



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

January 31, 2017

Ms. Lisa Horvatich,
Director of Student Services
South Redford School District
26141 Schoolcraft Road
Redford, Michigan 48239

Re: OCR Docket No. 15-16-7342

Dear Ms. Horvatich:

This letter is to notify you of the disposition of a complaint filed on September 19, 2016, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the South Redford School District (the District), alleging that the District discriminated against a student on the basis of disability. Specifically, the complaint alleged that during the 2016-2017 school year, the District failed to implement the provisions of the Student's Individualized Education Program (IEP) that require the District to provide her with an individual one-to-one aide throughout the school day.

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. Because the District receives Federal financial assistance from the Department and is a public entity, the District is subject to these laws. OCR therefore 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 Complainant (the Student’s parent), and spoke with the District’s director of student services. Additionally, OCR reviewed documentation submitted by both the Student’s parent and the District. Prior to the completion of OCR’s investigation, the District asked to voluntarily resolve the complaint pursuant to Section 302 of OCR’s Complaint Processing Manual (CPM) and signed the enclosed resolution agreement (the Agreement), which, once implemented, will fully address the complaint allegation. Below, we set forth a summary of OCR’s investigation to date.

OCR’s Investigation to Date

xx - paragraph deleted – xx

xx - paragraph deleted – xx

xx - paragraph deleted – xx

OCR’s investigation to date, raised concerns regarding the ambiguity of the language included in the Student’s XXXX XX, 2016, IEP. Specifically, the meaning of “individual aide/adult support” was unclear, and no further explanation was provided in the IEP or other documentation to address the ambiguity. As such, the Student’s parent and the District had conflicting interpretations of the provision and its requirements, a concern of which was discussed with the District during the course of OCR’s investigation. While the information reviewed by OCR thus far does not provide sufficient evidence to establish a violation of Section 504 or Title II, it has raised a potential compliance concern regarding whether the District provided the Student with FAPE.

Applicable Legal Standards and OCR Policy

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires a District to provide a qualified student with a disability with a free and appropriate public education (FAPE). The regulation states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and are based upon adherence to procedures that satisfy the requirements of Section 504 implementing regulations § 104.34, § 104.35, and § 104.36. The regulation further states that implementation of an IEP developed in accordance with the Education of the Handicapped Act is one means of meeting this standard.

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, before OCR completed its investigation, the District expressed an interest in resolving the allegation pursuant to Section 302 of the Case Processing Manual. The CPM 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 allegations. 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 allegations or the information obtained during the investigation and consistent with applicable regulations.

On January 30, 2017, the District signed the enclosed Agreement, which, once implemented, will fully address the complaint allegation in accordance with Section 504 and Title II. The terms of the Agreement require the District to do the following:

1. Within 45 days of signing this agreement, after providing proper notice to the Student's parent(s), the District will convene a group consisting of individuals knowledgeable about the Student—including the Student's parent(s)—to:
 - a. consider whether the District's interpretation and implementation of the "individual aide/adult support" provision stated in the supplementary aids and services section of the Student's Individualized Education Program (IEP) dated XXXX XX, 2016, resulted in a denial of FAPE from XXXX XX, 2016, through XXXX XX, 2016, during the 2016-2017 school year; and
 - b. determine whether any compensatory education and/or remedial services are necessary for the Student due to the District's interpretation and implementation of the "individual aide/adult support" provision of the Student's XXXX 2016 IEP.
2. If the team determines compensatory education and/or remedial services are necessary, within seven (7) calendar days of making its determination, the team will develop a written plan for providing timely compensatory education and/or remedial services to the Student. The plan will identify the nature and amount of services to be provided at no cost to the Student's parent; the individual(s) responsible for carrying out the applicable services; and the dates such services are to be provided. The District will provide the Student's parent(s) notice of the procedural safeguards, including the right to challenge the group's determination through an impartial due process hearing.

Conclusion

Given the foregoing, OCR considers this complaint 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 another 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. Chenelle Love, who will be monitoring the District's implementation, by telephone at (216) 522-7626 or by e-mail at Chenelle.Love@ed.gov. 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