



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

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

Kevin T. Sutton, Esq.  
Lusk & Albertson PLC  
409 E. Jefferson Avenue, Fifth Floor  
Detroit, Michigan 48226

Re: OCR Docket #15-15-1238

Dear Mr. Sutton:

This letter is to notify you of the disposition of the above-referenced complaint filed on April 13, 2015, with the U.S. Department of Education's Office for Civil Rights (OCR) against the Lapeer Community Schools (the District), alleging retaliation by the District and discrimination based on disability. Specifically, the complaint alleged that the District retaliated against the Complainants for advocating on behalf of their son (the Student), by filing a due process complaint against the Complainants on xxxxxxxx xx xxxx and that portions of the District's website, including the homepage and the special education page, are inaccessible to persons with disabilities.

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, and 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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department) and by public entities, respectively. These laws also prohibit retaliation against individuals who seek to enforce rights or oppose discrimination under these laws. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws. Accordingly, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation into:

- Whether the District intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Section 504 or Title II or because the individual made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under Section 504 or Title II in violation of Section 504's implementing regulation at 34 C.F.R. § 104.61, and/or Title II's implementing regulation at 28 C.F.R. § 35.134.
- Whether the District, on the basis of disability, excluded qualified persons with disabilities from participation in, denied them the benefits of, or otherwise subjected them to discrimination in its programs and activities based on disability, in violation of the regulation implementing Section 504 at 34 C.F.R. § 104.4 and the regulation implementing Title II at 28 C.F.R. § 35.130; and
- Whether the District failed to take appropriate steps to ensure that communications with a participant are as effective as communications with others, in violation of the regulation implementing Title II at 28 C.F.R. § 35.160.

OCR has investigated this complaint by reviewing information and documentation provided by the Complainants and the District. On October 1, 2015, District counsel requested to voluntarily resolve the allegations pursuant to OCR's Case Processing Manual (CPM) voluntary resolution process.

### **Alleged Retaliation**

The complaint alleged that because the Complainants were advocating for the Student related to his disability services, the District retaliated by filing a due process complaint against the Complainants. The Complainants explained that on xxxxxxxx xx xxxx, they requested multiple Individual Education Evaluations (IEE) for xxxxxxxxx battery, xxxxxxxxxxx battery, xxxxxx and xxxxxxxxx battery, and xxxxxxxxxxx battery be conducted at public expense for the Student. When the District did not agree to all of the batteries, on xxxxxxxxx xx xxxx, the Complainants filed with the Michigan Department of Education (MDE) a request for a due process hearing against the District. A resolution session meeting for the Complainants' due process complaint was set for xxxxxxx xx xxxx. Before going into the xxxxxx xx due process resolution meeting, the District informed the Complainants that it had filed a due process complaint with MDE against the Complainants. The Complainants allege that the District filed its due process complaint against them in retaliation because they were advocating on behalf of the Student. The Complainants added that during the xxxxxxx xx due process resolution meeting both the District's and the Complainants' due process complaints were resolved, and both parties withdrew their due process complaints against one another.

The District provided copies of the Complainants' due process complaint, the District's due process complaint, and a copy of the xxxxxxx xx xxxx resolution session agreement. The documentation established that the Complainants filed a due process complaint on xxxxxxxxx xx xxxx, and as part of the remedy they requested multiple IEEs at public expense. The documentation also established that on xxxxxxx xx xxxx, the District filed a due process

complaint, which states it is filed pursuant to Michigan law, R 340.1723c(2) and R 340.1724f, to prove that the District's evaluations were appropriate and that the Complainants were not entitled to any IEE at public expense. In addition, the documentation established that at the xxxxxxxx xx resolution session, the parties reached a resolution and the agreement in part states both parties agreed to withdraw their due process complaints without prejudice. Both of the Complainants and a District representative signed the resolution session agreement on xxxxxxxx xx xxxx.

The Michigan Administrative Rules for Special Education (MARSE) at R 340.1723c(2) state, "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. A parent is entitled to only 1 independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees. The parent shall submit the parent's disagreement and request in written, signed, and dated form. However, the public agency may initiate a hearing under R 340.1724 to show that its evaluation is appropriate."

Based on documentation provided to OCR and statements from both the Complainants and the District representatives, the District's due process complaint filed against the Complainants was withdrawn on xxxxxxxx xx xxxx, following the parties resolution of the matter. Therefore, there is credible information indicating that this retaliation allegation raised by the complaint has been resolved. When OCR determines that there are no current retaliation allegations appropriate for further resolution, the allegations will be closed pursuant to OCR's Case Processing Manual Section 110(e). Thus, OCR has determined that the retaliation allegation has been resolved and is closed as of the date of this letter.

### **Alleged Website Inaccessibility**

The complaint also alleged that the District's website is not in compliance with Section 504 and Title II because it is inaccessible to persons with visual impairments, hearing impairments, intellectual disabilities, physical impairments, and reading disabilities. The Complainants stated that it appears that pages on the District's website are not accessible with Acrobat PDF files. The Complainants' advocate added that she ran an accessibility check on the District's website using the site [www.PowerMapper.com](http://www.PowerMapper.com), and that this checker identified Section 508 level 1 issues for the District's main page and special education page.

Prior to the completion of OCR's investigation, the District asked to resolve this complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM).

- **Applicable Legal Standards and OCR Policy**

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person 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. In this usage, "program or activity" encompasses a broad variety of operations associated with the receipt of federal financial assistance from the Department, including all operations of a local education agency or a college or university, as

well as all of the operations of department, agency, or other instrumentality of a State or local government or the entity of such a State or local government that distributes such assistance and each such department or agency to which the assistance is extended. The regulation implementing Section 504, at 34 C.F.R. § 104.4(b), further prohibits discrimination on the basis of disability in the provision of any aid, benefit, or service, directly or through contractual, licensing, or other arrangements. A recipient may not deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service; afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others; provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others; or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

The regulation implementing Title II, at 28 C.F.R. § 35.130, has requirements similar to those in the regulation implementing Section 504. Additionally, the regulation implementing Title II has specific requirements for communication, which, in pertinent part, require that public entities take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1). Entities subject to Title II are required to provide equally effective communication, regardless of the medium chosen for their communication. Communication includes the transfer of information and encompasses information conveyed through computer-related applications and online environments.

OCR and the U.S. Department of Justice, Civil Rights Division, issued a Dear Colleague Letter on June 29, 2010 (June 2010 DCL), on access to emerging technologies for individuals with disabilities. OCR then issued another Dear Colleague Letter on May 26, 2011 (May 2011 DCL), along with a questions and answers document (FAQ), in follow-up to the June 2010 DCL. The FAQ clarifies that students with disabilities, especially visual impairments, are to be afforded “the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students.” The FAQ also clarifies that an accommodation or modification that is available only at certain times will not be considered “equally effective and equally integrated” where other students have access to the same information at any time and any location, as is the case with a website or other online content. The May 2011 DCL states that online programs are also covered and stresses the importance of planning to ensure accessibility from the outset.

While the May 2011 DCL and FAQ focused primarily on electronic book readers, the principles articulated in the documents apply to all forms of information technology. Though the DCL and FAQ discussed students as the affected population, recipients and public entities must ensure equal access to the educational benefits and opportunities afforded by the technology and equal treatment in the use of the technology for individuals with disabilities in any populations the recipient engages with its programs or activities, including students and members of the public.

- **Voluntary Resolution**

As noted above, before the conclusion of OCR's investigation, the District expressed interest in voluntarily resolving this complaint pursuant to Section 302 of the 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. OCR determined that it is appropriate to resolve the allegation concerning the alleged inaccessibility of the District's website prior to the completion of its investigation. Accordingly, on November 12, 2015, the District submitted the enclosed Agreement to OCR, which, when fully implemented, will resolve this complaint.

### **Conclusion**

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 this allegation and take appropriate action to ensure the District's compliance with the Section 504 and Title II regulations.

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 harmed individual may file a 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.

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.

We appreciate the District's cooperation during OCR's preliminary investigation and resolution of this complaint. We look forward to receiving the District's first monitoring report pursuant to the Agreement, which OCR will be due on January 31, 2016. For questions about implementation of the Agreement, please contact xx xxx xxxxxx, who will be monitoring the District's implementation, by telephone at (xxx) xxx-xxxx, or by e-mail at xxx.xxxxxx@ed.gov.

If you have any questions regarding resolution of this complaint, please contact me at (xxx)xxx-xxxx or by e-mail at xxxx.x.xxxx@ed.gov.

Sincerely,

Xxxx x. xxxx  
Supervisory Attorney/Team Leader

Enclosure