



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

March 25, 2021

Via Regular U.S. Mail

Dr. Andrae Townsel
Superintendent
Benton Harbor Area Schools
870 Colfax Avenue
Benton Harbor, Michigan 49022

Re: OCR Docket No. XX-XX-XXXXXX

Dear Dr. Townsel:

This letter is to notify you of the disposition of the above-referenced complaint filed on June 20, 2016, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Benton Harbor Area Schools (the District) alleging that the District discriminated against a student based on disability. Specifically, the Complainant alleged that the District failed to evaluate the Student to determine whether XXXX was a student with a disability for the purpose of developing a Section 504 plan, despite having information that should have led the District to suspect that the Student had a disability. The complaint also alleged that the District failed to notify the Student's parents of their procedural safeguards with respect to the District's decision not to evaluate the Student for a Section 504 plan.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 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 federal financial assistance from the Department and as a public entity the District is subject to these laws.

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

- Whether the District failed to properly identify and evaluate a student with a disability and provide XXXX with appropriate regular and special education and related aids and services in violation of the regulation implementing Section 504 at 34 C.F.R. §§ 104.33 and 104.35.
- Whether the District failed to provide notice of the procedural safeguards to challenge the District's determination not to evaluate the Student through an impartial due process hearing, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.36.

In its investigation to date, OCR reviewed information provided by the Complainant and the District. The information demonstrated that following the parent's initial request for evaluation, the District evaluated the Student and found XXXX to be ineligible for special education but did not consider eligibility for services under a Section 504 plan. The information further demonstrated that in XXX XXXX, at the parent's request, the District provided for an independent educational evaluation which determined that the Student was ineligible for special education and recommended that XXXX be evaluated for a Section 504 plan. The District's information establishes that in XXX XXXX, the District created a Section 504 plan for the Student, provided notice of procedural safeguards to the parent and conducted a manifestation determination to address the Student's behaviors during the XXXX-XXXX school year. Information from a related OCR proceeding demonstrated that following these incidents, District personnel received training regarding the District's obligations under Section 504 regarding procedural safeguards and the District's obligations upon receiving a request for a Section 504 evaluation.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On March 16, 2021, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the remaining allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

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 looks forward to receiving the District’s first monitoring report by March 1, 2021. For questions about implementation of the Agreement, please contact XXX. XXX will be overseeing the monitoring and can be reached by telephone at (XXX) XXX-XXXX or by e-mail at XXX@ed.gov. If you have questions about this letter, please contact me by telephone at (XXX) XXX-XXXX, or by e-mail at XXX@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure