



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

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REGION XV  
MICHIGAN  
OHIO

May 27, 2015

Christine M. Johns, Ed.D  
Superintendent  
Utica Community Schools  
11303 Greendale  
Sterling Heights, Michigan 48312

Re: OCR Docket #15-15-1123

Dear Dr. Johns:

This is to notify you of the disposition of the above-referenced complaint against Utica Community Schools (the District), which was filed on January 20, 2015, with the U.S. Department of Education's Office for Civil Rights (OCR). The complaint alleged that the District discriminated against a student (Student) on the basis of disability (XXXXXXXXXX XXXXXXXXXXXX). Specifically, the complaint alleges that the District changed the Student's placement to a separate school for students with XXXXXXXXXXXX XXXXXXXXXXXX in XXXXXXXX XXXX without first evaluating her specific needs. During the course of the investigation, OCR included the allegation of whether the District denied the Student a free appropriate public education (FAPE) from XXXXXXXX X, XXXX to on or about XXXXXXXXXXX XX, XXXX, when the Student was not attending school.

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 also 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, 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; thus, OCR had jurisdiction to investigate this complaint.

Because the regulation implementing Title II provides no greater protection than the Section 504 implementing regulation with respect to this case, OCR applied Section 504 standards. Based on the complaint allegations, OCR investigated the following legal issues:

- whether the District failed to reevaluate a student with a disability before making a significant change in her placement in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35; and
- whether the District failed to provide a student with a disability a FAPE in violation of Section 504 implementing regulation at 34 C.F.R. § 104.33.

During its investigation, OCR interviewed the Complainant, spoke with the District’s special education coordinator, and reviewed documentation submitted by the District. After a careful review of the relevant information, OCR has determined that the evidence is not sufficient to support a finding that the District failed to evaluate the Student before making a significant change in placement. With regard to the allegation that the District failed to provide the Student with a FAPE, the District conceded that the Student was out of school from XXXXXXXX X, XXXX, to approximately XXXXXXXXX XX, XXXX, because the District could not secure a placement. Accordingly, OCR finds that the District’s actions did not comport with the requirements of Section 504. The District has signed a Resolution Agreement, a copy of which is enclosed that, once implemented, will address the compliance issues OCR identified. We set forth below the bases for OCR’s determination.

### **Applicable Legal and Policy Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.33, requires a recipient that operates a public elementary or secondary education program or activity to provide a FAPE to each qualified student with a disability in the recipient’s jurisdiction.

The Section 504 implementing regulation at 34 C.F.R. § 104.35 provides that a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation of any person who, because of 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.

OCR considers a significant change in placement as not merely a change in the physical location of a program, but as a substantial change in a student’s educational program. Such a change requires that the decision be made pursuant to Section 104.35(c) before the initiation of the change. Examples of what constitutes a “substantial” change include the suspension of a student for more than 10 days, a pattern of suspensions or exclusions that exceed 10 days, or a significant change in the nature or amount of educational services. Short of a change of that magnitude, OCR will not review the day-to-day actions of a district.

### **Summary of OCR’s Investigation and Analysis**

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The District assumed that the parent would welcome the ISD program, but when the parent was informed of the program, she told the District that she wanted the Student to be placed in the District’s XX program, not in the ISD program. When the District learned that the parent opposed the ISD placement, the District put in place a temporary IEP (30 days) and placed the Student in the District’s own XXXXXXXXXXXXXXXXXXXX XX program.

The District provided OCR with a document entitled “Transfer of a Student with a Disability,” dated XXXXXX XX XXXX, placing the Student in the XXXXXXXXXXX XX XXXXXXXXXXX XXXXXX at a District elementary school and indicating that the parent consented to the proposed placement. The District confirmed that the Student did not attend any school or receive any educational services from XXXXXXXX X through XXXXXXXX XX. The District also confirmed that it had not offered any compensatory education or services for the time the Student had not attended school.

**Analysis and Conclusion**

OCR finds that there is insufficient evidence to support a finding that the District attempted a significant change in the Student’s placement without first conducting an evaluation of the Student. The Student’s IEP from her previous district required her to be in a XXXXXXXXXXXXXXXXXXXX XX program. The District indicated that the ISD’s XXXXXXXXXXXXXXXXXXXX XX program was most like the Student’s placement at her former district. The Complainant has not provided any information to support that the ISD program was a significant change in placement from the Student’s previous placement at the neighboring district under her IEP. Accordingly, there is insufficient evidence to conclude that the District violation Section 504, as alleged.

Regarding the FAPE allegation, the District confirmed that the Student did not receive any educational services from XXXXXXXX X to XXXXXXXX XX, XXXX, and has not been offered any compensatory education. On XXXXXXXX XX, the District, through a temporary IEP, ultimately placed the Student in its XXXXXXXXXXXXXXXXXXXX XX, three weeks after classes began on XXXXXXXX X, XXXX. Based on the foregoing, OCR concludes that there is sufficient evidence to support a finding that the District failed to provide the Student with a FAPE from XXXXXXXX X to XXXXXXXX XX, XXXX, in violation of the Section 504 regulation at 34 C.F.R. § 104.33. To resolve this compliance concerns, the District submitted the enclosed agreement on May 22, 2015. Under terms of the Agreement, the District will convene the Student’s IEP team to determine what compensatory and/or special education or related services will be provided to the Student

for the time she was not able to attend school (approximately XXXXXXXX XXXXX XXXX), and develop a plan for providing those services with a completion date not to extend beyond XXXXXXXXX X, XXXX.

In light of the signed Agreement, OCR finds that this allegation 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 allegation.

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.

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.

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, we 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.

We appreciate the cooperation of the District during the 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 (216) 522-7634.

We look forward to receiving the District's monitoring report by June 15, 2015. The report should be directed to Allison Beach's attention at Allison.Beach@ed.gov.

Sincerely,

/s/

Donald S. Yarab  
Supervising Attorney/Team Leader

Enclosure