



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

May 30, 2019

XXXXX
XXXXX
XXXXX
XXXXX, Michigan XXXXX

Re: OCR Docket No. 15-19-1092

Dear XXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Ann Arbor Public Schools (the District) alleging that the District discriminated against a student (the Student) on the basis of his disability. Specifically, the complaint alleged that the District failed to implement the Student's Section 504 plan from XXXXX, through xxxxx, when xxxxx.

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 began an investigation of the following legal issue: whether the District failed to provide a qualified student with a disability with a free appropriate public education (FAPE), in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation of this complaint to date, OCR reviewed documentation provided by the Complainant, including the Student's Section 504 Eligibility Determination form and his Section 504 Accommodation Plan dated xxxxxx, as well as various emails between the District and the Student's parent. On May 10, 2019, prior to OCR's completion of its investigation, the District indicated it would like to voluntarily resolve this complaint under Section 302 of OCR's Case Processing Manual (CPM), which provides that 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. OCR determined that it was appropriate to resolve this complaint pursuant to Section 302 of the CPM, and on May 29, 2019, the District signed the enclosed resolution

agreement (the Agreement), which, once implemented, will address the complaint allegation. Below, we set forth a summary of OCR’s investigation to date.

Background and Summary of OCR’s Investigation

[XXXX PARAGRAPH REDACTED]

Applicable Legal Standards and Analysis

The Section 504 implementing regulation at 34 C.F.R. § 104.33 requires recipients of federal financial assistance to provide qualified students with disabilities with a free appropriate public education (FAPE). The Section 504 implementing regulation at 34 C.F.R. § 104.33 (b)(1) states that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students who have a disability as adequately as the needs of students who do not have disabilities are met. As Title II offers no greater protections in this instance than Section 504, OCR applied Section 504 in the instant case.

In analyzing allegations of denial of FAPE, OCR first considers what regular or special education and related aids and services a student’s Section 504 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.

The information OCR has reviewed to date raises a concern that the District denied the student a FAPE XXXXX. Specifically, XXXXX, raise the concern that the District did not implement the Student’s Section 504 plan during that time. However, as noted above, before OCR could further investigate to determine if the Student’s Section 504 plan was fully implemented, the District asked to voluntarily resolve the complaint pursuant to Section 302 of OCR’s Case Processing Manual (CPM). For OCR to complete its investigation, OCR would need to interview District staff responsible for implementing the Student’s Section 504 plan to determine whether they were aware of the plan, knew the specific services required by the plan, and implemented each of the provisions of the Student’s plan while he attended XXXXX. OCR would also need to review a copy of the plan provided by the District.

OCR will monitor the District’s compliance with the attached agreement.

Conclusion

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 Student's parent 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.

If you have any questions about this letter or the resolution of the complaint, you may contact me by telephone at XXXXXX. For questions about implementation of the Agreement, please contact XXXXX, who will be monitoring the District's implementation of the Agreement, by telephone at XXXXX or by e-mail at XXXXX. We look forward to receiving the District's first monitoring report by **June 17, 2019**.

Sincerely,

/s

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure