



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

July 1, 2021

Via E-mail Only to XXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXX XX XXXXX XXXX
3033 Orchard Vista Dr SE A,
Grand Rapids, Michigan 49546

Re: OCR Docket No. 15-20-1241

Dear XXX XXXXX:

This letter is to notify you of the disposition of the above-referenced complaint filed on March 16, 2020, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Pellston Public Schools (the District) alleging that the District discriminated against a student (the Student) based on disability. Specifically, the Complainant alleges that during the XXXX-XXXX and XXXX-XXXX school years:

1. the District failed to appropriately re-evaluate the Student prior to subjecting XXX to a series of out of school suspensions for behaviors related to XXX disability; and
2. the District failed to provide the Student with a “XXXXXXXX XXX XXXXXX” as required by XXX Section 504 plan and instead took actions that escalated the Student’s behavior.

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 made a significant change in the placement of a student with a disability without appropriately reevaluating the student, in violation of the Section 504 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.

During its investigation to date, OCR reviewed documentation provided by the Complainant and the District and interviewed the Student’s parent. Prior to completing the investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR’s Case Processing Manual. In order to complete this investigation, OCR would interview District staff and request additional documentation.

Facts Obtained to Date

The Student was in XXX grade during the XXXX-XXXX school year. The District identified the Student as a student with a disability based on XXXX XX XXX XXXX XXX XXXX Section 504 plan. The Section 504 plan states that staff would not engage in “XX XXX XXXXXXX” XXXXXXXXXXXX for XXXXXXXXXXXXXXXXXXXX XXXXXXX XXXXXXXXXXXX unless the Student was putting XXXXXXX or others in danger. The Section 504 plan instructs staff to XXXX XXX X XXXXX XXXXXXX XX XXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXXXXX. In addition, the Section 504 plan states that the Student is to be provided a “XXXX XXXX XXXXX” in X XXXX XXXXX XX XXX XXXXXXX. The plan states that the Student was to be sent to a designated staff member if XXX is XXXXXXXXXXXX XX XXX XXXXXXXXXXXX.

X---paragraph redacted---X

The District provided OCR with the Student’s dashboard which details the Student’s discipline history. X---sentence redacted---X. The dashboard provides the following details regarding the Student’s out of school suspensions.

X---table redacted---X

The District provided its student discipline policy which states that a student with a disability may be subjected to a short-term suspension, a removal lasting less than ten days, when guilty of a gross misdemeanor or persistent disobedience. In addition, the policy states that a student with a disability may only receive a long-term suspension, a removal lasting longer than ten days or an expulsion, after a student’s Section 504 Committee determines that the behavior is not a manifestation of the Student’s disability and the student’s current plan reflects the special education programs and services needed to meet the unique educational needs of the student. The policy does not address whether a series of suspensions should be treated as an exclusion.

To date, OCR received no information regarding discipline-related manifestation determination reviews and evaluation decisions regarding the Student for the relevant time period.

The Complainant alleged that the District did not grant the Student an opportunity to XXXX XXXX as required by XXX Section 504 plan. The Complainant said the discipline referral forms sent home by the District did not indicate when or if the Student was provided with X XXXX XXXX XXXXXXX. In addition, the Complainant said the Student told XXX parents that District staff often denied XXX X XXXX XXXX XXXXXXX and made comments that escalated XXX behavior.

The District provided OCR with a XXXXXXXX XX, XXXX, XXXXX from XXX XXXXXXXXXXXX to XXX XXXXXXXXXXXX XXXXXXX XXX XXXXX XXXXX. The email indicated that the principal had informal discussions with the Student's parent regarding XXX XXXXXXX XXX XXXXXXX. The principal said staff met with the Student well after an incident unless there was a safety concern. According to the principal, when the Student demonstrated XXXXXXXXXXXX XX XXX XXXXXXXXXXXX, XXX was allowed to XXXXXXXXXXXX XX XXX XXX XX XXX XXXXXXX. The District asserted that the Student's parent provides conflicting feedback on XXX XXXXXXX XXX XXXXXXX. X--- sentence redacted---X

The District provided OCR with documentation indicating that in XXXXXXXXXXX XXXX, the District moved the Student from XXXXXXXXXXX XXXXXXXXXXX XX XX XXXXXXX XXXXXXXXXXX XXX XX XXX XXXXXXX XX XXXXXXX to the District's safety protocols. Based on the evidence obtained to date, it is unclear whether the Student's Section 504 team was involved in the decision to change the Student XX XXX XXXXXXX XXXXXXX. In XXX XXXX, the Parent told OCR that the Student XXXXXXXXXXX XX XXXXXXXXXXX XXXXXXXXXXXX in XXXXXXX XXXX but decided to XXXXXXX XXXXXXX XXXXXXXXXXX XX XXX XXX XXXX.

Legal Standard

As OCR has determined that the applicable Title II regulation provides no greater protection than the applicable Section 504 regulation in regard to the circumstances of this complaint, OCR addressed only applicable Section 504 standards below.

The regulation implementing Section 504, at 34 C.F.R. § 104.33, provides that a recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction. An appropriate education 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 students without disabilities are met and that are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36 as to educational setting, evaluation and placement, and procedural safeguards. What constitutes a FAPE must therefore be determined through an appropriate evaluation or reevaluation under those provisions.

At 34 C.F.R. § 104.35(a), recipients are required to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related aids and services before taking any action with respect to the initial placement of the person in a regular or special education program **or any subsequent significant change in placement**, including in the disciplinary context. Certain disciplinary exclusions, such as a suspension, may constitute a significant change in placement.

A disciplinary exclusion of any student with a disability constitutes a significant change in placement when the exclusion is permanent (expulsion), for an indefinite period, or for more than 10 consecutive school days. In addition, a series of suspensions that are each 10 or fewer

days in duration but exceed 10 days in the aggregate may create a pattern of exclusion that constitutes a significant change in placement.

The determination of whether a series of suspensions creates such a pattern must be decided on a case-by-case basis, considering factors such as the length of each suspension, the proximity of the suspensions to one another, and the total amount of time a student is excluded from school. In some cases, in-school suspensions must be considered in determining whether a significant change in placement has occurred--in particular when an in-school suspension results in exclusion from the regular education environment and from a district's educational programs and activities.

The first step of a re-evaluation before a proposed discipline that constitutes a significant change in placement is to determine, using appropriate evaluation procedures, whether the conduct in question is a manifestation of the student's disability. That determination should be made by a group of persons who are knowledgeable about the student, the meaning of the evaluation data, and the placement options. If the group determines that the student's conduct is a manifestation of his disability, the group must continue the re-evaluation to determine whether the student's educational placement is appropriate and what, if any, modifications to that placement are necessary, rather than imposing the proposed discipline. If the group determines that the conduct is not a manifestation of the student's disability, the district may exclude the student from school in the same manner as it excludes similarly situated students without disabilities.

The district should ensure that the student's parent(s)/guardian(s) are notified of the determination and that they are provided notice of the procedural safeguards afforded them under 34 C.F.R. § 104.36 to contest that determination.

Analysis

Although the OCR's investigation is not yet complete, evidence available thus far raises concerns that the District may have subjected the Student to significant changes to XXX educational placements without first conducting the required reevaluations during the XXXX-XXXX and XXXX-XXXX school years. Although the District's policies require the District to conduct a manifestation determination when a student with a disability receives a long-term suspension, defined as a suspension more than ten days, the policies do not state that a series of removals could amount to a long-term suspension. Similarly, the District's policies do not include language clarifying that a series of suspensions which are each 10 or fewer days in duration but exceed 10 days in the aggregate may create a pattern of exclusion that constitutes a significant change in placement and may trigger the need for a manifestation determination. Additionally, to date, OCR has not obtained evidence to show that the District conducted an evaluation of the Student prior to enrolling XXX in an online program, which was done in XXX XXXX XX XXXX.

Regarding the allegation that the District failed to implement the Student's Section 504 XXXX XXXX provision, the District provided the principal's summary of how the District generally implemented the provision. Additionally, the evidence provided to date indicated that the District and the parent disagreed as to how the provision should be implemented. To date, there

is no evidence that the District reconvened the Student’s Section 504 team to clarify the manner of implementation of this provision.

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. On June 29, 2021, 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 **October 29, 2021**. For questions about implementation of the Agreement, please contact XXX XXXXX XXXXXXXXXX XXXXXXX. she will be overseeing the monitoring and can be reached at

XXXXXXXXXXXX@ed.gov. 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 Miller
Supervisory Attorney/Team Leader

Enclosure