



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

November 10, 2015

Mr. Richard Naughton
Superintendent
Huron School District
32044 Huron River Drive
New Boston, Michigan 48164

Re: OCR Docket #15-15-1287

Dear Superintendent Naughton:

This letter is to notify you of the disposition of the above-referenced complaint that was filed on May 18, 2015, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Huron School District (the District), alleging that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that the District:

1. excluded the Student from attending school on the basis of disability from February 26, 2015, through the end of the 2014-2015 school year; and
2. failed to evaluate the Student before making a significant change in her placement in the spring of 2015.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504), which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit 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. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

- Whether the District, on the basis of disability, excluded a student from participation in, denied her the benefits of, or otherwise subjected her to discrimination under any program or service of the District, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.4 and Title II's implementing regulation at 28 CFR § 35.130;
- Whether the District failed to provide a free appropriate public education (FAPE) to a qualified student with a disability in violation of Section 504's implementing regulation at 34 C.F.R. § 104.33; and
- Whether the District failed to conduct an evaluation of a qualified student with a disability before a significant change in placement as required by Section 504's implementing regulation at 34 C.F.R. § 104.35(a).

Summary of OCR's Investigation to Date

To date, OCR has investigated this complaint by interviewing the Complainant and reviewing information and documentation provided by the Complainant and the District.

According to the Complainant, the Student has XXXXXX XXXX XXXXXX, which caused her to have XXXXXXXX in XXXX and XXXX. The XXXXXXXX severely affected her memory and decision-making abilities and her ability to retain learned information. The Student had an IEP in her previous district, which classified her as Otherwise Health Impaired (OHI). The Complainant provided OCR with a copy of this IEP.

The Complainant told OCR that she went to the District on XXXXX, XXXXXXXX, XX, XXXX, to enroll the Student as a transfer student. She filled out forms provided by the District and submitted the Student's IEP, report card, and transcript to the enrollment clerk. The clerk showed the IEP to a special education teacher, who said it was pretty straightforward and suggested that it should be forwarded to a particular guidance counselor. According to the Complainant, the clerk told the Complainant that someone would contact her no later than Wednesday of the following week, because the District was XXXXXXXXXX XXXX XXXXXXXX. The clerk gave her a form to set up transportation for the next week (the Complainant said they do this with any enrollment, not just students with IEPs). The Complainant did not call transportation because she did not have a schedule to give her daughter.

The Complainant said she did not receive a call the following week. She said she called XX, XX, XX, XXXXX. On Monday, XXXXX XX, the Complainant asked the clerk whether someone was going to call her. The clerk said she would try to find out and give someone the Complainant's information. She said the Complainant could check back with her the next day. When the Complainant called the next day, the clerk said she would put in another message, but she never said to whom she was directing the messages. On Wednesday, the Complainant got the same response.

The Complainant said the next time she spoke to someone at the District was XXXXX XX. Someone from the District, whom she thinks was another clerk, called the Complainant with a full school schedule for the Student. The clerk read the schedule to the Complainant and told her what classes the Student could take. The Complainant was not happy about the schedule because XX XXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXX XXX XXX. She said it seemed like no one had looked at the Student's IEP because [XX Partial Paragraph Redacted XX].

OCR reviewed documentation provided by the District which states that the Complainant had an appointment to enroll the Student on either XXXX X XX XXXX XX XXXXX, but she did not show up. The documentation further indicated that the Complainant came to the District on XXXXX XX and enrolled the Student with an expected start date of XXXXXXXX XX. The Student did not attend school on XXXX XX. According a note in the documentation provided by the District, someone from the District called the Complainant on XXXXXXXX XXXX XXXXXXXX XXXXX XXXXX XXX XXX XXX XXXXXXXX XXXXX XXXX XXX XXXXXXXX XXXXX.

XX Paragraph Redacted XX

XX Paragraph Redacted XX

Additional documentation provided by the District confirms that the District was waiting to enroll the Student until after the nurse training. The documentation shows that the District contracted with Wayne County Regional Education Service Agency (Wayne RESA) for a school nurse consultant on XXXXXXX. There are also several e-mails sent between District staff regarding the nurse training session for staff, including an e-mail [XX Partial Paragraph Redacted XX].

On XXX, the Complainant sent an e-mail to the principal of the school complaining about the length of the enrollment process. Later that day, the principal replied by e-mail stating that it looked like the Student had needs to be addressed, and that his staff had to be trained by a nurse before the Student could start.

The Complainant spoke to the District superintendent on XXX. The Complainant said he told her he was not aware of the situation and said he would make some phone calls and call her back. The superintendent called back and said that the Student could start school. The Complainant said on XX, she got an e-mail from the principal saying the Student could start the next day. The District's documentation confirms this.

The Complainant said that on XXX, she met with a counselor and the Teacher to discuss the Student's placement. The Complainant said it was at this meeting that the Student was given only a partial schedule (XXXX) and that her IEP was not followed when making her educational placement. The Complainant said the District placed the Student in special education classes when her existing IEP stated that she should be in regular education classes. The Complainant said that during this meeting, the Teacher said when you start at the XXX XX XXX XXXX. The Teacher offered the Student special education XXXX and XXX classes. The plan was for the Student to take those X classes, XXXXX XXXX, and XXX XXX XXXXX. The Complainant

said some electives were suggested, but she did not consider them. According to the Complainant, the District said no general education classes were available.

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The Complainant told OCR she agreed to a half day schedule on XX because she wanted her daughter in school. The Complainant said she did not have a choice if the District was only offering half days, so she agreed.

XX Paragraph Redacted XX

XX Paragraph Redacted XX

XX Paragraph Redacted XX

XX Paragraph Redacted XX

The Complainant told OCR that she then contacted a school board member about the situation. She said the day after XXX XXX, the superintendent called her and offered to provide the Student with a full schedule of general education classes. The Student then started the full schedule two days after XXX XXX (XXX); and she attended school after that. The last day of the school year was on or about June 14, 2015. The District's attendance records confirm that the Student's first day of school was XXXXXX, and indicates that she attended school on XXXXXX.

The District provided the Student's academic schedule for the 2015-2016 school year and documentation showing that the District held an IEP meeting on XX, 2015, and invited the Complainant to attend.

Prior to the completion of OCR's investigation, the District requested to voluntarily resolve the allegations pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). In order to complete its investigation, OCR would need to conduct interviews of District staff responsible for the enrollment, evaluation, and placement of students with disabilities, and depending on the information elicited from the District, an additional interview of the Complainant.

Applicable Legal Standards and OCR Policy

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

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.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), requires a recipient, before taking any action with respect to the initial placement of a student with a disability in a regular or special education program or any subsequent significant change in placement, to evaluate that student.

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. Section 504 does not prohibit the receiving school district from honoring the previous IEP during the interim period.

Resolution

Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), allegations and issues under OCR investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest to resolve the complaint. On October 20, 2015, prior to the completion of OCR's investigation, the District requested to voluntarily resolve the complaint allegations. Further, OCR has determined that it is appropriate to resolve the complaint allegations with the enclosed agreement which is aligned with the allegations and issues investigated to date and is consistent with applicable law and regulations. In light of the enclosed Agreement signed on November 9, 2015, which when implemented, will fully resolve the complaint, OCR is closing its investigation of the allegations 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 complaint and resume its investigation of the complaint allegations.

The Agreement requires the District to:

- convene a team of knowledgeable persons, including the Student's parents, to determine what compensatory education or other remedial services the Student requires as a result of not receiving appropriate regular and/or special education or related services for any reason during the 2015 spring semester, and draft a written plan for providing the Student with the compensatory education or other remedial services deemed necessary;
- provide Section 504 training, by a competent authority on Section 504, to all of its

administrators and staff members (including its designated Section 504 Coordinator) who are responsible for the enrollment, identification, evaluation, and placement of students with disabilities, or who may have a role in the implementation of Section 504 plans or Individualized Education Programs (IEPs). At a minimum, the training will cover the District's responsibilities regarding identification, evaluation, and placement procedures required by Section 504 and its implementing regulation at 34 C.F.R. §§ 104.34, 104.35, and 104.36, as well as the District's obligation to provide qualified students with a free appropriate public education (FAPE) under 34 C.F.R. § 104.33; and

- submit to OCR, for review and approval, any Section 504 policies and procedures that address the enrollment of students whom the District knows or suspects are students with disabilities. Once OCR reviews and approves the policies as compliant with the Section 504 regulations, the District will adopt those policies and procedures, post those policies and procedures on its website, and notify students, parents, guardians, and staff of the procedures and where copies may be obtained.

The proposed agreement is consistent with applicable laws and regulations and is aligned with the allegations and issues of the complaint and the information obtained during the investigation to date.

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, the harmed individual may file a complaint alleging such treatment.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We look forward to receiving the District's first monitoring report by January 18, 2016. For questions about implementation of the Agreement, please contact Allison Beach, who will be monitoring the District's implementation, by e-mail at Allison.Beach@ed.gov or by telephone at (216) 522-2666. For questions about this letter, please contact me at (216) 522-7640.

Sincerely,

/s/

Sacara M. Martin
Supervisory Attorney/Team Leader

Enclosure