

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

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CLEVELAND, OH 44115



REGION XV
MICHIGAN
OHIO

August 24, 2017

Dr. Glenn Maleyko
Superintendent
Dearborn Public Schools
18700 Audette Street
Dearborn, Michigan 48124

Re: OCR Docket No. 15-17-1440

Dear Dr. Maleyko:

This letter is to inform you of the disposition of the above-referenced complaint filed against Dearborn City School District (the District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on May 15, 2017, which alleged that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that the District failed to provide the Student with the following accommodations, as provided for in his XXXXXXXXXXXX 2016, Individualized Education Program (IEP):

1. [X—sentence redacted—X]
2. [X—sentence redacted—X]
3. [X—sentence redacted—X]

from the adoption of the IEP in XXXXXXXXXXXX 2016 through the close of the 2016-2017 school year.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, 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 an investigation of the following issue: 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.

To date, OCR has investigated this complaint by reviewing documentation provided by the Student's parent and information provided by the District. Prior to the completion of OCR's investigation, the District expressed an interest in voluntarily resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) and signed the enclosed resolution 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

The Student attended XXXXX XXXXX School in the District as XXXXX grader during the 2016-2017 school year. The District identified the Student as a qualified student with a disability (XXXXX XXXXX) and developed an IEP on XXXXXXXXXXXX 2016.

[X—paragraph redacted—X]

During the investigation, the District's Director of Special Education reported to OCR that she reviewed the Student's information and found that teachers' notes were provided for the Student's XXXXX and XXXXX classes, but she could not confirm whether the individual schedule was provided to the Student as the district staff was out during the summer break. Prior to submitting its data response, the District expressed its interest in resolving this complaint under Section 302 of OCR's CPM.

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 and Conclusion

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. On August 23, 2017, the District submitted the enclosed signed Agreement to OCR. The provisions of the signed Agreement are aligned with the complaint allegation and the information obtained to date during the investigation and consistent with applicable regulations. When fully implemented, the signed Agreement will resolve the complaint allegation.

In light of the signed Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will reopen the complaint and take appropriate action to ensure the District's compliance with the Section 504 and Title II regulations.

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 harmed individual may file a complaint alleging such treatment.

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 September 22, 2017. For questions about implementation of the Agreement, please contact OCR attorney, Ms. Suwan Park, who will be monitoring the District's implementation, by e-mail at Suwan.Park@ed.gov or by telephone at (216) 522-4972. For questions about this letter, please contact me at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure