



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

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

Amy M. Natyshak, Esq.
Marshall & Melhorn, LLC
Four Seagate, Eighth Floor
Toledo, Ohio 43604

Re: OCR Docket #15-16-1157

Dear Ms. Natyshak:

This letter is to inform you of the disposition of the above-referenced complaint filed against Toledo Public Schools (the District) with the U.S. Department of Education (Department), Office for Civil Rights (OCR), on January 19, 2016, alleging discrimination on the basis of disability. Specifically, the complaint alleged the following:

- 1) the District discriminated against the Student, in or around February 2016, when it did not follow the action plan for his asthma at XXXX (the Academy) and allowed him to go outside when the temperature was 30 degrees or below; and
- 2) the District failed to evaluate the Student before changing his school placement on multiple occasions from December 2015 to February 2016.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit 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 complaint allegations, OCR opened an investigation of the following issues:

- whether the District failed to provide a qualified student with a disability with a free appropriate public education (FAPE), in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.33; and
- whether the District made a significant change in the placement of a student with a disability without appropriately reevaluating the student, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.35(a).

Summary of OCR’s Investigation

To date, OCR has investigated this complaint by reviewing information provided by the Complainant and the District.

XX PARAGRAPH REDACTED

The Complainant stated that the Student is severely asthmatic. The Complainant said the Student’s 2015-2016 Individualized Education Program (IEP) at the District addressed his asthma. She said he also had an “action plan” at the District that addressed his asthma. She stated that while the Student was attending school at the Academy, in or around February 2016, someone in the school burned popcorn, and the students had to be evacuated. She said the Student’s stepfather went to school and, when he got there, he saw that the Student was outside without a coat or hat. She said the Student’s action plan stated that the Student should not be outside when it is 30 degrees or below.

The Complainant told OCR that she attended a meeting in or around December 2015 with staff at XXXXXX to discuss behavioral incidents that the Student had been involved in. She said the staff told her the Student’s behavior issues meant that he was not a fit for XXXXX. She said one staff member said the Student would be a better fit at McKinley Elementary School (McKinley), another school within the District with a confined classroom for students with behavior issues. The Complainant said she did not did agree to send the Student to McKinley but decided to apply for the Student to attend OWE, a District magnet school. She said he started attending OWE on XXXXXXXX, 2016, but on XXXX, she was informed he could no longer attend OWE because the school did not have an intervention teacher for the Student, and OWE could not fit the needs of his IEP. She said staff from OWE later informed her that the Student could attend the Academy in the District and so he transferred there in XXXXX 2016.

In support of her complaint, the Complainant provided OCR with some of the Student’s records and copies of correspondence between her, her advocate(s), and District staff.

The District provided OCR with a copy of the Student’s IEP, dated XXXXX, 2015, and his attendance record.

XX PARAGRAPH REDACTED XX

With respect to the changes in the Student’s school placement, the Complainant provided OCR with a copy of a PR-01 Prior Written Notice to Parents form dated XXXXX, 2016, that stated that the Student was “staying in current setting [XXXXX], but this option was rejected due to student and parent decision.” XX PARTIAL PARAGRAPH REDACTED XX

OCR notes that the Complainant provided OCR with an e-mail dated XXXXX, 2016, in which a District employee made the following statement regarding the Student’s placement in OWE: “OWE does not have a primary placement of any kind. I have one in-class support teacher there and she works with intermediate students.”

On July 14, 2016, 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 Regulatory Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, prohibits recipients from, on the basis of disability, excluding a qualified person with a disability from, denying the person the benefits of, or otherwise subjecting the person to discrimination under any of its programs or activities.

The Section 504 regulation, at 34 C.F.R. § 104.33, further 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. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting this standard.

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.

Generally, a significant change in placement means a significant change in the type or amount of services being provided, including the termination or substantial reduction in services, significantly altering the number of hours a child is in regular education, or

certain disciplinary exclusions. A change in teachers or aides (or other staff) without altering the nature or amount of services, or a change in time of day when services are delivered, would not generally constitute a significant change in placement.

Resolution and Conclusion

As noted above, prior to the completion of OCR's investigation, the District expressed interest in resolving the allegations in the complaint pursuant to Section 302 of OCR's CPM, which 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. On September 14, 2016, the District submitted the enclosed signed resolution agreement (the Agreement) to OCR. The provisions of the Agreement are aligned with the complaint allegations and the information obtained to date during the investigation and are consistent with applicable regulations. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the Agreement, OCR finds that the 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 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.

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

OCR looks forward to receiving the District's first monitoring report by October 31, 2016. For questions about implementation of the Agreement, please contact Aubrie Wancata, who will be monitoring the District's implementation, by e-mail at

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Aubrie.Wancata@ed.gov or by telephone at (216) 522-4711. For questions about this letter, please contact Sacara Martin, Supervisory Attorney/Team Leader, at (216) 522-7640.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure