



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

April 14, 2014

Gregory B. Gray, Ph.D.
Superintendent
Brighton Area Schools
125 S. Church Street
Brighton, Michigan 48116-2403

Re: OCR Docket #15-14-1005

Dear Dr. Gray:

This is to notify you of the disposition of the above-referenced complaint that was filed on October 17, 2013, with the U.S. Department of Education's Office for Civil Rights (OCR) against Brighton Area Schools (the District), alleging that the District discriminated against a student (the Student) on the basis of her disability (XXXXXXXXXXXXXXXXXXXX). Specifically, the complaint alleged that during the XXXX-XXXX school year the District failed to properly and timely evaluate the Student to determine whether she is a student with a disability. In addition, the complaint alleged that the District failed to notify the Student's parent of her due process rights upon denying her request for a Section 504 evaluation.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits 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 allegations, OCR commenced an investigation to determine whether the District failed to properly and timely evaluate a student with a disability and provide the student with appropriate disability-related services, and provide procedural safeguards in violation of the regulation implementing Section 504 at 34 C.F.R. §§ 104.33, 104.35, and 104.36.

In its investigation to date, OCR interviewed the Complainant and key District staff, and reviewed documentation submitted by the Complainant and the District. The Complainant said that in XXX XXXX, XXX XXXXXXXX XXX XXXXXXXXXXXX XXXX XXXXXXXXXXXX XXXXXXXXXXXX XXX XXX XXXXXXXXXXXXXXXXXXXX XXXX XXXXXXXXXXXX. The Complainant said that she notified the District of the diagnosis and gave the District a doctor's note with the Student's diagnosis that also stated she qualifies for a Section 504 plan (Plan), and that the District needed to proceed with a Plan. The Complainant provided a copy of the doctor's note, which is dated XXXXXXXX XX, XXXX. The Complainant said that she first requested a Plan in XXX XXXX, and the principal at the time said the team would conduct the evaluation at the beginning of the next school year in the XXXX XXXX, since it was already the end of the school year. The Complainant said nothing happened regarding the Plan when the Student started the XXXX-XXXX school year. She said that she repeatedly asked for the Plan during the school year, but the District did not conduct the Section 504 evaluation, and the District did not notify her of her due process rights.

For the XXXX-XXXX school year, the Complainant said there is a XXX XXXXXXXXXXXX at the School. The Complainant provided the principal with a doctor's note dated XXXXXXXXXXXX X, XXXX. XX XXXXXXXX XXXX, she met with the principal and the District's nurse to conduct a Section 504 evaluation and to place the Student on a Plan. The District confirmed that the XXX principal convened the Section 504 Team, conducted the evaluation, and the Student is now on a Plan. The District provided a copy of the Student's Plan, which is dated XXXXXXXX XX, XXXX.

The regulation implementing Section 504 states, at 34 C.F.R. § 104.33, that school districts are required to provide a free, appropriate public education (FAPE) to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

The Section 504 regulation states, at 34 C.F.R. § 104.35(a), that a recipient school district 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 regarding the person's initial placement of the student in regular or special education. Furthermore, the Section 504 regulation states, at 34 C.F.R. § 104.36, that a recipient school district shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of a disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

Voluntary Resolution

Before the conclusion of OCR's investigation, the District expressed interest in voluntarily resolving this complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM). The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of 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 consistent with applicable regulations.

Under the terms of the voluntary agreement signed by the District (the Agreement), the District will reconvene the Student's Section 504 team to determine whether the Student would have been eligible for services pursuant to Section 504 as of XXXXXXXX XX, XXXX, the date of the first doctor's note provided to the District. If the team determines that the Student would have been eligible for services pursuant to Section 504, it will determine what compensatory education or related services are necessary, if any, to compensate the Student for the District's failure to evaluate her for a disability under Section 504 and provide her with FAPE.

The District also agreed to provide notice of its Section 504 policies and procedures, including procedural safeguards, and where they are located to students, parents and guardians. Additionally, the District agreed to provide training to all of its administrators and other staff at XXXXXXXX XXXXXXXXXXXX School who have responsibilities for implementing portions of students' Section 504 plans or a role in the identification, evaluation, and placement of students that have or are suspected of having a disability under Section 504.

In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the District's implementation of the Agreement. Should the District fail to fully implement the Agreement, OCR will reopen the complaint and resume its investigation of the complaint allegations.

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 harmed individual may file another complaint alleging such treatment. A complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate the cooperation of the District during the preliminary investigation and resolution of this complaint. If you have any questions about this letter or OCR's resolution of this case, you may contact me at Daniel.Scharf@ed.gov or at (216) 522-7627, or Mr. Ted Wammes at Ted.Wammes@ed.gov or at (216) 522-7022. We look forward to receiving the District's first monitoring report by June 6, 2014. Should you choose to submit your monitoring reports electronically, please send them to OCRCleMonitoringReports@ed.gov.

Sincerely,

/s/

Daniel Scharf
Acting Supervisory Attorney/Team Leader

Enclosure