. The XXXXX teacher told OCR that for the first three units of the XXXXX class during the 2014-2015 school year, he rewrote the Student's assignments. In November 2014, he told the Student that he could complete either the odd or even problems for each homework assignment. He suggested that the Student do the odd problems because the answers were in the back of the book which meant that the Student would be able to check his work before submitting it.

During a parent-teacher conference in XXXXX 2014, the XXXXX teacher told OCR that he discussed with the Student's parent the fact that the Student would be responsible for every other problem on each homework assignment. The XXXXX teacher told OCR that the Student's parent did not indicate that she had any concerns about this, nor did she ever complain to him. The XXXXX teacher also informed the Student's special education teacher how the Student's assignments were being reduced, so that she could reinforce this idea with the Student.

The XXXXX teacher told OCR that the Student understood that he was supposed to do every other problem. The Student was not confused about what he was supposed to do and he always reduced the problems by doing the odd or even problems. The XXXXX teacher said that he gave the Student credit for any homework or assignment he turned in, whether or not they were submitted timely.

The Student's parent disputed that the XXXXX teacher told her or the Student that the Student was supposed to do all odd or all even problems, or that this was the method he was using to implement this provision of his IEP provision. The Student's parent declined OCR's request to speak with the Student to address the disputed matters. The Student's parent stated that she is not a XXXXX teacher so she is not in a position to know whether any skills and concepts in the homework assignments were redundant, or whether the Student was exposed to all of the skills and concepts.

Analysis and Conclusion

The evidence shows that the Student's, XXXXX XX, 2014, IEP and the XXXXX XX, 2014, amended IEP that were in effect during the 2014-2015 school year provided for a "reduced number of XXXXX items on homework assignments." Problems were to be eliminated when multiple problems of same concept or skill appeared in homework assignments. The IEP did not specifically indicate how the XXXXX assignments were to be reduced, although information suggests that typically teachers or special education teachers performed this task. The information indicates that the XXXXX teacher was aware that the problem sets in the XXXXX textbook were redundant and that consecutive problems covered the same ideas and concepts. Therefore, to quickly and effectively reduce the homework assignment, he decided to have the Student complete every other problem on each assignment. The evidence supports that the XXXXX teacher communicated to the Student and the special education teacher that he would implement the IEP provision at issue by having the Student choose all even or odd problems for each homework assignment. OCR found no evidence to suggest that the Student's homework assignments were not reduced in a manner consistent with the objectives of the IEP.

OCR has determined that the evidence is insufficient to support a finding that the District failed to implement the Student's IEP in his XXXXX class, as alleged. Thus, the evidence is insufficient to support a conclusion that the District denied the Student a FAPE, in violation of Section 504 and Title II. Thus, OCR has closed allegation (a) effective the date of this letter.

Alleged Failure to Implement the Student's IEP in His XXXXX and XXXXX Courses

(b) Failure to provide study guides and answers to study guides in his XXXXX course.

OCR reviewed the Student's XXXXX 2014 IEP and the XXXXX XX, 2014, amendment which state that the Student will be provided a "copy of study guides with answers before tests." Additionally, OCR reviewed the Student's XXXXX XX, 2015, IEP and its amendment dated XXXXX XX, 2015, which defines study guides and review guides, and clarifies that the answers to the study guide is to be provided to the Student after he attempts to do the study guide. The documents indicate there were misunderstandings regarding the provisions of study guides and review guides. The Student's XXXXX XX, 2015, IEP was revised to define a study guide (defining what will be on the test) and a review guide (practice leading up to assessment). There was also disagreement as to when the study guide answers would be given. The Student's IEP was amended in XXXX XX, 2015, to clarify that the Student had to independently attempt the study guide before being provided the answer key. Additionally, the parent and the District disagreed about whether the teachers were required to create a study guide specifically for the Student if one was not provided to other students. There was no further clarification in the XXXXX XX, 2015, IEP or its amendment regarding this matter. E-mail messages demonstrate that the XXXXX teacher and the Student's parent continued to disagree about the provision of study guides as late as XXXXX 2015.

- (c) Failure to check for the Student’s understanding of directions and concepts in his XXXXX and XXXXX courses.

The parent asserts that the Student constantly received no credit for in-class assignments and that the XXXXXX XXXX teacher had to check to ensure that the Student understood his assignments. The Student told the parent that the XXXXX and XXXXX teachers did not check to see if he understood assignments. The Student’s IEP requires that teachers “check for student understanding of directions, content, and the concepts necessary to complete work and assessments” in all classes, and that this XXXXX be done by asking the Student specific questions, or by monitoring his attention and performance in class. District staff denied that they failed to implement this provision of the IEP. Staff indicated that they “checked for understanding” with the Student in a variety of ways in their respective classes, consistent with the IEP objectives. Staff indicated that when they checked with the Student he was able to verbalize his understanding, but he did not want to follow through with the work. One staff member reported that it was a battle to engage with conversation and “check for understanding” when the Student was not receptive.

The special education teacher told OCR that if a student is not actively engaged a teacher is supposed to redirect the student and show the student where he/she is in the class activity. She stated that the Student’s teachers regularly told her that the Student was sleeping a lot in class, playing with his cell phone, refusing to do work and not putting forth effort.

- (d) Failure to chunk larger assignments in his XXXXX course.

The complaint alleged that the XXXXX teacher failed to chunk larger assignments for the Student. The Student’s XXXXX 2014 requires that teachers “chunk long term or complex assignments.” The IEP was amended in XXXXX 2015 to clarify that assessments were also to be chunked. The special education teacher explained that a long term assignment would be an assignment taking over a week to complete, but that it is open to interpretation. The XXXXX teacher’s written statement indicated that she never assigned any large assignments in the Student’s XXXXX class however the special education teacher told OCR that she had a difficult time figuring out the XXXXX teacher’s online grade book, and that it was not clear if the assignments were long term or complex assignments.

- (e) Failure to read tests aloud in his XXXXX course.

The complaint asserts that the XXXXX teacher consistently failed to have the Student’s tests read aloud. The Student’s parent stated that the District dropped a XXXXX test because it was not read to him in accordance with his IEP. The Student’s IEP states “tests/assessments read aloud or audio format” 100 percent of the time. The XXXXX teacher’s written statement indicates that she accommodated all of the Student’s tests. However, when the special education teacher asked, the Student refused to have his Social/Emotional test read to him. The XXXXX teacher indicated that all other accommodations were provided to the Student.

The special education teacher stated that the Student took his XXXXX tests in the XXXXX XXXXX. If the Student declined to have his assessments read aloud then they would not be read. She stated that the teachers do not force students to accept accommodations. The information provided by the District confirmed that the Student failed a test which was removed from his assessment marks, as indicated by the Student's parent.

- (f) Failure to adjust tests, including providing reduced choices for multiple choice questions, word banks and a reduced number of problems when the same concept or skill is being evaluated

[XX paragraph deleted XX]

The special education teacher stated that she believed there were continued issues with the XXXXX teacher not accommodating the Student's tests. She noted that the Student often re-took tests as a result of her failure to do so.

Resolution

As noted above, before OCR completed its investigation, the District expressed an interest in resolving the allegation pursuant to Section 302 of the Case Processing Manual. The CPM provides that a complaint XXXXX 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 allegations. 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 allegations or the information obtained during the investigation and consistent with applicable regulations.

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 15, 2015, after providing proper written notice to the Student's parent, to convene a group of knowledgeable persons, including the parent, to: 1) revise or clarify the IEP so that so that it no longer contains ambiguous or vague provisions (e.g. whether study guides must be created for the Student); and 2) determine whether the District failed to provide the Student with any aids or services pursuant to the Student's IEPs in effect for the 2014-2015 school year. If the team determines that there was a lapse of aids or services that impacted the Student's receipt of a free and appropriate public education from the District, the team will determine whether the Student needs compensatory and/or remedial services as a result of the District's failure to provide appropriate regular and/or special education or related services during the 2014-2015 school year.

If such remedial services are determined to be necessary, within one (1) week of its determination, the IEP team will develop a written plan for providing the Student with the compensatory education or other remedial services deemed necessary. The plan will identify the nature and amount of the services to be provided at no cost to the Student's parents, by whom, and when, with a completion date of no later than June 1, 2016. The plan will become part of the

Student's IEP. The District will 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.

The agreement also requires the District to submit documentation to OCR showing the participants to the meeting, any revisions or clarifications to the IEP, an explanation for decisions made, the information considered including the determination of what provisions of the Students IEP were not implemented, when and in which classes, and whether that impacted the Student's ability to receive a free and appropriate public education; 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

Based on the foregoing, OCR considers this complaint resolved. 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 (216) 522-2675. For questions about implementation of the Agreement, please contact Ms. Halle Jones, who will be monitoring the District's implementation, by telephone at (216) 522-4953 or by e-mail at Halle.Jones@ed.gov. We look forward to receiving the District's first monitoring report within two weeks of the decision as to whether compensatory and/or remedial services are needed.

Sincerely,

/s/

Kelly M. Johnson
Supervisory Attorney/Team Leader

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Enclosure