



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

August 17, 2016

Catherine A. Tracey, Esq.  
Miller Johnson  
45 Ottawa Ave. SW, Suite 1100  
P.O. Box 306  
Grand Rapids, Michigan 49501-0306

Re: OCR Docket No. 15-16-1320

Dear Ms. Tracey:

This letter is to inform you of the disposition of the above-referenced complaint filed against Canton Preparatory High School (the School) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on April 11, 2016, which alleged that the School discriminated against a student (the Student) based on his disability. Specifically, the complaint alleged that the School did not provide the Student with a one-to-one paraprofessional aide from XXX through XXX, as required by his XXX XXXX individualized education program (IEP).

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 School is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR began an investigation of the following issue: whether the School 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.

### Summary of OCR's Investigation

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

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To date, OCR has investigated this complaint by interviewing the Student's parent (the parent), reviewing documents and written information provided by the parent, and reviewing documentation produced by the School. Before OCR completed its investigation, the School expressed an interest in voluntarily resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) and OCR determined that it is appropriate to resolve this complaint with an agreement. Accordingly, OCR is not making a finding with regard to the School's compliance with Section 504 or Title II in this letter.

- **Background Information**

During the XXXX-XXXX school year, the Student was in the XXXX grade at the School. The Student's previous school had identified him as a student with a disability, and the Student had an IEP from his previous school, dated XXXX XXXX. According to the Student's parent, the Student is enrolled in the School for the XXXX-XXXX school year.

- **Implementation of the Student's IEP**

X---TWO PARAGRAPHS REDACTED---X

### **Applicable Legal Standards and OCR Policy**

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipients to provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or the severity of the person's disability. An appropriate education for purposes of FAPE 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 nondisabled students are met, and that are developed in accordance with procedural requirements set forth in 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards, including notice.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a team determined were necessary to provide the student with FAPE. OCR then determines whether the recipient provided the student the agreed-upon services and, if not, whether this resulted in a denial of FAPE.

### **Conclusion**

As noted above, prior to the completion of OCR's investigation, the School expressed interest in resolving the complaint allegation pursuant to Section 302 of OCR's CPM, which provides that a complaint may 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 allegation(s). Such a request does not constitute an admission of liability on the part of the School, nor does it constitute a determination by OCR that the School has violated any of the laws that OCR enforces. On August 16, 2016, the School submitted the enclosed signed Agreement to OCR. The provisions of the signed Agreement are aligned with the complaint

allegation and the information obtained to date during the investigation and consistent with applicable regulations. When fully implemented, the signed Agreement will resolve the complaint allegation.

In light of the signed Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the School's implementation of the Agreement. Should the School fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure the School's compliance with the Section 504 and Title II regulations.

This concludes OCR's investigation of the complaint and should not be interpreted to address the School'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 School 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.

OCR looks forward to receiving the School's first monitoring report by September 2, 2016. For questions about implementation of the Agreement, please contact OCR attorney, Ms. Suwan Park, who will be monitoring the School's implementation, by e-mail at [Suwan.Park@ed.gov](mailto:Suwan.Park@ed.gov) or by telephone at (216) 522-4972. For questions about this letter, please contact me at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab  
Supervisory Attorney/Team Leader

Enclosure