



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 20, 2016

Ms. Susan C. Hastings, Esq.
Squire Patton Boggs
4900 Key Tower 127 Public Square
Cleveland, OH 44114

Re: OCR Docket # 15-16-1368

Dear Ms. Hastings:

This letter is to notify you of the disposition of a complaint filed on May 3, 2015, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Solon City School District (the District), alleging that the District discriminated against a student (the Student) on the basis of disability by failing to consistently implement his Section 504 plan regarding XXXXXXXX XXXX,XXXXXXXXXX, XXXXXXXX services, and access to technology during the XXXX-XXXX school year.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), 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 (Title II), 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 District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR began investigating 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.

In its investigation of this complaint to date, OCR interviewed the Student's parent (the Parent) and reviewed documentation provided by the Parent. Prior to the completion of OCR's investigation, the District asked to voluntarily resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the complaint allegation. We set forth

below a summary of OCR’s investigation to date.

OCR’s Investigation to Date

X---six 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.

Resolution

As noted above, prior to the completion of OCR’s investigation, the District 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 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 allegation(s) or the information obtained during the investigation and consistent with applicable regulations.

On September 16, 2016, the District has signed the enclosed Agreement, which, once implemented, will fully address the complaint allegation in accordance with Section 504 and Title II. Under the terms of the Agreement, the District will:

- Within 5 days of signing the Agreement, advise the Parent in writing that if she re-enrolls the Student in the District for the 2016-2017 school year, the District will, within 30 calendar days of the Student’s re-enrollment, reconvene the Student’s Section 504 team (the Team) to develop, amend or revise, as necessary, the Student’s Section 504 plan to ensure that the Student receives a FAPE and determine whether any compensatory education or other remedial services for the Student are necessary for the XXXX-XXXX school year. The letter should note that while the Parent may re-enroll the Student and seek an evaluation at any point in the future, the Parent must re-enroll the Student within

180 days of the date of the letter in order to access the possibility of compensatory education and/or remedial services.

- Within 30 days of the Student’s re-enrollment, if the Parent re-enrolls the Student within 180 days of the letter described above, convene a Section 504 meeting to: (a) develop, amend, or revise, as necessary, the Student’s Section 504 plan to ensure that the Student receives a FAPE (in the interim, the District will either implement the Student’s current Section 504 plan created by his prior school district, or meet with the Parent to determine what accommodations will be provided during the Student’s initial 30 days upon enrollment); (b) provide the Parent with notice of the procedural safeguards afforded her under the Section 504 implementing regulation at 34 C.F.R. § 104.36; (c) determine any compensatory education and/or remedial services the Student requires for the XXXX-XXXX school year, when the complaint states that the Student may not have had XXXXXXXX XXXX,XXXXXXXX, XXXXX services, and access to technology, in all subjects; (d) develop a written plan for providing the Student with the compensatory education and/or other remedial services, if deemed necessary, which will become part of the Student’s Section 504 plan; (e) identify the nature and amount of the services to be provided at no cost to the Parent, by whom, and when, within; and (f) provide the Parent with a meaningful opportunity to provide input into these determinations.
- Within 3 days of the Section 504 meeting: (a) provide the Parent with a copy of the Section 504 plan, and a copy of the written plan for providing the Student with compensatory education and/or remedial services, and/or notification of the Team’s decision regarding whether the Student requires compensatory education and/or remedial services for the XXXX-XXXX school year; (b) provide the Parent with notice of the procedural safeguards afforded her under the Section 504 implementing regulation at 34 C.F.R. § 104.36, including the right to challenge such determinations through an impartial due process hearing, should she disagree. The notice will indicate that the Parent has 20 calendar days from the date of receipt to inform the District of her acceptance of the Student’s Section 504 plan and/or the District’s offer of compensatory education and/or remedial services, if any.
- Within 3 months of the Section 504 meeting, provide any compensatory education and/or remedial services deemed necessary.

The District will provide documentation to OCR to demonstrate its implementation of the Agreement, as outlined in the Agreement.

Conclusion

In light of the signed Agreement, OCR finds that the complaint is 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 a 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) 522-7634. For questions about implementation of the Agreement, please contact Ms. Timsi Pathak, who will be monitoring the District's implementation. Ms. Pathak can be reached by e-mail at Timsi.Pathak@ed.gov or by telephone at (216) 522-7642. We look forward to receiving the District's first monitoring report by March 31, 2017.

Sincerely,

/s/

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure