



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

**REGION XV
MICHIGAN
OHIO**

February 13, 2018

Mr. Timothy Kolesar
Superintendent
Ironwood Area Schools
650 East Ayer Street
Ironwood, Michigan 49938

Re: OCR Docket No. 15-15-1357

Dear Mr. Kolesar:

This letter is to notify you of the disposition of the above-referenced complaint filed on July 8, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Ironwood Area Schools (the District) alleging that the District discriminated against a student (the Student) based disability. Specifically, the complaint alleges that:

[X---paragraph redacted---X]

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, which prohibit 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 at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of such financial assistance 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 opened an investigation into the following issues:

1. Whether District staff members, acting within the scope of employment, subjected a student to disability-based harassment that was sufficiently severe, persistent, or pervasive to interfere with his ability to participate in or benefit from the District's educational program, in violation of the Section 504 implementing regulation at 34 C.F.R § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.

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2. 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.
3. Whether the District made a significant change in the placement of a student with a disability without appropriately reevaluating the student, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35(a).
4. Whether the District failed to educate a qualified student with a disability with persons without disabilities to the maximum extent appropriate to the needs of the qualified student with a disability in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.34(a).
5. Whether the District excluded a qualified student with a disability from participation in, denied the student the benefits of, or otherwise subjected the student to discrimination under any of the District's programs, activities, aids, benefits, or services 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).
6. Whether the District failed to afford a qualified student with a disability an equal opportunity to participate in or benefit from the District's programs, activities, aids, benefits, or services in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(ii) and the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii).
7. Whether the District failed to provide a qualified student with a disability an equal opportunity for participation in nonacademic and extracurricular services and activities in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.37(a).

As explained below, prior to the conclusion of OCR's investigation, the District asked to resolve the compliance concerns connected with allegation #1 pursuant to Section 302 of OCR's Case Processing Manual. [x---paragraph redacted---x]

Background

During the 2014-2015 school year, the Student was in the first grade in the District.

[x---paragraph redacted---]

OCR's Case Processing Manual (CPM) states that OCR may close allegations when it obtains credible information indicating the allegations raised by the complaint have been resolved, and there are no systemic allegations. In such a case, OCR will attempt to ascertain the apparent resolution. If those allegations are not appropriate for further resolution, they will be closed.

OCR spoke with the XXXXXXXXXXXX on January 5, 2017. She said that since the District had taken the above steps, the Student had XXXXXXXXXXXX and was doing “fantastic.” OCR notes that the steps taken by the [x---paragraph redacted---x]

[x---paragraph redacted---x]

When OCR spoke with the xxxxxxxxxx on January 5, 2017, she said that despite progress for the Student individually, she remained concerned about the District staff’s overall awareness of how to handle students xx. She said that the District would benefit from training on the impact of xxxxxxxxxxxxxxxxxxxxxxxx, as well as what constitutes hostile environment/discrimination.

As noted above, before OCR completed its investigation into the complaint allegations, the District asked to resolve the complaint pursuant to Section 302 of OCR’s CPM. The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. 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.

When a school knows or should know of bullying conduct based on a student’s disability, it must take immediate and appropriate action to investigate or otherwise determine what occurred. If a school’s investigation reveals that bullying based on disability created a hostile environment—i.e., the conduct was sufficiently serious to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school—the school must take prompt and effective steps reasonably calculated to end the bullying, eliminate the hostile environment, prevent it from recurring, and, as appropriate, remedy its effects. Therefore, OCR would find a disability-based harassment violation under Section 504 and Title II when: (1) a student is bullied based on a disability; (2) the bullying is sufficiently serious to create a hostile environment; (3) school officials know or should know about the bullying; and (4) the school does not respond appropriately.

The District has signed the enclosed resolution agreement, which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. The resolution agreement requires the District to provide training to District administrators, teachers, and staff regarding: (1) how xxxxxxxxxxxxxxxx may affect students at school; (2) what constitutes disability-based harassment; and (3) the District’s policies regarding disability-based discrimination and harassment and reporting expectations for staff.

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 individual may file another 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, OCR 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.

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

OCR appreciates the District's cooperation during the investigation of this complaint. For questions regarding this letter, please contact me at (216) xxx-xxxx. We look forward to receiving the District's first monitoring report, which is due under the agreement on June 1, 2018. Please address your monitoring report to OCR attorney xxxxxxxxxxxx, who will be monitoring the District's implementation of this agreement. xxxxxxxxxxxx can be reached by telephone at (216) xxx-xxxx, or by e-mail at xxxxxxxxxxxxxxxxxxxx@ed.gov.

Sincerely,

/s/

Lisa M. Lane
Supervisory Attorney/Team Leader

Enclosure