



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 14, 2019

Ms. Tara Koch
Special Services Director
Chippewa Valley Schools
19120 Cass Avenue
Clinton Township, Michigan 48038

Re: OCR Docket No. 15-18-1261

Dear Ms. Koch:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX 14, 2018, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Chippewa Valley Schools (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that in XXXXX 2018, the District failed to reevaluate the Student upon request.

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 allegation, OCR opened an investigation of the following legal issues:

- 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; and
- whether the District failed to appropriately evaluate/reevaluate a student with a disability as required by the Section 504 implementing regulation at 34 C.F.R. § 104.35.

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and a District employee (the District employee). 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) and then signed the enclosed Resolution Agreement (the Agreement), which, once implemented, will fully address any compliance issues raised by the complaint allegation. OCR sets forth below a summary of its investigation to date.

OCR's Investigation to Date

During the 2017-2018 school year, the Student was in the XXXXX grade at the District. The Student was on an Individualized Education Program (IEP) for a XXXXX XXXXX. The IEP also referenced that the Student had a severe XXXXX allergy.

At the start of the 2017-2018 school year, the District developed a separate general health plan to address the Student's XXXXX allergy. According to the District, this general health plan was not created pursuant to an IEP meeting. The District employee informed OCR that the Student's general health plan was kept in the health care office, and that teachers were made aware of the Student's XXXXX allergy.

The Student's parent stated that the District's actions were not sufficient to address the Student's XXXXX allergy, as the Student experienced multiple XXXXX allergy attacks at the District after students ate XXXXX-based foods next to, and near, the Student, and after the District served XXXXX-based food in its cafeteria. [X-sentence deleted=X] The Student's parent stated that many of these incidents necessitated medical interventions, such as emergency medical treatment and the administration of epinephrine injections.

In XXXXX 2018, the Student's parent discussed with District staff her concerns regarding the need for medical interventions due to the increasing number of XXXXX allergy attacks the Student experienced at the District. She stated that in XXXXX 2018, the Student's IEP team met and drafted a Health Care Plan (HCP) to address the Student's XXXXX allergy; however, she did not know if the HCP was subsequently finalized, or whether the HCP was incorporated into the Student's IEP. On XXXXX XX, 2018, she informed OCR that she had recently called the District and requested a copy of the HCP but was told by District staff that it was still in draft form. [X-sentence deleted=X]

The District provided OCR with copies of correspondence amongst District staff dated XXXXX 2018, in which staff discussed the Student's parent's concerns and the need to prevent further XXXXX allergy attacks. The District also submitted copies of the Student's IEPs and HCPs, in effect during the 2017-2018 school year.

Based on this documentation, on XXXXX XX, 2017, the District amended the Student's IEP, in part, to identify the Student's XXXXX XXXXX allergy and provide the location of an epinephrine auto injector. On XXXXX X, 2018, the District further amended the Student's IEP to provide him with additional time to complete assignments on days when the Student's allergy caused his absence from school. On XXXXX XX, 2018, the District developed a HCP identifying the Student's XXXXX allergy diagnosis and outlining the District's obligations related to medications/emergency care, cleaning, notifications, school environment, transportation, classrooms, field trips, extracurricular activities, and the Student's attendance. Although the XXXXX 2018 HCP submitted to OCR was marked "draft," the District employee informed OCR that the District implemented the Student's XXXXX 2018 HCP. On XXXXX 12, 2018, the District revised the Student's IEP and HCP. The XXXXX 2018 HCP outlined the District's obligations related to medications/emergency care, notifications, classrooms, field

trips, extracurricular activities, and the Student’s attendance. Although the XXXXX 2018 HCP submitted to OCR was marked “draft,” the District employee informed OCR that the District implemented the Student’s XXXXX 2018 HCP. On XXXXX XX, 2018, the District further amended the Student’s IEP and HCP. The XXXXX 2018 IEP, identified the Student’s history of XXXXX-induced anaphylaxis, caused by ingestion of, and close contact with (e.g., smelling) XXXXX XXXXX. The XXXXX 2018 IEP further directed persons to “[s]ee [the HCP].” The XXXXX 2018 HCP provided that the Student’s classroom was to be XXXXX free and outlined steps the District would take to prevent the Student from being exposed to XXXXXs. The HCP stated that:

- Signs will be placed in visible locations in [the Student’s] classrooms indicating it is a ‘XXXXX and XXXXX Alert Zone[.]’
- Staff and student body will be made aware. Information to share will be provided by administration.
- [X-sentence deleted=X]
- Substitute teaching plans will include a copy of the [HCP].
- Teachers, lunchroom staff, cafeteria staff, hall monitors, and office staff, bus driver ([f]ield [t]rips) will be informed and provided a copy of the [HCP].
- Lunchroom table will be cleaned prior to use with a single use paper towel and disinfectant.
- [The Student] will eat lunch at a designated XXXXX and XXXXX alert table in the lunch room.

The District employee told OCR that although the Student’s IEPs and HCPs are on separate documents, the HCPs are a part of the Student’s IEPs.

In October 2018, the Student’s parent informed OCR that District staff were not following the agreed upon protocols to ensure the Student did not have an allergy attack. Information provided by both the Student’s parent and the District indicated that during the 2018-2019 school year, the Student continued to have multiple allergy attacks at school related to exposure to XXXXXs. For example, based on the information the District provided, the Student had attacks on XXXXX XX and XX, 2018 as a result of exposure to XXXXXs in his classroom, which was supposed to be XXXXX free. [X-sentence deleted=X]

Applicable Legal and Regulatory Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.33, requires recipient institutions that operate public elementary or secondary education programs to provide a free and appropriate public education (FAPE) to each qualified person 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 individuals without disabilities 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. One way a District can show that it has provided a student with FAPE is by demonstrating that it fully implemented a Student's properly developed IEP.

The Section 504 implementing regulation, at 34 C.F.R. § 104.35(a), requires school districts to evaluate any child who, because of disability, needs or is believed to need special education or related aids and services. In addition, the Section 504 regulation at 34 C.F.R. § 104.35(b) requires recipients to establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services. The Section 504 regulation at 34 C.F.R. § 104.35(d) also requires districts to establish procedures for the reevaluation of students with disabilities. Reevaluations must be done periodically, and prior to a significant change in a student's placement. Re-evaluations are also required in certain other circumstances, for example, where a parent or teacher requests a reevaluation based on concerns that a student's existing disability related aids and services are not meeting the student's needs.

Voluntary Resolution and Conclusion

The Student's parent initially alleged that the District failed to reevaluate the Student to address his XXXXX allergy in XXXXX 2018, upon request. OCR's review of the Student's HCPs and the information received to date indicate that the District did reconvene the Student's IEP team (the Team) in XXXXX 2018 and revised the Student's IEP related to his XXXXX allergy. The Team also developed a HCP, which the District asserted was part of the Student's IEP, which included steps to prevent the Student's exposure to XXXXX at school. However, the information OCR has obtained to date raised potential compliance concerns regarding the District's implementation of the Student's HCPs. [X-sentence deleted=X] This raised concerns that that the Student was being denied a FAPE in violation of Section 504 and Title II.

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 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 April 22, 2019, the District signed the enclosed Agreement, which, when fully implemented, will address the compliance concerns OCR identified. OCR will monitor the 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 report by May 31, 2019. For questions about implementation of the Agreement, please contact Ms. Timsi Pathak. Ms. Pathak will be overseeing the monitoring and can be reached by telephone at (216) 522-7642 or by e-mail at Timsi.Pathak@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

/s/

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure