



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

March 1, 2019

Gretta Kumpf, Ph.D.
Superintendent of Schools
Tipp City Exempted Village Schools
90 S. Tippecanoe Dr.
Tipp City, Ohio 45371

Re: OCR Docket #15-17-1466

Dear Superintendent Kumpf:

This letter is to notify you of the disposition of OCR complaint 15-17-1466, filed on May 25, 2017, with the U.S. Department of Education's Office for Civil Rights (OCR) against Tipp City Exempted Village Schools (the District), alleging discrimination on the basis of disability. Specifically, the complaint alleged that:

- 1) the District failed to implement a student's Section 504 plan during the XXX school year;
- 2) the District disciplined a student, who has a disability, more harshly than it disciplined similarly-situated students without disabilities when it assigned him XXX and subsequently recommended XXX;
- 3) the District assigned a student with a disability XXX, which resulted in his disciplinary removal from his educational placement XXX during the XXX school year;
- 4) the District significantly changed a student's educational placement, without adhering to the requirements of Section 504, after it implemented XXX in lieu of XXX incident;
- 5) the District failed to respond to grievances the student's parent filed related to disability discrimination and the student's XXX for the XXX incident; and
- 6) the District has failed to provide notice of its Section 504 coordinator, as required by the Section 504 regulation.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (Department). OCR also is responsible for

enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35 (Title II). 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 school district, the District is subject to these laws.

During its investigation, OCR reviewed information provided by the Complainant and received some additional information from the District. Prior to OCR's receipt of the District's data response and any interviews, the District expressed an interest resolving the allegations voluntarily, and OCR determined that it was appropriate to do so under Section 302 of OCR's Case Processing Manual (CPM).

Applicable Legal Standards

As OCR has determined that the applicable Title II regulation provides no greater protection than the applicable Section 504 regulation in regard to the circumstances of this complaint, OCR addressed only applicable Section 504 standards below.

The regulation implementing Section 504, at 34 C.F.R. § 104.33, provides that a recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction. An appropriate education 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 students without disabilities are met and that are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36 as to educational setting, evaluation and placement, and procedural safeguards. What constitutes a FAPE must therefore be determined through an appropriate evaluation or reevaluation under those provisions.

At 34 C.F.R. § 104.35(a), recipients are required to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to the initial placement of the person in a regular or special education program **or any subsequent significant change in placement**, including in the disciplinary context. Certain disciplinary exclusions, such as a suspension, may constitute a significant change in placement. A disciplinary exclusion of any student with a disability constitutes a significant change in placement when the exclusion is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days. In addition, a series of suspensions that are each 10 or fewer days in duration but exceed 10 days in the aggregate may create a pattern of exclusion that constitutes a significant change in placement. The determination of whether a series of suspensions creates such a pattern must be decided on a case-by-case basis, considering factors such as the length of each suspension, the proximity of the suspensions to one another, and the total amount of time a student is excluded from school. In some cases, in-school suspensions must be considered in determining whether a significant change in placement has occurred--in particular when an in-school suspension results in exclusion from the regular education environment and from a district's educational programs and activities.

The first step of a re-evaluation before a proposed discipline that constitutes a significant change in placement is to determine, using appropriate evaluation procedures, whether the conduct in question is a manifestation of the student's disability. That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group determines that the student's conduct is a manifestation of his disability, the group must continue the re-evaluation to determine whether the student's educational placement is appropriate and what, if any, modifications to that placement are necessary, rather than imposing the proposed discipline. If the group determines that the conduct is not a manifestation of the student's disability, the district may exclude the student from school in the same manner as it excludes similarly situated students without disabilities. The district should ensure that the student's parent(s)/guardian(s) are notified of the determination and that they are provided notice of the procedural safeguards afforded them under 34 C.F.R. § 104.36 to contest that determination.

Furthermore, the regulation implementing Section 504, at 34 C.F.R. § 104.4(a), prohibits recipient school districts from, on the basis of disability, excluding a qualified person with a disability from participation in, denying him the benefits of, or otherwise subjecting him to discrimination under any recipient programs or activities. In addition, 34 C.F.R. § 104.4(b)(iv) provides that a recipient shall not discriminate against any qualified person with a disability by providing different or separate aid, benefits, or services, unless different treatment is necessary to provide the individual with aid, benefits, or services that are as effective as those provided to persons without disabilities.

Finally, the regulation implementing Section 504 at 34 C.F.R. § 104.7(b) requires recipients of Federal financial assistance to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. 34 C.F.R. § 104.8, requires each recipient to provide notice of the employee responsible for coordinating its efforts to comply with disability discrimination complaints.

Summary of Investigation to Date

According to the Student's parent (Parent), the District identified the Student as a student with a disability (XXX) prior to XXX and met his disability-needs through an Individualized Education Program (IEP) under the Individuals with Disabilities Education Act (IDEA). His IEP provided services in XXX environment, such as XXX. In XXX, the District XXX developed a Section 504 plan to provide him with accommodations in the XXX classroom.

According to the Parent, the District failed to implement the Student's Section 504 plan during his XXX year, in XXX. In support of this allegation, she provided OCR with copies of e-mail messages between her and District personnel, indicating that XXX.

The Parent also stated that the Student was subjected to XXX removals during his XXX year that amounted to a significant change in his placement. She said that he was XXX for XXX. She provided OCR with a XXX; the latter noted that XXX and that the Student XXX. The Student's mother alleged that the Student was not permitted to XXX but instead was XXX at school. She

contended that, while a teacher XXX, the teacher did not provide the Student with XXX; rather, his instruction was XXX, and his specified, related services were not provided.

The Parent stated that the District held no manifestation determination hearing prior to XXX in this way. In support, she provided e-mail messages between herself and District XXX, which stated that the Student was XXX in XXX, so no manifestation hearing was required, and that the District had XXX, because his accommodations XXX.

The Parent also stated that the Student was XXX differently from students without disabilities. She stated that the Student's instruction, as described above, occurred not in the XXX program but rather in a XXX program that took place in the morning straight through till XXX and that he was not permitted XXX. Furthermore, she said that he had to have XXX in school to, for example, XXX and that other students made fun of him as a result. She also said that the District had not told her that the Student would be excluded from XXX, but that he was so excluded. In support of this allegation, the Parent provided OCR with copies of e-mail exchanges between herself and the superintendent about the Student's XXX and his having to have XXX. She also provided several examples to show that students without disabilities who had committed similar or more serious offenses had not been excluded XXX.

The Parent told OCR that, when she complained about the Student's treatment, which she considered discriminatory, neither District personnel nor the school board appropriately responded to her, informed her about the District's compliance officer(s), or promptly resolved her complaint. In support, she provided OCR with communications between her and the District, including XXX, about the alleged discrimination. Replies she provided to OCR did not refer her to a grievance procedure or reference its compliance officer(s).

Evidence gathered to date raises cause for concern that the Student was not provided with a FAPE, either because XXX during the year in question or because his placement was changed without a Section 504 Team determination that his new placement XXX would provide him with a FAPE. The evidence also raises cause for concern that the District significantly changed the Student's educational placement without re-evaluating him and making a determination of whether XXX was a manifestation of this disability. The evidence raises further cause for concern as to whether the District XXX the Student differently from similarly situated students without disabilities who XXX by changing only his educational placement XXX. Finally, the evidence to date raises cause for concern that the District did not provide a prompt and equitable resolution of her complaint after she contacted the District and XXX about alleged discrimination.

As stated above, before OCR completed its investigation or made any findings concerning the District's compliance with Section 504 or Title II, the District expressed an interest resolving the allegations voluntarily. Such a request does not constitute an admission of liability on the part of a recipient institution such as the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. On XXX, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the concerns which the District agreed to resolve via Section 302 of the CPM. OCR will monitor 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 looks forward to receiving the District's first monitoring reports by February 28, XXX, and March 31, XXX. For questions about implementation of the Agreement, please contact Ms. Karla Ussery. She will be overseeing the monitoring and can be reached by telephone at (216) 522-2683 or by e-mail at Karla.Ussery@ed.gov. If you have questions about this letter, please contact Ms. Ussery.

Sincerely,

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure