



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

October 6, 2020

Via Email Only to rdietzel@thrunlaw.com

Robert A. Dietzel, Esq.
Thrun Law Firm, P.C.
P.O. Box 2575
East Lansing, Michigan 48826

Re: OCR Docket No. 15-20-1237

Dear Mr. Dietzel:

This letter is to notify you of the disposition of the above-referenced complaint filed on March 12, 2020, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Milan Area Schools (the District) alleging that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleges that:

1. X-SENTENCE REMOVED-X
2. X-SENTENCE REMOVED-X

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:

- X-SENTENCE REMOVED-X
- Whether the District failed to provide a qualified student with a disability a free appropriate public education (FAPE), in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

- Whether the District failed to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 or Title II regulations, 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).

During its investigation to date, OCR reviewed information provided by the Complainant and the District and X-SENTENCE REMOVED-X.

X-PARAGRAPH REMOVED-X

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X-PARAGRAPH REMOVED-X

On March 13, 2020, the Michigan governor issued an executive order closing the District due to COVID-19.

X-PARAGRAPH REMOVED-X

The regulation implementing Section 504 at 34 C.F.R. § 104.33 requires recipients to provide 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. Disability harassment that adversely affects an elementary or secondary student's education may be a denial of FAPE under Section 504.

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. When fully implemented, the resolution agreement will address all of the allegations investigated. 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 **January 15, 2021**. For questions about implementation of the Agreement, please contact XXXXX XXXXX. He will be overseeing the monitoring and can be reached by telephone at (XXX) XXX-XXXX or by email at XXXXX.XXXXX@ed.gov. If you have questions about this letter, please contact me by telephone at (XXX) XXX-XXXX, or by email at XXXXX.XXXXX@ed.gov.

Sincerely,

/s/

Sacara E. Miller
Supervisory Attorney/Team Leader

Enclosure