



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

**REGION XV
MICHIGAN
OHIO**

October 30, 2018

Kevin T. Sutton, Esq.
Lusk Albertson PLC
409 E. Jefferson Ave., 5th Floor
Detroit, Michigan 48226

Re: OCR Docket No. 15-17-1287

Dear Mr. Sutton:

This letter is to notify you of the disposition of the above-referenced complaint filed on February 21, 2017, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Utica Community Schools (the District) alleging that the District discriminated against a preschool student (the Student) on the basis of disability. Specifically, the complaint alleged that:

1. [X--- paragraph redacted ---X]
2. [X--- paragraph redacted ---X]

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, in providing preschool education, on the basis of disability, excluded a qualified student with a disability and/or failed to take into account the needs of the student in determining the aid, benefits, or services to be provided to the student, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.38;
- whether the District discriminated against a qualified student with a disability in providing nonacademic services, including physical education courses, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.37; and
- whether the District, in providing nonacademic services, failed to ensure that a qualified student with a disability participated with nondisabled students to the maximum extent

appropriate to the needs of the student with a disability in question, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.34(b).

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant.

[X--- paragraph redacted ---X]

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 with an 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 October 24, 2018, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the 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 December 15, 2018. For questions about implementation of the Agreement, please contact XXXXXXXX. He will be overseeing the monitoring and can be reached by telephone at (216) xxx-xxxx or by e-mail at xxxxxxxxxxxxxxx@ed.gov. If you have questions about this letter, please contact me by telephone at (216) xxx-xxxx, or by e-mail at xxxxxxxxxxxxxxx@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure