



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

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

Re: OCR Docket #15-15-1300

Dear Mr. Sutton:

This is to notify you of the disposition of the above-referenced complaint that was filed on May 26, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Utica Community Schools (the District) alleging that the District discriminated against a District student (the Student) based on his disabilities. Specifically, the complaint alleged that:

1. During the 2014-2015 school year, the District failed to appropriately evaluate/reevaluate the Student by refusing to consider whether he qualified as an individual with a disability and needed disability services related to his xxxxx condition and xxxxxxxxxx xxxxxx xxxxxx.
2. During the 2014-2015 school year, the District failed to provide the Student's parent with a meaningful opportunity to provide input into his disability-related services, when it developed and implemented a behavior plan for the Student without consulting with the Student's parent or providing her with a copy.

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). 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). 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 Section 504 and Title II.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

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Based on the complaint allegations, OCR investigated the following issues:

- Whether the District failed to appropriately evaluate/reevaluate a student with a disability as required by the Section 504 implementing regulation at 34 C.F.R. § 104.35.
- Whether the District failed to provide a qualified student with a disability with a free appropriate public education (FAPE) as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33.
- Whether the District failed to establish and implement, with respect to actions regarding the educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.36.

OCR investigated this complaint by speaking with the complainant and obtaining information and documentation from the complainant and the District. However, prior to OCR's completion of its investigation, the District offered to voluntarily resolve the complaint allegations pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*. Thus, on November 16, 2015, the District signed the attached resolution agreement (Agreement), which once implemented, will address the Section 504 and Title II compliance concerns raised by the complaint allegations. A discussion of OCR's investigation to date is presented below.

- **Summary of OCR's Investigation to Date**

During the 2014-2015 school year, the Student attended xxxxx grade in the District's Beacon Tree Elementary School (the School). The complainant informed OCR that the Student has a xxxxx condition, and a xxxxxxxxxx xxxxx xxxxxx. During the 2014-2015 school year, the Student was on an Individualized Education Program (IEP) related to his xxxxx condition and was classified as xxxxxxxxxx xxxxxx xxxxxxxxx.

The complainant informed OCR that in xxxxxxxx 2015, the IEP team reconvened for the Student's three-year reevaluation. She stated that during the reevaluation, the District refused to consider whether the Student was eligible for certain disability-related services related to his xxxxx condition and xxxxxxxxxx xxxxx xxxxxx. She explained that as a result of the Student's disabilities, he has trouble with xxxxxxxx control, xxxxxxxxxx xxxxxxxxxx, xxxxxx and xxxxxx xxxxxxxxxx matters, such as properly xxxxxxxxxx with xxxxxxxx, and understanding xxxxxxxxxx xxxx and xxxxxxxxxx. She said that he is also very xxxxxxxx and xxxxxxxx of the xxxxx around him, and struggles with xxxx xxxxxxxxxx, e.g., knowing when xxxx xxxxxxxx have passed versus xxxxxxxx xxxxxx. She stated that during the first half of the 2014-2015 school year, she asked the District to provide the Student with xxxxxx and xxxxxxxxxx related to his xxxxxxxx issues. For example, she said that she asked the District to have the Student's xxxxxxxxxx xxxxxxxxx evaluated by someone who specializes in xxxxxxxxxx xxxxx xxxxxx. She stated that the

District staff refused her request, and questioned whether the Student had a xxxxxxxxxx xxxxx xxxxxx. The complainant reported that she also asked for xxxxxx and xxxxxxxx testing and xxxxxxxxxx testing which the District also refused.

The complainant stated that during the xxxxxxxx 2015 IEP meeting, she and District staff determined that the Student's classification would remain xxx due to his xxxxx condition. However, when she received the revised IEP in the mail, his classification had been changed to xxx based on xxxx, which she asserted was not discussed at the meeting. She stated that included with the revised IEP was an xxxx screening document, which she had never seen, and a letter from the Student's xxxxxx from when the Student was in xxxxxxxxxxxx stating that he had symptoms of xxxx. She stated that she asked the District for a second IEP meeting, stating that change was not appropriate and was inconsistent with the IEP team's decision that the Student classification should remain xxx due to his xxxxx condition. The complainant stated the District refused to change the Student's classification, asserting that just because the Student had a xxxxx condition did not mean that he was automatically disabled. However, the complainant stated that she had provided the District with medical documentation from the Student's xxxxxxxxxxxx showing that he had issues related to his xxxxx condition, and the District had nothing to refute that medication documentation. She noted that the District claimed that it never got the medical documentation.

The complainant was provided with notice of her due process rights regarding the District's decision on the Student's xxxxxxxx 2015 IEP, but she did not pursue a due process hearing regarding the District's decision. The complainant stated that she subsequently requested an independent evaluation of the Student and the District agreed to this request on xxxx x, 2015. She stated that the independent evaluation covered all of her areas of concern, including the Student's xxxxxx and xxxxxxxx skills, xxxxxxxx xxxxxxxx, xxxxxx issues and xxxxxxxxxx and xxxxxxxxxx issues. The complainant and District staff informed OCR that the Student's IEP team is meeting on xxxxxxxx xx, 2015 to discuss the results of the independent evaluation and develop a new IEP.

The complainant also alleged that in xxxxxxxx 2014, the District developed a xxxxxxxxxx plan for the Student that was outside of his IEP and that was not discussed or shared with her. She stated that she learned of its existence during the xxxxxxxx 2015 IEP meeting and asked for a copy, which she received on xxx xx, 2015. She said that the xxxxxxxxxx plan stated that it had been in place since xxxxxxxx 2014, but she had never seen it. She stated that there were things in the xxxxxxxxxx plan that she would have challenged had she been provided with an opportunity to provide input.

OCR contacted the District regarding the complainant's allegations. The District denied the complainant's assertion that the District failed to properly evaluate or reevaluate the Student for disability-related services during the 2014-2015 school year, and also denied failing to provide the complainant with a meaningful opportunity to provide input into the reevaluation process. The District also denied the complainant's allegations of discrimination with respect to the Student's xxxxxxxx plan. The District asserted that the

complainant was invited to a meeting in the xxxx of 2014 to discuss a xxxxxxxxxx plan, but she did not attend. The District claimed that it thereafter provided her with other opportunities to provide input and that she did provide input into the Student's xxxxxxxxx-related services.

- **Applicable Legal Standard / Analysis and Conclusion**

The Section 504 implementing regulation 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 that receives federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a).

Further, the Section 504 regulation, at 34 C.F.R. § 104.33(a), requires a school district to provide each qualified student with a disability within its jurisdiction a free appropriate public education (FAPE). For purposes of FAPE, an appropriate education is 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 satisfy the procedural requirements of the Section 504 regulation regarding educational setting, evaluation, placement, and procedural safeguards. See 34 C.F.R. § 104.33(b).

The regulation implementing Section 504, at 34 C.F.R. § 104.35, requires recipient school districts to 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. The regulation also requires recipient districts to reevaluate students with disabilities periodically and before any subsequent significant change in placement. OCR has interpreted this provision to require districts to reconvene and reevaluate students whose current disability-related services, contained in a student's Section 504 plan or Individualized Education Program (IEP), are no longer sufficient to provide FAPE.

The Section 504 regulation, at 34 C.F.R. § 104.36, also provides that when evaluating a student with a disability and making placement decisions regarding that student, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data and the placement options and (4) ensure that the placement decision is made in conformity with 34 C.F.R. § 104.34 (which provides that students with disabilities must be educated with nondisabled students to maximum extent appropriate to the needs of the student with a disability.)

Further, the regulation implementing Section 504, at 34 C.F.R. § 104.36 requires recipient Districts to establish and implement, with respect to actions regarding the identification, evaluation or educational placement of persons with disabilities, a system of procedural safeguards, including notice of these decisions to the parent or guardian, an opportunity for the parent or guardian to review relevant records, and an opportunity for the parent or guardian to challenge decisions regarding identification, evaluation and placement through an impartial hearing.

OCR has interpreted the above provisions, in part, to require Districts to provide parents or guardians with a meaningful opportunity to provide input into decisions regarding the identification, evaluation and placement of students with disabilities.

In the instant case, the complainant alleged that the District failed to appropriately reevaluate the Student in xxxxxxxx 2015, when it failed to consider whether he required disability-related services related to his xxxxx condition and xxxxxxxxxx xxxxxx xxxxxxx. Further, she contends that the District did not provide her with a meaningful opportunity to provide input into the decision to classify the Student as xxx xxx xx xxx, as xxxx was not discussed as a possible diagnosis during the IEP meeting. She also alleged that she was not provided with a meaningful opportunity to provide input into the Student's xxxxxxxxxx plan, nor was she provided with notice of the plan or an opportunity to challenge the plan's provisions.

As noted above, the District denied that it discriminated against the Student as the complainant alleged. However, before OCR could complete its investigation into the allegations, the District offered to resolve the complaint through Section 302 of OCR's CPM. Thus, on November 16, 2015, the District has signed the attached Agreement, which once implemented, will address any Section 504 or Title II compliance issues raised by the complaint allegations.

The Agreement requires the District to reconvene the Student's IEP team and develop an IEP, and if necessary, a behavior plan, that contain the disability-related services necessary to provide the Student with FAPE during the 2015-2016 school year. The Agreement provides that in developing the IEP and any behavior plan, the IEP team is required to consider all relevant information about the Student, including but not limited to, documentation and information provided by the Student's parents, and information from the Student's 2015 independent evaluations. The Agreement also requires the Student's IEP team to consider whether the Student requires compensatory education or other remedial services based on an assessment of whether the Student was properly classified and/or provided with appropriate disability-related services during the 2014-2015 and 2015-2016 school years. The Agreement also requires the District to provide the Student's parents with a meaningful opportunity to provide input into the above-referenced IEP team decisions, as well as copies of any IEP, behavior plan, or compensatory education plan developed for the Student, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36. In addition, the Agreement requires the District to provide relevant District staff with training on the requirements of Section 504 and Title II.

As the District has agreed to the terms of the attached Agreement, OCR is closing this complaint effective the date of this letter. OCR will, however, monitor the District's compliance with the terms of the Agreement.

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.

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 have the right to file a private suit in federal court, whether or not OCR finds a violation.

OCR appreciates the District's cooperation. If you have any questions, please contact me at (xxx) xxx-xxxx. For questions about implementation of the Agreement, please contact xx. xxxxxx xxxxxxxx at (xxx) xxx-xxxx, or by e-mail at xxxxxx.xxxxxxx@ed.gov who will be monitoring the District's implementation of the Agreement. We look forward to receiving the District's first monitoring report, which is due by January 31, 2016.

Sincerely,

Xxxx x xxxx  
Supervisory Attorney/Team Leader

Enclosure