



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

March 8, 2018

Kevin T. Sutton, Esq.  
Lusk Albertson  
409 E. Jefferson Avenue, Fifth Floor  
Detroit, Michigan 48226

Re: OCR Docket No. 15-17-1040

Dear Mr. Sutton:

This letter is to notify you of the disposition of the above-referenced complaint filed on October 17, 2016, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Lapeer Community Schools (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that the District failed to implement the Student's Section 504 plan when XXXXXXXX.

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, and OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following legal issues:

- whether the District failed to provide a qualified student with a disability a free appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33; and
- whether the District failed to provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford a qualified student with a disability an equal opportunity for participation in such services, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.37(a)(1).

Because the regulation implementing Title II provides no greater protection than the regulation implementing Section 504 with respect to this complaint allegation, OCR applied Section 504 standards in analyzing this complaint.

During its investigation, OCR reviewed information the Student's parent (the Parent) provided. In addition, OCR interviewed district staff and reviewed documents and information the District provided. After a careful review and analysis of the information obtained during this investigation, OCR has determined that the evidence is sufficient to support a finding that the District discriminated against the Student as alleged in violation of the regulations implementing Section 504. We set forth below the bases for OCR's determination. The District submitted the enclosed resolution agreement, described below, to resolve this complaint.

### **Summary of OCR's Investigation**

XX – paragraphs redacted - XX

### **Applicable Legal Standards and Analysis**

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a) requires recipients of Federal financial assistance to provide a qualified student with a disability with a free appropriate public education (FAPE). The Section 504 implementing regulation at 34 C.F.R. § 104.33 (b)(1) 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 the individual educational needs of students who have a disability, as adequately as the needs of students who do not have disabilities are met and are based upon an adherence to procedures that satisfy the requirements of §§ 104.34, 104.35 and 104.36. The Section 504 implementing regulation at 34 C.F.R. § 104.35(d) requires that recipients of Federal financial assistance establish procedures for periodic reevaluation of students who have been provided special education and related services. In providing or arranging for the provision of nonacademic and extracurricular services and activities set forth in § 104.37(a)(2), the Section 504 implementing regulation at 34 C.F.R. § 104.34(b) requires recipients of Federal financial assistance to ensure that qualified students with a disability participate with students without a disability in such activities and services to the maximum extent appropriate to the needs of the students with a disability in question. Further, the Section 504 implementing regulation at 34 C.F.R. § 104.37(a)(1) requires recipients of Federal financial assistance to provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford a student an equal opportunity for participation in such services.

The evidence shows that, during the first semester of XXXX school year, the Student had a Section 504 plan dated XXXXX in place. According to this Section 504 plan, the Student XXXXXXXX. OCR found, as discussed above, that the District had not reconvened the Student's Section 504 team to update the Student's Section 504 plan to address extracurricular, non-academic, or after-school curricular activities that the Student was participating in XXXXXXXX despite numerous complaints and requests that the Student's parent had made regarding the Student's XXXXXXXX in those activities. Rather, the District relied upon the Student's parent to XXXXXXXX with District staff, who had no training regarding disability accommodations, as to what accommodations would or would not be provided during the

Student's participation in extracurricular, non-academic, and after-school curricular activities. Not until XXXX did the District reconvene the Student's Section 504 team to determine what, if any, accommodations were appropriate for the Student in the various settings at issue.

Based on the foregoing, OCR found that the District's failure to timely reconvene the Student's Section 504 team to reevaluate the student's Section 504 needs related to the extracurricular, nonacademic, and after-school curricular activities at issue constituted a violation of the Section 504 implementing regulations at 34 C.F.R. §§ 104.33 and 104.37(a)(1).

### **Resolution and Conclusion**

In consideration of the evidence that shows that the District reconvened on XXXXXX, and reviewed and revised the Student's Section 504 plan, OCR has determined that the District has remedied the compliance concerns related to the individual Student. To resolve the remaining concerns of the non-compliance finding identified above, on March 7, 2018, the District provided the enclosed signed Agreement, which once implemented, will resolve OCR's compliance finding. Specifically, the Agreement requires the District to: revise and submit to OCR for review and approval its existing Section 504 Administrative Guidelines and Forms (the Procedures) to ensure that all staff who may have a role in the implementation of Section 504 plans will receive copies of the applicable students' Section 504 plans, and after OCR's approval, implement the revised Procedures; and draft and submit to OCR for review and approval a written memorandum to all building administrators, all special education director(s), all teachers, and all other staff/personnel (e.g., paraprofessionals, speech therapists, school nurses, social workers and/or counselors) who may have a role in the identification, evaluation, and placement of students that have, or are suspected of having, a disability under Section 504, or who may have a role in the implementation of Section 504 plans, to remind them of the Section 504 requirements (e.g., periodic reevaluation and that any decision regarding the identification, evaluation, or placement of a student under Section 504 shall be made by a team of individuals knowledgeable about the student, the meaning of the evaluation data, and the placement options), the availability and location of the District's Section 504 procedures and grievance procedures, and a list of resources available for staff regarding Section 504, and after OCR's approval, disseminate the written memorandum to all relevant district administrators and staff. OCR will monitor the District's implementation of the 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 appreciates the cooperation of the District during the investigation and resolution of this complaint. If you have any questions about the monitoring, please contact Ms. Sarah Poppleton, who will be monitoring the District's compliance with the Agreement. You may reach her by telephone at (216) 522-2674. If you have any questions about this letter, you may contact me at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab  
Supervising Attorney/Team Leader

Enclosure