



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

March 9, 2020

Ms. Sharon Dusney
Director of Special Services
1333 Radcliff Street
Garden City, Michigan 48135

Re: OCR Docket No. 15-20-1042

Dear Ms. Dusney:

This letter is to notify you of the disposition of the above-referenced complaint filed on October 22, 2019, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Garden City School District (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that during the 2019-2020 school year, the District failed to implement the following provisions of the Student's Individualized Education Program (IEP): XXXXX SENTENCE REMOVED 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.

OCR reviewed information provided by the Complainant and the District and interviewed the Complainant and the District's Special Services Director. The District indicated that it was interested in immediately resolving the complaint allegations, and OCR determined that the complaint allegations were appropriate for resolution.

Summary of OCR's Investigation to Date

XXXXX PARAGRAPH REMOVED XXXXX

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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 or benefits from 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.

A recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education (FAPE) to each qualified person with a disability in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. 34 C.F.R. § 104.33.

Analysis

The evidence shows that the Student was XXXXX. However, the remaining provisions of the Student's XXXXX IEP amendments and XXXXX IEP, identified by the Complainant, may be unclear as written and may not have been fully implemented. Therefore, OCR determined that the evidence obtained to date raises concerns that support a need for the provisions of the agreement which will require the Student's IEP team to convene a meeting, clarify the IEP provisions at issue, and determine if it is necessary to provide the Student with any compensatory education. Before completion of OCR's investigation, the District expressed interest in voluntarily resolving the complaint allegations.

Resolution

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 issues 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 March 3, 2020, 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.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

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 12, 2020. For questions about implementation of the Agreement, please contact Ms. XXXXX. She will be overseeing the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at (216) 522-7640, or by e-mail at Sacara.Miller@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure