



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

September 30, 2021

Via E-mail Only to jeff@butlerlg.com

Jeffrey Butler, Esq.
Butler Law Group, P.C.
2398 Hulett Road
Okemos, Michigan 48864

Re: OCR Docket No. 15-20-1294

Dear Mr. Butler:

This letter is to notify you of the disposition of the above-referenced complaint filed on June 8, 2020, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Bloomfield Hills School District (the District), alleging that the District discriminated against a student (the Student) based on disability. Specifically, the Complainant alleged that, from XXXXX XX, XXXX, to the end of the XXXX-XXXX school year, the District did not provide the Student a free appropriate public education (FAPE) when it did not implement the provisions of his individualized education program (IEP) requiring XXX XXXXX XXX XXXX XX XXXXXXXXXXX XXXX XXXXXXXXXXX, XXX XX X XXXXXXX, XXX XXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXX services.

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 issue: whether the District failed to provide a qualified student with a disability with a FAPE, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33.

Facts Obtained to Date

During its investigation to date, OCR reviewed information provided by the Complainant and the District and interviewed the Complainant.

During the period at issue in this complaint, XXXXX XX, XXXX, to the end of the XXXX-XXXX school year, the Student was in the XXXXX XXXXX, and attended the District's

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

XXXXXXXXXX XXXXX XXXXXXX XXXXXXX. The Student received disability-related services pursuant to an IEP; he was identified as having a XXXXXXXX XXXXXXXX XXXXXXXXXX XX XXX XXXXX XX XXXXX XXXXXXXX XXXXX, XXXXXXX XXXXXXX XXXXXXX, XXX XXXXXXX XXXXXXX. The IEPs that covered the period at issue are the Student’s XXXXXXXX X, XXXX, IEP, and the Student’s XXX X, XXXX, IEP amendment.

The Complainant (the Student’s parent) alleged that, starting around XXXXX XX, XXXX, students in the District moved to all virtual instruction. The Complainant alleged that, per the Student’s IEPs, the Student was to receive XXXX XX XXXXXXX XXXXX XXX XXXX XX XXXXXXX XXXX XXXXXXXXXX, XXXXXXX XXXXXXXXXX, XXX XXXXXXX XXX XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX. The Complainant told OCR that, prior to XXXXX XX, XXXX, when all District students began receiving all their schooling virtually, the Student received:

- Frequently close to XXXXX XXXXX XXX XXXX of XXXXXXXXXX XXXX XXXXXXXXXX, and potentially more than that if needed, sometimes in a XXX-XX-XXX XXXXXXX and sometimes in a XXXXX XXXXX XXXXXXX;
- Assistance from a XXXXXXX, who was usually the XXXXXXX XXXXXXXXXX XXXXXXX. Where necessary, XXX XXXXXXX would perform XXXXXXX XXXXXXXXXX functions so that the Student could effectively demonstrate XXX XXXXXXXXXXXXXXXXXXXX XX XXX XXXXXXX (for example, XXX XX XXXXXXXX X XXXXXXXXXX);
- Both the XXXXXXX XXXXXXXXXX and XXXXXXX XXXXXXXXXX XXXXXXXXXX would XXXXXXX XXX XX XXXXXXX XXXXXXXXXX if the Student needed it. It was generally either prompted by the Student XXXXXXX XXX XXXX, or if students were working independently on a class assignment, the Student could XXXXXXXXXX XXX XXXXXXXXXX XX XXX XXX XXXXXXXXXX.

The Complainant said that, from XXXXX XX, XXXX, to the end of the XXXX-XXXX school year, the District did not provide all of the services in the Student’s IEPs, and instead the Student received:

- XXXXX – PARAGRAPH REMOVED – XXXXX.
- XXXXX – PARAGRAPH REMOVED – XXXXX.
- XXXXX – PARAGRAPH REMOVED – XXXXX.

In response to these allegations, the District provided OCR with a copy of the Student’s XXXXXXXXXX X, XXXX, IEP, which states that “[the Student’s] XXXX XXXXXXXXXX and XXXXXXX negatively impact his ability to XXXXX XXXXXXXXXX in the general education classroom XXXXXXXXXX. With supports in place through accommodations, he XXXXXXXXXX XXXX XXXX XXX XXXXXXXXXX XX XXX XXXXXXXXXX XXXXXXXXXX.” The IEP also states, “XXXXX XXX XXXXX XXX XXXXXXXXXX, XX

XXX X XXXX XXXX XXXXXXXX XXXX XXXX XXXXXXXX XX XXXX X XXX XXXX
XXXXXX XXX XXXX XXXX.” The IEP also states that “[the Student] requires specialized
instruction within the XXXXXXXX XXXX and accommodations in the XXXXXXXX
XXXXXXXXXX XXXXXXXXXX to have access to XXX XXXXXXXX XXXXXXXXXX.”

The XXXXXXXX X, XXXX, IEP provided that the Student was to receive the following
“XXXXXXXX XXXXXXXXXX Services and Programs”:

XXX—TABLE REDACTED--XXX

The XXXXXXXX X, XXXX, IEP also shows that the Student was to receive the following
“Supplementary Aids and Services”:

XXX—TABLE REDACTED—XXX

The District did not provide OCR with any other IEP documents for the Student, including a
copy of the Student’s XXXX X, XXXX, IEP Amendment that the Complainant provided to
OCR. The IEP Amendment did not modify the Student’s IEP with respect to the Student’s
program, aids, or services through the end of the XXXX-XXXX school year, but the team did
determine that the Student met the criteria for XX XXXXXXXX XXXXXXX XXXX because of
XXXXXXXXXX XXXXXXXX XX XXXXXXXX XXXXXXX XXX XXXXXXXX. As such,
the evidence reviewed to date indicates that XXX XXXXXXX XXX XXXXXXX XXXXXXXX
XXXXXXXXXX described in the Student’s XXXXXXXXXX X, XXXX, IEP were in effect from
XXXXX XX, XXXX, to the end of the XXXX-XXXX school year.

The District also submitted a document entitled “XXXXXXXXXXXXXXXX- Service Log,”
which was completed by the Student’s XXXXXXXX XXXXXXXXXX XXXXXXXX. The District’s
data indicates that the Student’s XXXXXXXX XXXXXXXXXX XXXXXXXX was also the District’s
XXXXXXXXXX XXXX XXXXXXXX. The XXXXXXXX XXXXXXXXXX service log does not
contain any entries from prior to XXXXX XX, XXXX, and it shows that, the week of XXXXX
XX, XXXX, there was one instance of “XXXXXXXX XXXXXXXXXX.” Starting
XXXXX XX, XXXX, the service log shows that the XXXXXXXX XXXXXXXXXX XXXXXXXX
provided X XXXXXXXX XX X XXXX XX X XXXXXXXX XX XXX XXXXXXX XXX XXXX of
“XXXXXXXX XXXXXXXXXX.” The XXXXXXXX XXXXXXXXXX service log
does not describe whether the Student’s XXXXXXXX XX XXXXXXX XXXXXXXXXX XXXXXXXXXX
were provided during this time, nor do any other documents the District provided to OCR.

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. Title II contains a similar provision at 28 C.F.R. §
35.130(a).

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a 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 Section 504’s procedural requirements at 34 C.F.R. §§ 104.34 - 104.36 regarding educational setting, evaluation, placement, and procedural safeguards. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

In determining whether a district failed to provide FAPE, OCR analyzes whether the student is a qualified individual with a disability eligible for FAPE, whether the student was to receive individualized regular or special education, and/or related aids and services; whether staff provided placement/services consistent with the student’s education plan, e.g., Section 504 plan or Individualized Education Program (IEP); and whether the district’s failure to implement the IEP or Section 504 plan resulted in a denial of FAPE.

School districts’ obligation to provide FAPE to each qualified individual with a disability remains in effect during the pendency of the COVID-19 pandemic. While a school district would not be required to provide services to students with disabilities while a district is closed and not providing any educational services to the general student population, OCR guidance provides that “Once school resumes, the school must return to providing special education and related services to students with disabilities in accordance with the student’s IEP or, for students entitled to FAPE under Section 504, consistent with any plan developed to meet the requirements of Section 504.” (“Fact Sheet: Addressing the Risk of COVID-19 in Schools While Protecting the Civil Rights of Students,” Mar. 16, 2020, OCR-000115). To fulfill that obligation, the Section 504 team and other individuals responsible for ensuring that FAPE be provided pursuant to Section 504, “would be required to make an individualized determination as to whether compensatory services are needed under applicable standards and requirements.” (“Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak,” cited to in “Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities,” Mar. 21, 2020, OCR-000116).

Analysis

OCR’s investigation to date raised concerns that the District did not provide the Student with a FAPE in accordance with the requirements of Section 504.

The evidence reviewed to date shows that the Student’s IEP required XXXX XX XXXXX XXXXX XXX XXXX XX XXXXXXXXXXX XXXX XXXXXXXXXXX, XXXXXX XXXXXXXXXXX, XXX XXXXXX XXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX. However, the evidence reviewed thus far indicates that from XXXXX XX, XXXX, through the end of the school year, the Student received at most up to XXX XXXXX per week of XXXXXXXXXXX XXXX XXXXXXXXXXX with his XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXX. Moreover, the District’s data

does not indicate that the District provided XXX XXXXXX XX XXXXXX XXXXXXXX XXXXXXXX from XXXXX XX, XXXX, to the end of the XXXX-XXXXschool year as required by the Student's IEP.

In addition, the IEP states that the Student required accommodations to have access to XXX XXXXXXXX XXXXXXXXXXXX, and the Student's XXX IEP amendment indicated that the Student's progress towards his goals in the spring term had declined. This raises a concern as to whether the Student would have been able to effectively and fully participate in XXX XXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX without the services provided for in his IEP.

Based on the analysis above, a cause for concern exists as to whether the District provided the Student with the full amount of XXXXXXXX XXXX, XXXXXXX XXXXXXXXXXX, XXX XXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXX XXXXXXXX by XXX XXX, thus denying the Student a FAPE as required by Section 504. To complete its investigation, OCR would need to interview District staff, including the Student's teachers and members of the Student's IEP team.

Voluntary Resolution and Conclusion

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 allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On September 29, 2021, OCR received the District's signed Resolution Agreement, which is enclosed, and 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 December 1, 2021. For questions about implementation of the Agreement, please contact XXXXX XXXXX, who will be overseeing the monitoring and can be reached by telephone at (XXX)XXX-XXXX or by e-mail at XXXXX.XXXXX@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

/s/

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure