



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

August 13, 2020

Via E-mail Only to hcarroll@ralaw.com

Helen S. Carroll, Esq.
Roetzel & Andress
222 S. Main Street
Akron, OH 44308

Re: OCR Docket No. 15-20-1222

Dear Ms. Carroll:

This letter is to notify you of the disposition of the above-referenced complaint filed on February 28, 2020, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Green Local School District (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the complaint alleged that the District:

1. failed to implement the Student's Section 504 plan with respect to XXXXX; and
2. failed to properly evaluate the Student when it 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 allegations, OCR opened an investigation of the following legal issues:

- whether the District, on the basis of disability, excluded a student from participation in, denied a student the benefits of, or otherwise subjected a student to discrimination in its programs and activities based on the student's disability 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;
- 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, in interpreting evaluation data and in making a placement decision, failed to draw upon information from a variety of sources; ensure that information obtained from all such sources was documented and carefully considered; and/or ensure that the placement decision was made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35(c).

During its investigation to date, OCR reviewed information provided by the Student's parent and the District. The District indicated that it was interested in immediately resolving the complaint allegations, and OCR determined that the complaint allegations were appropriate for resolution.

Allegation #1 – Failure to Implement Section 504 Plan Related to XXXXX

Facts

XXXXXX 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

XXXXXX PARAGRAPH REMOVED XXXXX

Allegation #2 - Failure to Properly Evaluate the Student When the District Did Not XXXXXX

Facts

XXXXXX PARAGRAPH REMOVED XXXXX

XXXXXX PARAGRAPH REMOVED XXXXX

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.35(c), states that in interpreting evaluation data and in making placement decisions, a recipient shall draw upon information from a variety of sources; ensure that information obtained from all such sources was documented and carefully considered; and/or ensure that the placement decision was made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

Analysis

XXXXXX PARAGRAPH REMOVED XXXXX

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 August 7, 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.

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 30, 2020. For questions about implementation of the Agreement, please contact Mr. XXXXX. He 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,

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure