



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

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REGION XV  
MICHIGAN  
OHIO

Gouri G. Sashital, Esq.  
Keller Thoma, P.C  
26555 Evergreen Road  
Suite 1240  
Southfield, Michigan 48076-4255

Re: OCR Docket #15-15-1261

Dear Ms. Sashital:

This letter is to inform you of the disposition of the above-referenced complaint, which was filed with the U.S. Department of Education's Office for Civil Rights (OCR) on April 27, 2015, against Gibraltar School District (the District). The complaint alleged that the District discriminated against a student (the Student) on the basis of race and disability. Specifically, the complaint alleged that:

1. On XXXXXX, a District staff member refused to enroll the Student and excluded him from the District's special education program for students with autism, on the basis of his race (African American).
2. The District failed to properly evaluate the Student prior to making the XXXXX, placement decision and failed to provide the Student's parent with a notice of procedural safeguards.

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 at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. OCR also enforces Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

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

- whether the District, on the basis of race, excluded a student from participation in, denied him the benefits of, or otherwise subjected him to discrimination under any program or service of the District, in violation of the Title VI implementing regulation at 34 C.F.R. § 100.3;
- whether the District denied a qualified student with a disability a free appropriate public education (FAPE), in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33;
- whether the District failed to conduct an evaluation of a student who, because of disability, needed or was believed to need special education or related services before taking any action with respect to the initial placement of the student as required by Section 504's implementing regulation at 34 C.F.R. § 104.35(a); and
- whether the District failed to provide a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of a qualified student with a disability as required by Section 504's implementing regulation at 34 C.F.R. § 104.36.

### **Summary of OCR's Investigation**

To conduct its investigation, OCR interviewed the Student's parent and District staff members knowledgeable about the events that served as the basis for the complaint. OCR also reviewed documentation submitted by the District. In addition, OCR provided the Complainant with an opportunity to respond to information obtained from the District relevant to the complaint.

The Student moved with his parent from out of state to the District in XXXX. The Student was XXX years old at the time. He had an Individualized Education Program (IEP) from his prior district, dated XXXXXX, with an eligibility designation of XXXX XXXX XXXXX. The Student's parent initially sought enrollment for the Student in the District on XXXXX. She told OCR that she contacted the District by telephone prior to that date and was told that there were still spaces available for the Student XXXXX XXXX XXXX XXXX XXXX.

On XXX, during the enrollment process, the Student's parent inquired about the District's special education program and submitted a copy of the Student's IEP from his previous district. She said a District staff member told her that the District would contact the Student's previous school and the Student would be attending XXXXXX Elementary or another District elementary school with an XXXXX program. The Student's parent said that sometime after the XXXX visit the District's social worker called her to ask her questions about the demographics of the Student's previous school and how he "fit in" there. The social worker also scheduled a "meet and greet" at XXX for the parent, the school psychologist, and the therapist.

The Student's parent said that at the meeting on XXXXX, the social worker started the meeting by saying that the Student most likely would not be able to XXXXXX XX XXXXX XXX

elementary school in the District but that he would be bused to a different district. She said they did not have the Student's IEP at this meeting and did not know the Student's name. The Student's parent said the staff asked her questions about "how he enjoyed being around kids like him" and "kids he would have more in common with." She said the District staff asked a lot of questions XXXXX XXXX XXXX XXX XXX XXX XXX XXXXXXXXXXX XXX XX XXX XXXX XX XXXXXX.

The Student's parent said the social worker then called to tell her that the Student would be bused to XXXXXXXX XXXX Schools XXXXX, which is over 30 minutes away from where she lives. She said the social worker told her that the Student would be more comfortable XXXXXXXX and that there would be more children he could relate to. The Student's parent asked the social worker whether she meant more children who looked like him, and the social worker replied, "That too; that's important too." The Student's parent said she told the social worker that the District placed the Student at XXXXX XXXXX because of the color of his skin. The social worker denied doing so and said they wanted him to go to a school that made him feel comfortable and also that the District had already filled all of their placements. The Student's parent said this contradicted the District's earlier statement in March that there were still spaces for the current year.

The District confirmed that the Student's enrollment was initiated on XXXXXXXX. At that time, the Student's family notified the District about the Student's disability and that he required special education services at his previous district. The District obtained the Student's educational records from his previous school district, including a XXXXX, IEP XX PARTIAL PARAGRAPH REDACTED XX. The District denied that the Student's race played any part in the Student's placement.

OCR reviewed documentation submitted by the District, including the Wayne County Regional Educational Service Agency (RESA)'s Plan for the Delivery of Special Education Programs and Services (the Plan). The District is one of 33 school districts in the RESA, in addition to about 110 public school academies. The Plan states that students with disabilities are provided with a continuum of special education programs and related services, including placement in a general education program in a general education facility as well as placement in a special education center-based program in a separate facility. The Plan lists 14 RESA districts where the center-based ASD programs are located, none of which are the District. One of the ASD program options is located in Lincoln Park.

The District's special education director (the director) told OCR that, in addition to its participation in the RESA, the District is part of a cooperative with three other districts. He said the District provides three levels of service for students with disabilities: (1) some students are served within the District; (2) some students are served in a cooperative program; and (3) some students are served at center-based programs located throughout the county. The placement depends on the individual needs of the student.

OCR reviewed a chart provided by the District listing all students who were identified as "XXXX XXXX" (XX) in the District's cooperative for the 2014-2015 school year. The chart provided information for each student, including their resident school district, age, race, hours of

special education services per week, and placement location. The chart showed the total number of XX students in the District during the 2014-2015 school year. The chart also showed the students' placements based on needs. The chart showed that the Student and other students were placed in programs outside of the District. The students placed outside the District included white, Hispanic/Latino, and African American students. The director provided information to OCR about the factors considered by the District when determining the placement of these students. The factors described by the Director were based on each student's educational needs.

OCR reviewed data submitted by the District verifying that, on XXXXXX, the District conducted a Referral/Review of Existing Evaluation Data (REED) meeting, followed by a Multi-disciplinary Evaluation Team (MET) meeting, to determine what, if any, evaluations needed to be conducted, to determine the Student's eligibility for special education services, and to determine the Student's placement. OCR also reviewed the REED consent form and MET summary, dated XXXXXX. The REED form was signed by the Student's parent on XXXXXXXX, and with her signature the Student's parent acknowledged that she received a copy of the procedural safeguards and consented to the evaluation plan.

The District referred the Student to XXXXX XXXXXX on XXXXX, but the Student did not begin attending XXXXX until XXXXX. The social worker contacted a Lincoln Park representative about placing the Student in its center-based program on XXXXX. On XXXX, the District submitted the referral paperwork to XXXXX. On XXXXXX, the Student's parent e-mailed a District employee to say that she had not received a call from XXXXX yet. An XXXXX e-mail from the social worker to another District employee states that the social worker contacted the Student's parent when she learned that the Student had not yet started school. On XXXXXXXX, the social worker sent an e-mail to the XXXXX representative confirming that the Student would start at XXXXX on Monday, XXXXX.

The District denied discriminating against the Student based on his race, and asserted that it regularly places students who, based on their particular needs, XXXX X XXXXX XXX XXXXXXXXXXXX XX XXXXX XXXXX within its region pursuant to its cooperative agreement, regardless of the student's race. District witnesses told OCR that it conducted the REED and MET in order to determine the least restrictive environment for the Student. Based on reviewing the documentation from the Student's previous district and observation of the Student, the team that attended the XXXXX meeting determined that the general education setting would not be appropriate, and the Student needed an XXXXX program. District witnesses stated that the Student had been in a XXX classroom in his previous district, and they determined it was appropriate to place him in the same type of program with comparable services.

The social worker denied making any statement to the Student's parent about XXXXXX having more kids who could relate to the Student. When asked about the delay between the District's evaluation of the Student on XXXXX and his first day of school at XXXXX on XXXXXXX, a District witness stated that the District completed the paperwork right away and tried to expedite the process as much as possible, but asserted that the responsibility for the delay falls on XXXXX because it was supposed to make transportation arrangements for the Student.

OCR provided the Complainant with the opportunity to respond to the information provided by the District. When told that District staff members had denied discriminating against the Student on the basis of race, the Complainant said they would never admit that, but that was what the conversation centered around, and it made her uncomfortable in the XXXXX meeting. She stated that the District staff asked about the make-up of the Student's old school: how many children were in his classroom, and whether there were a lot of children who "looked like him." The Student is not currently enrolled at the District.

### **Applicable Legal Standards**

The Title VI regulation, at 34 C.F.R § 100.3(a), states that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Evidence of discriminatory intent may be direct or circumstantial. Absent direct evidence of discriminatory motive, in determining whether a recipient subjected a student to different treatment on the basis of race, color, or national origin in violation of Title VI, OCR looks to whether there were any apparent differences in the treatment of similarly-situated students on the basis of race, color, or national origin. If so, OCR assesses any recipient explanation for any differences in the treatment of similarly-situated students to determine whether the reasons articulated are legitimate or are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the students in a manner that is consistent with its established policies and procedures and whether there is any other evidence of discrimination based on race, color, or national origin.

The Section 504 regulation, at 34 C.F.R. § 104.33, requires recipient school districts to provide a FAPE to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or the severity of the person's disability. An appropriate education for purposes of FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met, and that are developed in accordance with procedural requirements of 34 C.F.R. §§ 104.34-104.36 regarding educational setting, evaluation, placement, and procedural safeguards, including notice.

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. If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options, determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. § 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about Individuals with Disabilities Education Act (IDEA) requirements when a student transfers is available from the Department's Office of

Special Education and Rehabilitative Services at  
<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>.

## **Legal Analysis and Resolution**

The evidence OCR obtained during its investigation is insufficient to support a finding that the District discriminated against the Student on the basis of race, as alleged. OCR found no direct evidence of the District's discriminatory motive in placing the Student in a program outside of the District. Therefore, OCR looked to whether there were any apparent differences in the treatment of similarly-situated students on the basis of race. OCR finds, based on the weight of the evidence, that white and Hispanic/Latino District students, similarly situated to the Student, were also placed in center-based programs located outside of the District. Students that were not placed in these programs were not similarly situated to the Student as their educational placements did require the same services in the same type of center-based, XXXXXXXX classrooms. OCR further finds that the District proffered a legitimate-nondiscriminatory reason for the Student's placement which was made by the Student's IEP team and was based on the Student's individualized education needs. Furthermore, information provided by the District demonstrated there were no center-based XXX programs physically located in the District. The information further showed that the only available center-based XXX program was in XXXXX, and that students of different races were placed in the Student's classroom at XXXXX by the District.

Therefore, the evidence obtained was insufficient to support a finding that the District discriminated against the Student, on the basis of race, by placing him at XXXXX, a school located outside of the District.

Based on the same information stated above, OCR finds that the evidence is also insufficient to support a conclusion that the District failed to properly evaluate the Student before making the placement decision. The weight of the evidence supports the District evaluated the Student on XXXXX, before making a placement decision for him.

Finally, the evidence is insufficient to support a finding that the District failed to provide a notice of procedural safeguards to the Student's parent, as alleged. As noted above, the District submitted documentation showing that the Student's parent was provided with a notice of procedural safeguards following the XXXXX meeting.

However, during the course of the investigation, OCR found that the evidence indicated a lapse in time between the Student's enrollment at the District and the District's provision of educational services to the Student through the placement at XXXXXXXX. XX PARTIAL PARAGRAPH REDACTED. The District did not arrange for any interim placement of the Student following his enrollment in the District. This resulted in the Student missing at least 14 days of school. The District was the Student's residential district at the time, and was therefore responsible for ensuring that the Student was provided with educational services and a FAPE. Therefore, the evidence is sufficient to support a finding that the District failed to provide the Student a FAPE or any type of educational services, from the time of his enrollment in XXXXXX XXXXX XXXXXXXX, in violation of Section 504.

On April 21, 2016, the District signed the enclosed Agreement, which, once implemented, will resolve the District's failure to provide the Student with educational services and a FAPE during the relevant time period. In summary, the Agreement requires the District, upon the Student's re-enrollment, to re-convene the Student's Section 504 team to determine what compensatory educational services or other remedial measures are appropriate.

## **Conclusion**

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.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We look forward to receiving the District's first monitoring report by **October 15, 2016**. For questions about implementation of the Agreement, please contact Ms. Julianne Gran, who will be monitoring the District's implementation, by e-mail at [Julianne.Gran@ed.gov](mailto:Julianne.Gran@ed.gov) or by telephone at (216) 522-2684. For questions about this letter, please contact me at (216) 522-7640.

Sincerely,

/s/

Emily C. Babb  
Acting Regional Director

Enclosure