



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

November 23, 2021

Via E-mail Only to: vcoe@clarkhill.com

Vickie L. Coe, Esq.
Clark Hill
212 East Cesar East Chavez Avenue
Lansing, Michigan 48906

Re: OCR Docket No. 15-21-1274

Dear Ms. Coe:

This letter is to notify you of the disposition of the above-referenced complaint filed on May 27, 2021, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Benton Harbor Charter Schools (the School) alleging that the School discriminated against a student based on disability. Specifically, the Complainant alleged that during the XXXXX XXXXX school year, the School did not reconvene the Student's individual education program (IEP) team or reevaluate the Student until XXXXX XXXXX, even though the Student regularly failed to complete classroom assignments since XXXXX 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 School is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

- whether the School failed to conduct an evaluation or a reevaluation of a student who, because of disability, needed or was believed to have needed special education or related services, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35(a);
- whether the School 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 information provided by the Complainant and the School and interviewed the Complainant.

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The Student attended XXXXX XXXXX virtually for the entire XXXXX XXXXX school year. Under XXXXX individualized education program (IEP) for speech and language impairment, the Student was placed in a regular classroom and received pull-out services for speech and reading.

According to the Complainant, recurring problems with the Student’s laptop did not interfere with classroom instruction but prevented XXXXX from turning in assignments for the school year. To date, the information OCR gathered suggests that the Student did not turn in any assignments. OCR could not find documentation showing that the Student’s progress on completing work was monitored. The School provided a XXXXX XXXXX IEP labeled as a reevaluation, but did not provide other reevaluation documentation. Further, the Student’s IEP did not change at that time.

School staff members referred the Student for a reevaluation in XXXXX XXXXX due to concerns about XXXXX academic performance. The reevaluation resulted in an IEP dated XXXXX XXXXX XXXXX, that changed the Student’s disability and added resource room services to the existing pull-out services.

In response to OCR’s request for any policies regarding the reevaluation of students with disabilities, the School provided an untitled document that included a section on “Timelines for Evaluation.” Under “Reevaluation Timelines,” the document stated:

Must be conducted:

- At least once every 36 months, unless the parent and LEA determine that a full evaluation is not needed
- Michigan law no longer requires that continuing eligibility be determined every 36 months via a formal multidisciplinary evaluation team meeting. This is not best practice. We highly recommend the team holding an eligibility recommendation meeting every three years. However, the REED process may never exceed the 36 month timeline
- When the district suspects that a student is no longer eligible
- Not more than once a year unless agreed upon by both the parent and district

The timeline did not include any other reasons to conduct a reevaluation.

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 School expressed an interest in resolving the allegation prior to the conclusion of OCR’s investigation and OCR determined resolution was appropriate. On November 23, 2021, the School 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 School’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 School 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 School's first monitoring report by **February 4, 2022**. For questions about implementation of the Agreement, please contact Julie Gran. Ms. Gran will be overseeing the monitoring and can be reached by telephone at (216) 522-2684 or by e-mail at julianne.gran@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 E. Miller
Supervisory Attorney/Team Leader

Enclosure