



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

February 03, 2020

XXXXXX xx XXXXXXXX
Superintendent
Flint Community Schools
923 E. Kearsley Street
Flint, Michigan 48503

Re: OCR Docket No. 15-19-1462

Dear xx XXXXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXXX xx, XXXX, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Flint Community Schools (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that the District discriminated against a student (the Student) on the basis of a disability when:

1. During the 2018-2019 school year, the District failed to complete an evaluation of the Student to determine his need for disability-related services despite receiving a request from the Student's parent and information regarding the Student's disabilities;
2. From February 18, 2019 through the end of the 2018-2019 school year, the District frequently removed the Student from class due to the Student's disability-related behaviors and placed him in in-school suspension.

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 the following legal issues:

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

- whether the District, on the basis of disability, excluded a student from participation in, denied him the benefits of, or otherwise subjected him to discrimination in its programs and activities in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4, and the regulation implementing Title II at 28 C.F.R. § 35.130.

During its investigation to date, OCR reviewed information provided by the Complainant and the District. 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 January 24, 2020, the District signed 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.

- Background

The Student was enrolled in xxxxxxxxxx at the District during the 2018-2019 school year. According to the Complainant, the Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Oppositional Defiant Disorder (ODD).

The Complainant alleged that in December 2018, the Student's mother asked the school to conduct a Section 504 evaluation of the Student based on his ADHD and ODD. The complaint alleged that the District referred the Student for an evaluation in February 2019, but never completed it. The Complainant informed OCR that on multiple occasions during the 2018-2019 school year, the Student's teacher removed him from class due to his disability-related behaviors and sent him home early. She stated that it happened so frequently, that the Student's mother began refusing to pick him up, at which point, the teacher began sending the Student to in-school suspension. She stated that during the timeframe relevant to this complaint, i.e., from February 18, 2019 through the end of the 2019-2020 school year, the Student was sent to in-school suspension repeatedly due to his disability-related behaviors. She stated that she learned that the Student was not sent to in-school suspension as a disciplinary measure, but because it was quieter there.

The Student was withdrawn from the District on xxxxxxxx xx, xxxx and has not returned.

- Summary of Investigation

OCR asked the District to provide copies of all Section 504 plans, IEPs or other education plans in effect for the Student during the 2018-2019 school year. OCR further requested a copy of the Student's disciplinary record for the 2018-2019 school year, including documentation regarding the specific dates and times the Student was removed from the classroom due to his behavior.

The District provided OCR with a medical verification form completed by the Student's doctor on xxxxxx xx, xxxx, which stated that the Student had been diagnosed with ADHD and ODD. The District also provided OCR with IEP evaluation forms demonstrating that the Student was initially evaluated for an IEP on xxxxxxxx xx, xxxx, but was found ineligible for special education services. The District provided no documentation to support that it evaluated the Student for a Section 504 plan after he was found ineligible for an IEP in xxxxxxxx xxxx.

The District provided OCR with a letter from the Student's mother to the Student's principal, dated xxxxxxxx xx, xxxx, wherein the Student's mother asked the District to evaluate the Student for a disability, including pursuant to Section 504, based on his ADHD and ODD diagnoses. The letter stated, in part, that the Student was struggling with transitioning between tasks, following directions, and with his peer relationships, and that his teacher had reported that he was aggressive, defiant and did not follow directions.

The District provided OCR with a xxxxxxxx xx, xxxx Section 504 referral form signed by the principal, demonstrating that the District referred the Student for a Section 504 evaluation on xxxxxxxx xx, xxxx. However, the Complainant alleged that the Section 504 evaluation was never completed, and the District provided no documentation to support that it was. OCR sent a follow-up e-mail to the District on xxxxxxxx xx, xxxx, inquiring if the District took any further steps to evaluate the Student pursuant to Section 504. The District acknowledged to OCR that it had no information to support that it completed a Section 504 evaluation for the Student, but that its Multi-Tiered System of Support team (MTSS) did begin to conduct observations of the Student.

The District also provided OCR with the Student's discipline and daily attendance records for the 2018-2019 school year. Based on the official discipline records, the Student received no discipline from February 18, 2019 through the end of the school year. The records do not indicate whether the Student was ever removed from class and placed in in-school suspension for non-disciplinary reasons. The District did not confirm or deny whether the Student was removed from class during the relevant time period, but only asserted that its discipline records did not reflect any disciplinary removals during that time.

As noted above, the Complainant contends that the Student was repeatedly removed from class and placed in in-school suspension due to his behaviors from February 18, 2019 through the end of the 2018-2019 school year.

- Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states 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 which receives federal financial assistance. The regulation implementing Section 504, at 34 C.F.R. § 104.3(j)(1), defines a person with a disability, in relevant part, as any person who has a physical or mental impairment which substantially limits one or more major life activities.

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.

The Section 504 regulation, at 34 C.F.R. § 104.35, provides that a recipient that operates a public elementary or secondary education program or activity shall conduct an 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 before any subsequent significant change in placement.

In the instant case, the documentation the District provided demonstrates that the District was aware of the Student's diagnosis of ADHD and ODD in December 2017. The District evaluated the Student and found him ineligible for an IEP in February 2018 but did not evaluate the Student to determine his eligibility pursuant to Section 504 at that time. In December 2018, the Student's mother notified the District again of the Student's ADHD and ODD diagnoses, informed the District of the issues the Student was having related to those diagnoses, and again asked for an evaluation, including pursuant to Section 504. While the District referred the Student for a Section 504 evaluation, the documentation OCR has reviewed to date does not support that the District completed it. The information provided to date raises concerns that the District had reason to suspect that the Student had a disability, but failed to evaluate him consistent with the requirements of Section 504 and that the Student may have been denied FAPE due to the denial of necessary disability-related services, and due to him being removed from the classroom because of his disability-related behaviors.

- Voluntary Resolution and Conclusion

As noted above, prior to the completion of OCR's investigation, the District expressed interest in resolving the complaint allegations pursuant to Section 302 of OCR's CPM. Section 302 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.

On January 24, 2020, the District signed the enclosed Resolution Agreement, which, when fully implemented, will address the compliance concerns OCR identified related to the complaint allegations. 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.

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 xxxxx.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 xxxxxxxx or OCR attorney xxxxx xxxxxxxx. Xx xxxxxxxx can be reached by telephone at (xxx) xxx-xxxx or by e-mail at xxxxxxxx.xxxxxxx@ed.gov and xx. Xxxxxx can be reached by telephone at (xxx) xxx-xxxx or by e-mail at xxxx.xxxxxxx@ed.gov.

Sincerely,

/s

Xxxxxxx xxxxxxxx

Supervisory Attorney/Team Leader