



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

February 7, 2020

Xx xxxxx xxxxx
Superintendent
Detroit Public Schools Community District
Xxxx xxxxxx xxxx xxxx xxxxx
Detroit, Michigan 48202

Re: OCR Docket No. 15-19-1454

Dear xx xxxxxxxx:

This letter is to notify you of the disposition of the above-referenced complaint filed on xxxxxxxx xx, xxxx, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Detroit Public Schools Community District (the District). The complaint alleged that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that during the 2018-2019 school year, the District failed to implement the Student's Section 504 plan when:

1. The District did not review the Student's assignment sheets or send any of his graded work to the counselor's office;
2. the District did not help the Student organize his backpack and locker; and
3. the District failed to communicate with the Student's parent weekly regarding his missing and upcoming assignments.

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 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. 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 February 3, 2020, the District submitted to OCR 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.

- Summary of Investigation

During the 2018-2019 school year, the Student was in the xxxxx xxxxx at the District. The Student was on a Section 504 plan for a traumatic brain injury (TBI). According to the Complainant, in January 2019, she met with District staff and it was determined that the Student's Section 504 plan was not being implemented. She stated that the District thereafter reconvened the Student's Section 504 team, and by February 8, 2019, it had finalized a new Section 504 plan for the Student. The Complainant stated that by February 15, 2019, she noticed that the new Section 504 plan was not being followed. Specifically, she informed OCR that District staff were not reviewing the Student's assignment sheets or sending any of his graded work to the counselor's office; were not helping the Student organize his backpack and locker; and failed to communicate with the Student's parent weekly regarding his missing and upcoming assignments.

The Complainant provided OCR with what she identified as the Student's new Section 504 plan and OCR confirmed that the plan required the District to chart the Student's homework assignments and sign off on the chart at the end of class, required the District to keep his graded work in a folder in the counselor's office so it could be sent home on Fridays, required the District to check the Student's backpack and locker every two weeks to ensure they were in order, and required the District to communicate with the Student's parent weekly regarding the Student's missing and upcoming assignments.

The Complaint also provided OCR with emails she sent to District staff regarding their failure to implement the Student's Section 504 plan. For example, the Complainant submitted a xxxxx xx, xxxx email exchange she had with one of the Student's teachers. In the exchange, the teacher asked the Complainant to speak to the Student about his behavior in class, and then noted that the Student had failed to turn in an assignment that was due four weeks prior. The Complainant responded and asked why the Student's missing assignments were not noted on the Student's daily assignment sheet. She also informed the teacher that she had received no graded work for the Student from this teacher since the beginning of the school year, even though the teacher was posting grades for the Student online. The Complainant alleged that the teacher never responded to this email.

The Complainant also provided a xxxxx xx, xxxx email she sent to another one of the Student's teachers in which she noted, in part, that she had not received any graded "section preview" assignments from the teacher. The principal was copied on the email. The principal responded on xxxx xx, xxxx, apologized for his delayed response, and stated that working with the Complaint had "shined light on many areas that our school was desperately lacking and needed to be addressed" The principal also stated: "I do not want you to think that we are ignoring the issues that have arisen as we have been working to make improvements and hold teachers accountable for what they need to do for students."

The Complainant also provided OCR with an email from another one of the Student's teachers dated xxxxxxxx xx, xxxx. The email stated that the Student was failing the teacher's class and had until Friday of that week to get in any missing assignments. The Complainant stated that she was never notified that the Student had missing assignments in this class.

The Student is no longer enrolled in the District.

- Legal Standard, Analysis and Resolution

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a free appropriate public education (FAPE) to each qualified individual 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 nondisabled students are met, and that are developed in accordance with procedural requirements of 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards.

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

OCR's review of the Student's Section 504 plan and the information received to date raised potential compliance concerns. Specifically, the information the Complainant has provided to date raises a concern that the District failed to fully implement the disability-related aides and services required by the Student's xxxxxxxx xx, xxxx Section 504 plan, and that this may have resulted in the Student being denied FAPE.

As noted above, prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint allegation pursuant to Section 302 of OCR's 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 because OCR's investigation has identified issues that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegation and the evidence obtained during the investigation and consistent with applicable regulations.

On February 3, 2020, the District submitted to OCR the enclosed Agreement, which, when fully implemented, will address the complaint allegations in accordance with Section 504 and Title II. The provisions of the resolution agreement are tied to the complaint allegations and the evidence obtained during the investigation and consistent with applicable regulations.

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.

If you have questions about OCR's resolution of this complaint, please contact me by telephone at (xxx) xxx-xxxx or by e-mail at xxxxxx.xxxxxxx@ed.gov. If you have questions about OCR's monitoring of the District's implementation of the resolution agreement, please contact OCR attorney xxxxx xxxxxxx. Xx xxxxxx can be reached by telephone at (xxx) xxx-xxxx or by e-mail at xxxxxx.xxxxxxx@ed.gov.

Sincerely,

/s

Xxxxxx xxxxxxxx

Supervisory Attorney/Team Leader

Enclosure