



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

March 4, 2016

Xx xxxxx xxxxxx
xxxxxxxxxxxxxxxx
East Detroit Public Schools
24685 Kelly Road
Eastpointe, Michigan 48021

Re: OCR Docket #15-15-1375

Dear xx xxxxxx:

Enclosed please find the disposition of the above-referenced complaint filed on August 5, 2015, with the U.S. Department of Education, Office for Civil Rights (OCR), against the East Detroit Public Schools (the District), alleging that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged:

1. The District limited the Student's education program from a xxxx xxx to less than xxx xxxxx a day of academic instruction on xxx x xxxx, in order to address xxxxxxxxx resulting from her disabilities, without first re-evaluating her to determine her needs;
2. The District xxxxxxxxx the Student for xxxx xxxx xxx days from xxxxx xx xxxx xxxx without first conducting a re-evaluation to determine if the xxxxxxxxx was related to her disability; and
3. The District failed to evaluate the Student for xxxxxxxxx-xxxxxxx needs in the xxxxxx xx xxxx even though the District was aware that the Student had significant xxxxxxxxx xxxxx related to her disability.

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). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (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 (Title II). Title II prohibits discrimination on the basis of

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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. Accordingly, OCR had jurisdiction to investigate this complaint.

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

1. Whether the District failed to re-evaluate a student with a disability prior to significantly changing her placement through the imposition of a xxxxxxxxxxxx xxxxxx of xxxx xxxx xxx xxxx and xxxxxxxx xxx xxxxxx xxx, in violation of the Section 504 regulation at 34 C.F.R. § 104.35(a); and
2. Whether the District failed to re-evaluate a student who the District had reason to believe needed special education or related services, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35(d).

Because the Title II implementing regulation provided no greater protection than the Section 504 implementing regulation with respect to the issues raised in these complaints, OCR applied Section 504 standards in analyzing the complaint allegation.

After a careful review of the evidence obtained, OCR has determined that the District violated Section 504 and Title II when it failed to re-evaluate the Student prior to significant changes in xxx placement from xxxxx xx xxxxx xx xxxxx xx xxxx, and failed to evaluate xxx for xxxxxxxx xxxxxxxx disabilities in the xxxxxx xx xxxx when it had reason to be aware of those disabilities. The bases of our determination are explained below.

I. Information Obtained Through OCR's Investigation

A. Background and Complaint Allegations

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

B. Information from the District

OCR conducted limited interviews in this matter because the superintendent, special services director, and assistant principal involved with the Student's case during the xxxx-xxxx school year, were no longer employed by the District by xxxxxx xxxx. OCR did, however, review the Student's educational records in an effort to determine the chronology of events and evaluate the complaint allegations.

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx] There is no indication as to what day this page was inserted or

if was shared with the parent. The District provided no documentation to show that the Student was re-evaluated prior to this change in her program.

With respect to the Student’s discipline around this time, OCR reviewed several relevant records including a log of contacts between District staff and the parent and the Student’s attendance records.

[xxx---paragraph redacted---xxx]

[xxx---paragraph redacted---xxx]

According to the District’s current special services director, the IEP team met to review these results at an IEP team meeting on xxxxxxxx x xxxx. The team concluded that it required additional information prior to adopting a further amendment to the IEP and behavior intervention plan. The team agreed to obtain a functional behavior analysis, input from the District’s speech-language therapist, input from the intermediate school district (ISD) regarding xxxxxxxx xxxxxxxxxx, and input from the ISD regarding xxxxxxxx interventions. A further team meeting is scheduled for xxxxx x xxxx, to review this data. The special services director said that the team and the family have had preliminary discussions around compensatory education for the Student in the area of xxxxxx-xxxxxxx services, which both of the outside evaluators recommended. However, there has been no discussion regarding compensatory education for missed instructional time in the period of xxx/xxxx xxxx.

II. Applicable Regulatory Standards

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), specifically requires a recipient that operates a public elementary or secondary education to program to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to the initial placement of the person in a regular or special education program or any subsequent significant change in placement. Under 34 C.F.R. § 104.35(d), a district must also periodically re-evaluate a student as conditions warrant.

When the exclusion of a child with a disability is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days, the exclusion constitutes a “significant change in placement.” In addition, a series of suspensions that are each 10 or fewer days in duration but exceed 10 days in the aggregate may create a pattern of exclusions that would constitute a “significant change in placement.” The determination of whether a series of suspensions creates a pattern of exclusions that constitute a significant change in placement must be decided on a case-by-case basis. Among the factors that should be considered are the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the child is excluded from school.

To implement an exclusion that constitutes a significant change in placement, a recipient must first conduct a reevaluation of the child under 34 C.F.R. § 104.35. The first step of the reevaluation is to determine, using appropriate evaluation procedures that conform to the

requirements of the Section 504 regulation, whether the misconduct is caused by the child's disability. That determination should be made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options. If the group determines that the student's misconduct is a manifestation of the student's disabling condition, the group must continue the evaluation, following the requirements of 34 C.F.R. § 104.35 regarding evaluation and placement, to determine whether the student's educational placement is appropriate and what, if any, modifications to that placement are necessary. If, on the other hand, the group determines that the conduct is not a manifestation of the student's disability, the student may be excluded from school in the same manner as similarly situated students without disabilities are excluded. The manifestation determination should be made as soon as possible after the disciplinary action is administered and, in any event, before the eleventh day of the suspension or removal.

Use of procedures consistent with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the requirements of the Section 504 regulation.

III. Analysis and Conclusion

With respect to the issue of whether the District significantly changed the Student's placement without re-evaluating her, it is undisputed that the District changed the Student's placement on at least two occasions.

[xxx---paragraph redacted---xxx]

There is no evidence to support that the Student's was re-evaluated prior to the District taking this action.

[xxx---paragraph redacted---xxx]

Accordingly, with respect to both of these changes of placement, OCR finds that the District violated the Section 504 regulation at 34 C.F.R. § 104.35(a) in failing to re-evaluate.

Finally, the District's log of contacts with the family in the xxxxxx xxxx reflects that the District was aware of the Student's disability, xxxx xxx xxxxxxxx xxx xxxx xxx xx xxx xxxxxxxxxxxx. As noted above, this led to a dramatic series of xxxxxxxxxxxx and ultimately to the xxxxxxxx-xxx xxxxxxxxxxxx from school. However, the District failed to further evaluate whether it needed additional supports to manage the Student's xxxxxxxx. As a result, OCR finds that the District violated the Section 504 regulation at 34 C.F.R. § 104.35(d) in failing to re-evaluate at that time.

On March 2, 2016, the District signed the enclosed Agreement, which, once fully implemented, will resolve the complaint violations regarding its failure to evaluate the Student. In summary, the Agreement requires that the District convene the Student's Section IEP team, including the Student's parent, to do the following:

- Conduct xxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx to determine whether the behaviors that led to the Student's xxxxxxxxxxxx from xxxxxx xx xxxx xx xxxx xx xxxx, were caused by the Student's disability. To the extent that the District determines that it was, it should

remove the xxxxxxxxxx from the Student's record.

- Determine whether any further re-evaluations are necessary to supplement those recently concluded.
- Revise the Student's IEP to the extent necessary to incorporate information from any newly conducted evaluations.
- Determine a compensatory education plan for the Student for – at minimum – the period of xxx xx xxxx xx xxxx xx xxx, when the Student was on a xxxxxx xxxxx xxx schedule. The District should further add to this period any days the Student was excluded from education for xxxxxxxxxx for xxxxxxxxx actually caused by her disability, as determined through the xxxxxxxxxxxxxxxx xxxxxxxxxxxx.
- Provide training regarding the District's policies and procedures for the identification, evaluation, and placement of students under Section 504 to all District teachers, administrators, and other staff involved with such identification, evaluation, and placement.

Based on the information above, OCR is closing this complaint effective the date of this letter. 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, coerced, 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 Complainant 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, 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.

The complainant may have the right to 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. If you have any questions, please contact me at (216) xxx xxxx, or xxxxx.x.xxxx@ed.gov. For questions about implementation of the Agreement, please contact xx xxxxx xxxxxxx at (216) xxx xxxx or xxxxx.xxxxxxx@ed.gov, who will be monitoring the District's implementation of the Agreement. We look forward to receiving the District's first monitoring report by May 15, 2016.

Sincerely,

/s/

Lisa M. Lane
Supervisory Attorney/Team Leader

Enclosure

cc: xxxxxxxxxxxxxxxx xxxxxx