

Menhem Aouad, Ed. Sp.
Director of Student Support Services
Madison District Public Schools
26524 John R. Road
Madison Heights, Michigan 48071

Re: OCR Docket #15-13-1271

Dear Mr. Aouad:

This is to notify you of the disposition of the above-referenced complaint that was filed on May 13, 2013, against the Madison District Public Schools (the District) with the U.S. Department of Education (the Department), Office for Civil Rights. The complaint alleged that the District discriminated against a student (Student) on the basis of disability (Attention Deficit Hyperactivity Disorder or ADHD) during the 2012-2013 school year when it failed to identify him as an individual with a disability and provide him with disability services, which resulted in the Student being xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx for behaviors related to his disability. As is discussed below, prior to OCR completing an investigation into this matter, the District voluntarily submitted the attached agreement, which once implemented, will resolve the complaint allegations.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. In addition, OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Persons who seek to enforce their rights under these laws are also protected from retaliation. As a recipient of Federal financial assistance from the Department and as a public institution, the District is subject to Section 504 and Title II.

The Complainant informed OCR that during the 2012-2013 school year, the Student, who has ADHD, attended xxxxxx grade in the District. She stated that he was diagnosed with ADHD in the xxxxx grade, and that she notified the Student's xxxxxxx and the school xxxxxxxxxxx about the diagnosis immediately. She stated that at one point the Student's

xxxxxxxxxxxx even sent a letter to the principal notifying him that the Student had a behavioral disorder and was under a psychologist's care. However, the District took no action to evaluate the Student for a disability or provide him with disability-related services.

The Complainant stated that during the first half of the 2012-2013 school year, the Student was xxxxxxxxxxx xxxxxxxx for behaviors related to his disability, The Complainant said that she met with the principal a number of times regarding the Student's behavior and they discussed his emotional issues. The Complainant stated that the principal's response was that his staff were not therapists and that the District had no obligation to take the Student's disability into account when disciplining him. According to the Complainant, the principal suggested that she ask the Student's xxxxxxxxxxx xx xxxxxxxx xxx xxxxxxxxxx. She stated that he made no mention of the District evaluating the Student for a disability or providing him with disability related services.

The Complainant stated that she also visited the school office and asked about disability services for the Student. She stated that she left her name with the school xxxxxxxx so a xxxxxxx xxxxxx could call her about her request, but the xxxxxxx xxxxxx never called.

The Complainant stated that on xxxxxxx xx xxxx, the Student was xxxxxxxx xxxxxx xxxxxxx as a result of a behavioral incident. She stated that after the Student's xxxxxxxxxx, the District denied knowing that the Student had a disability. She stated that she subsequently received a call from the District's special education director, who wanted to meet to discuss if the District had handled the situation appropriately. The Complainant stated that she declined the meeting, as she did not want to be bothered by the school anymore.

The Complainant stated that the Student is now enrolled in a different school which is closer to her home. She stated that he has not had the same behavioral problems there and she has no intention of returning him to the District. She stated that the Student is not behind academically at all as a result of the District's actions and is excelling academically at his new school.

Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.33(a), recipient school districts that operate a public elementary and secondary education program or activity are required to provide a free and appropriate public education to each qualified student with a disability. The regulation defines a free and appropriate public education to be the provision of regular or special education and related aids and services that are: 1) designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met and 2) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.

The Section 504 regulation also provides, at 34 C.F.R. § 104.35(a), that school districts which operate a public elementary or secondary education program shall conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement

of the person in regular or special education and any subsequent significant change in placement. In addition, pursuant to Section 504, there are limits on when and how a school district may discipline a student for behaviors related to his or her disability.

In the instant case, prior to the conclusion of OCR's investigation, the District expressed interest in resolving the complaint allegations, and signed the attached agreement, which once implemented, will resolve any compliance concerns raised by the complaint. Pursuant to Section 302 of OCR's Case Processing Manual (Manual), an OCR complaint may be resolved before the conclusion of an OCR investigation if a recipient expresses an interest in resolving the complaint. This does not constitute an admission of liability on the part of a recipient institution such as the District, nor does it constitute a determination by OCR that the District has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and are to be consistent with applicable regulations.

In the attached agreement, the District agreed to revise its Section 504 policies and procedures and submit them to OCR for its review, to publicize the new procedures once they are approved, and to provide training to its staff on the revised procedures. In addition, the District agreed to allow OCR to provide training to relevant District staff regarding Section 504 and Title II's requirements regarding the identification, evaluation and placement of students with disabilities, as well as issues related to the discipline of students with disabilities. As the enclosed agreement resolves any compliance issues raised by this complaint, OCR is closing this complaint effective the date of this letter.

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 Complainant may file another complaint alleging such treatment.

Thank you for you and the District's cooperation during OCR's review of this complaint. I will be coordinating OCR's monitoring of the agreement. OCR looks forward to receiving the District's first monitoring report, which is due by January 30, 2014. Please contact me at (216) 522-2667 or at Brenda.Redmond@ed.gov if you have any questions about this letter or the District's implementation of the agreement.

Sincerely,

xxxxxx xxxxxxxx
Acting Team Leader

Enclosure