



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

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MICHIGAN
OHIO

April 17, 2019

Kristen Howard, Esq.
Special Assistant to the Superintendent
Detroit Public Schools Community District
Office of Equity, Advocacy & Civil Rights
3011 W. Grand Blvd., 14th Floor
Detroit, Michigan 48202

Re: OCR Docket No. 15-19-1053

Dear Ms. Howard:

This letter is to notify you of the disposition of the above-referenced complaint filed on November 2, 2018, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Detroit Public Schools Community District (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that the District failed to timely evaluate the Student to determine if she is a student with a disability.

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 issue: whether the District failed to conduct a timely evaluation of a student who, because of disability, needed or was believed to have needed special education or related services, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35(a).

To conduct its investigation, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant. After a careful review and analysis of the information obtained during its investigation, OCR has determined that the evidence is sufficient to support a finding that the District violated the regulations implementing Section 504 and Title II, as alleged. The bases for OCR's determination are explained below.

Summary of OCR's Investigation

(2 paragraphs redacted)

Applicable Regulatory Standards

The Section 504 implementing regulation, at 34 C.F.R. § 104.4, provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

The Section 504 regulation at 34 C.F.R. § 104.33 further provides that a recipient that operates a public elementary or secondary education program must provide a free appropriate public education (FAPE) to each qualified individual with a disability within its 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 persons with disabilities as adequately as the needs of persons without disabilities are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards. Implementation of an IEP developed in accordance with IDEA is one way a recipient can demonstrate that it has provided a qualified student with a disability with a FAPE in accordance with the Section 504 regulation.

The regulation implementing Section 504 at 34 C.F.R. Section 104.35(a) and (d) provides that a recipient shall conduct an initial evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement, and shall establish procedures for periodic reevaluation of students who have been provided special education and related services. OCR interprets the Title II regulation to require public school systems to provide FAPE to the same extent as is required under the Section 504 regulation. See 28 C.F.R. §§35.103(a) and 35.130(b)(1).

Although the Section 504 regulation does not set forth specific timeframes by which recipient school districts must complete evaluations of students, a recipient school district must ensure that qualified students with disabilities are evaluated and provided access to meaningful educational services without unreasonable delay. OCR will consider, as guidance, state-required timeframes for evaluations as well as a school district's internal guidelines to determine whether the evaluation has been completed within a reasonable time. Under Michigan's Administrative Rules for Special Education at R 340.1721b, initial evaluations must be completed within 30 school days of receiving parental consent for an evaluation.

Analysis and Conclusion

The District's position paper states that the District received a signed request for an evaluation from the Complainant on XXXXXX XX XXXX. To be timely under Michigan law, the evaluation needed to be completed within 30 school days of XXXXXX XX XXXX, which was XXXXXX XX XXXX. As the evaluation was not completed by XXXXXX XX XXXX, the District did not timely complete its evaluation of the Student. For these reasons, OCR finds that

the evidence is sufficient to support a finding that the District violated the regulations implementing Section 504 and Title II.

On April 16, 2019, the District signed and submitted the enclosed agreement which, when fully implemented, will resolve the compliance issues. 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 June 1, 2019. For questions about implementation of the Agreement, please contact OCR attorney Kimberly Kilby. Ms. Kilby will be overseeing the monitoring and can be reached by telephone at (216) 522-2574 or by e-mail at Kimberly.Kilby@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab
Supervisory Attorney/Team Leader

Enclosure