



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

July 29, 2021

Via E-mail Only to XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

Giarmarco, Mullins & Horton, P.C.
Tenth Floor Columbia Center
101 West Big Beaver Road
Troy, Michigan 48064-5280

Re: OCR Docket No. 15-19-1310

Dear XX XXXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX XX, XXXX, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Saline Area Schools (the District) alleging that the District discriminated against a student based on disability. Specifically, the Complainant alleged that the District failed to appropriately respond to reports XX XXX XXXXXXXXXXXX XXXXXXXX that other District students were harassing the Student based on his disability during the XXXX-XXXX school year.

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 opened an investigation of the following legal issues:

- whether a student was subjected to harassing conduct on the basis of disability that was sufficiently severe, persistent, or pervasive to interfere with or deny the student's participation in or receipt of benefits, services, or opportunities in the District's program and, if so, whether the District failed to investigate promptly and to respond appropriately, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4, and the Title II implementing regulation at 28 C.F.R. § 35.130;
- whether the District failed to provide for the prompt and equitable resolution of complaints of disability discrimination as required by the Section 504 and Title II regulations at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b); and

- 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 to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and District employees.

The time period covered by OCR’s investigation in this case is from XXXXXXXX XXX XXXXX to the end of the XXXX-XXXX school year. During that time period, the Student was in the XXX XXXXXX (the XXXX XXXXXX). The Student was identified as a student with a disability and was on an IEP during the time period relevant to the complaint.

The Student’s parents (the Parents) told OCR that the Student experienced several incidents, both before and during the time period at issue, which they interpreted as bullying or harassment, and they reported each incident to the District on multiple occasions. The Parents reported the following alleged incidents within the relevant time period:

- X – paragraph redacted – X
- In XXXXXXXXXX XXXX, they reported:

“X---list redacted---X”

- On XXXXXXXXXX X, XXXX, Students 2 and 4 XXXXXXXXXX XXX XXXXXXXXXX XXX in the XXXXXXX XXXXXXXXXX; The Parents explained that Student 4 did this because XXX XXXXXXXXXX XXXX XXX XXXXXXXXXX XXX XXXXXXX XXXXXXXXXX XX XXX XXXXXXXXXX XXX XXXXXXXXXX. However, the Parents asserted that XXX XXXXXXXXXX XXX XXX XXXX XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX XXX XXXXXXXXXX XXXX XXXX XXXX XXXX XXXX XXX XXXX XXX XXX XXXX XXXX.
- On XXXXXXXXXX XX, XXXX, Student 2 XXXXXXX XXX XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX; The Student’s parents felt this was a bullying or harassment incident because Student 2 had complained about XXX XXXXXXXXXX XXXXXXXXXX XXX XXXXXXX, XXX XXXX XXXXXXXXXX XXX XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX.
- In XXXXX XXXX, the Student received XXXXXXXXXX XXXXXXXXXX XX XXXXXXXXXX XXXX XX XXXXXXXXXX XXXXXXXXXX XXXX XXX XXXXXXXXXX XX XXXXXXXXXX XXXXXXXXXX. XXX XXXXXXXXXX XXXXXXXX:

“X---list redacted---X”

The Complainant indicated in his complaint and told OCR that he reported these incidents to and discussed them with District personnel, including the XXXX XXXXXXX principal and assistant principal, the District’s director of student services, and members of the Student’s IEP team, on

multiple occasions from XXXXXXXX XXXX to XXXXX XXXX. Further, the Complainant told OCR that he reported several of these incidents to the District as disability harassment. The Complainant explained that the Student was targeted for characteristics closely associated with his disability, XXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXXX such as XXXXXXXXXXX XX XXXX XXXXX XXXXX XX XXXXXXXXXXXX XX XXXXXXXXXXXX XX XXXXXXX. “X--- sentence deleted---X”

The Complainant told OCR that he felt that the District did not do enough to investigate or prevent these incidents. The Complainant said that District personnel would repeatedly communicate to the Complainant that they were investigating the reports, but they would not tell the Parents what actions they had taken.

The District, through counsel, asserted in response to the allegations that, although the Parents and the Student reported several incidents throughout the XXXX-XXXX school year, the reports “did not provide detailed information regarding specific instances of alleged bullying behavior.” The District said that, despite this, it conducted:

a thorough investigation into each incident. Each investigation included interviewing all identified student witnesses.... Based on the investigations, the School District determined that [the Student] was not the subject of disability-based harassment or bullying. Rather, [the Student] merely had a number of negative interactions with other students that: (1) were unrelated to his disability, (2) were often caused by [the Student], and (3) did not rise to the level of harassment or bullying.

The District also described several measures that it took in response to the Parents’ and the Student’s complaints, including meeting with every student who was reported to have taken the alleged bullying actions; investigating the incidents involving alleged online bullying; developing an XXXXXXXXXXXXXXX XXXX that was XXXXXXX XXXXXXX XXXXXXX XXXXXXX XXXXXXX.

The District’s response included correspondence between the Student and his Parents and District personnel; documentation from meetings the Parents had with District personnel, including the IEP team; the Student’s XXXXXXXXXXXXXXX XXXX; and a log of meetings District personnel had with the students alleged to have engaged in bullying or harassing conduct towards the Student.

The District’s data shows that the Parents or the Student reported the incidents listed above to the District in e-mails dated XXXXXXXX XX, XXXXXXXXXXX X, and XXXXXXXXXXX XX, XXXX; and XXXXXXXXXXX XX, XXXXX XX, and XXXXX XX, XXXX. The Parent’s XXXXXXXX XX, XXXX, XXXXXXX XX XXX XXXXXXXXXXXX described the XXXXXXXX XX incident as an “XXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXX.” The Student’s XXXXX XX, XXXX, report also stated that X XXXX XXXXXXXX he received made him feel uncomfortable, unsafe, and afraid to come back to school. In addition, in one of the XXXXX XX, XXXX, e-mails from the Parent to the director of Student Services, the Parent wrote:

X - paragraph redacted – X

The District's data also includes documentation of a XXXXXXXX XXXX IEP meeting, at which the Parents raised concerns regarding the alleged bullying incidents, and at which, upon the Parent's request, the District XXXXXXXX XXXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXX and XXXXX XXXXX. The XXXXXXXXXXXXXXXXXXXX XXXX included several steps staff would take to support XXXXXXXX XXXX XXXXXXXXXXXXXXXX, including that they would "XXXX XX XXXXXXXXXXX XXX XXXXXXXXXXXXXXX XXXXXXXXXXXX XX XXXXX XXXXXXXXXXXXXXX XXXXXXX XXXXXXX," "XXXXXX XXXX XXXXXXXXXXX XXXX XXXXXXXXXXXXXXX XXXXXXX XXXXXXX XX XXXXX XXXX XXXXXXXXXXXXXXX," and "XXXXXXX XXXXXXXXXXXXXXX XX XXX XXXX XXXXXXXXXXX XXXXXXXXXXXXXXX XXXX." The data also includes documentation of a XXXXX X, XXXX "XXXXXXXXXXXX XXXXXXX," which included the principal, assistant principal, and director of Student Services, and which involved a discussion of the reported incidents of alleged bullying.

While the District's data supports that it repeatedly conveyed to the Parents that District personnel had investigated the incidents and spoken with the various students, the District's data does not show that it consistently informed the Parents or the Student of investigative findings, including any findings regarding whether the alleged conduct constituted harassment. While the District submitted to OCR a log of students it spoke with in response to the Student's and the Parents' complaints, the log is heavily redacted, and provides very little information on what was discussed, or with whom. Other than that log, the District did not provide OCR with documentation demonstrating that it conducted an investigation of the Student's and the Parents' complaints of disability-based harassment. While the District informed the Parents in a XXXXX XX, XXXX, letter that "XX XX XXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXX XXX XXXXXXXXXXX XXX XXX XXXX XXXXXXXXXXXXXXX XX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX XXXX XXX XXXXXXXXXXXXXXX XX XXX XXXXXXX," "XXX XXXX XX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX X XXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXX XX XXXXXXXXXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXXXXXX XXX XXX XXXXXXXXXXXXXXX XXX XXX XX XXXXXXXXXXXXXXX XXXXXXX.

Moreover, District personnel repeatedly told the Parents that it could not disclose specific information regarding actions it took with respect to other students due to privacy concerns. However, the data does not demonstrate that the District made findings regarding whether particular conduct constituted harassment, and if so, that the District took actions, including the issuance of discipline, to remedy the impact of the harassment and prevent its recurrence. Further, the District's documentation does not describe what, if any, investigative standards it applied in its investigations of the reports.

The District's anti-harassment policy (the Policy) states that "All members of the School District community must report incidents of harassment that are reported to them to the Compliance Officer within two (2) business days of learning of the incident." The Policy also provides for both an informal and a formal complaint process, the latter of which requires interviews with the parties and witnesses, consideration of documentation and information provided by the parties, and a written report to the superintendent describing the evidence gathered during the

investigation and providing a recommendation as to whether a party was subjected to harassment. The District's data did not contain any such written report.

In an interview with OCR, a District administrator said that all of the complaints made by the Student and his family were thoroughly investigated. He also said that when the District conducts investigations of harassment claims, their investigative process includes steps such as interviewing the individuals involved in the allegations, ensuring that all parties involved receive due process, and informing families of the District's findings. However, the administrator could not describe with more specificity what investigative steps were taken with respect to the complaints made by the Student and his family, nor could he point to any documentation in the District's data which demonstrated what investigative steps the District took beyond those which have already been described in this letter. Moreover, he could not recall if he ever reported any of the Student's or his family's complaints to the District's compliance officer, which is what the District's anti-harassment policies require of District staff who receive a harassment complaint. The administrator also could not recall whether the Student or his family were ever informed of how to file a formal complaint, although the District noted that the formal complaint process is described in the student handbook, and that parents are generally required to sign acknowledgements that they received and reviewed the handbook.

The District was given an opportunity to submit additional documentation showing the investigative steps taken in response to the complaints from the Student and his family; as of the date of this letter, the District has not provided any such additional documentation.

The District's documents show that to the extent that it did address the Student's "XXXXXXXXX XXXX XXXXXXXXXXXXXXXX," it did so within the context of his XXXXXXXXXXX XXXX XXXX, by XXXXXXXXXXX XXX XXXXXXXXXXXXXXXXXXXX XXXX XXX XXXXXXXXXXXX XXX XXXX XXXX XXXXXXXXXXX XXXXX XX XXX XXXXXXXXXXXX XX XXXXXXX XXXXXXX XXXXXXX XXX XXXXX XXXXXXX XX XXX XXX XXXXXXXXXXXXXXX XXXX XX. However, based on the evidence OCR obtained, there were additional incidents of alleged harassment after these changes were made, and as noted above, the District provided no evidence that it took additional measures to address the continued incidents.

The Student XXXXXXXXXXX from the XXXX XXXXXXX at the end of the XXXX-XXXX school year.

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 concerns that can be addressed through a resolution agreement. In this case, the District expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On July 27, 2021, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. 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 November 15, 2021. For questions about implementation of the Agreement, please contact OCR attorney XXXXX XXXXXXXX. XX XXXXXXXX will be overseeing the monitoring and can be reached by telephone at XXXX XXXXXXXX or by e-mail at XXXXXXXXXXXXXXX@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