



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

September 27, 2019

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXX Michigan XXXXX

Re: OCR Docket No. 15-18-1143

Dear XXXXXXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXXXXX, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Birmingham Public 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 Individualized Education Program (IEP) by failing to provide XXX:

[XXX paragraph redacted XXX]

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 investigated the following legal issue: whether the District failed to provide a qualified student with a disability with a free appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation to date, OCR reviewed information provided by the Complainant and the District. Prior to the completion of OCR’s investigation, the District asked to voluntarily resolve this complaint pursuant to Section 302 of OCR’s *Case Processing Manual* (CPM). On September 27, 2019, the District signed the enclosed Resolution Agreement (the Agreement), which, once implemented, will fully address any compliance issues raised by the complaint allegations. OCR sets forth below a summary of its investigation to date.

OCR’s Investigation to Date

[XXX sentence redacted XXX] The Student was on an Individualized Education Program (IEP) XXXXXXXXXXXXXXXXXXXXX. As noted above, the Complainant alleged that certain

Further, the information the District has provided to date raises concern that the District failed to fully implement the disability-related aides and services required by the Student's IEP during the 2017-2018 school year, and that this may have resulted in the Student being denied FAPE.

[XXX paragraph redacted XXX]

Under Section 302 of OCR's CPM, 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 because OCR's investigation has identified issues that can be addressed through a resolution agreement. As noted above, the District expressed an interest in resolving this complaint prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On September 27, 2019, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the compliance concerns OCR identified. 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 XXXXXXXX 2019. For questions about implementation of the Agreement, please contact XXXXXX. XXXXXX will be overseeing the monitoring of the Agreement and can be reached by telephone at XXX

XXXXXXXXXX or by e-mail at XXXXXXXXXXXXX. If you have questions about this letter, please contact me by telephone at XXXXXXXXXXXXX, or by e-mail at XXXXXXXXXXXXXXXXXXXX.

Sincerely,

/s
Supervisory Attorney/Team Leader

Enclosure