



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 30, 2016

Mr. Daniel Tanoos
Superintendent
Vigo County School Corporation
686 Wabash Ave
P.O. Box 3703
Terre Haute, Indiana 47807

Re: OCR Docket # 05-16-1106

Dear Mr. Tanoos:

This is to advise you of the resolution of the above-referenced complaint filed against Vigo County School Corporation (Corporation) with the U.S. Department of Education (Department), Office for Civil Rights (OCR).

The complaint alleged that, in the 2015-2016 school year, the Corporation subjected students with disabilities at West Vigo Elementary School (School) to discrimination based on disability by failing to follow proper placement procedures when amending the Individualized Education Plans (IEPs).

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the Corporation is subject to these laws.

During its investigation, OCR reviewed data provided by the Complainant and the Corporation. Based on its investigation, OCR determined that the Corporation's notice of nondiscrimination does not comply with the requirements of Section 504 and Title II. Prior to the completion of OCR's investigation, the Corporation agreed to take actions to resolve the other issues in the complaint. The bases for OCR's determinations are set forth below.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4(a), states that no qualified disabled person shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or

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otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance.

The Section 504 regulation, at 34 C.F.R. § 104.8, states a recipient that employs 15 or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of disability in violation of Section 504. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to 34 C.F.R. § 104.7(a). Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

The Title II regulation, at 28 C.F.R § 35.106, states that a public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them.

The Title II regulation, at 28 C.F.R § 35.107, states that a public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

The Section 504 regulation, at 34 C.F.R § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The Section 504 regulation, at 34 C.F.R § 104.33(b)(1), states that the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of disabled persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.

The Section 504 regulation, at 34 C.F.R. § 104.35(a), states 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.

The Section 504 regulation, at 34 C.F.R. § 104.35(b), requires that a recipient establish standards and procedures for the evaluation and placement of students who, because of disability, need or are believed to need special education and/or related services.

The Section 504 regulation, at 34 C.F.R. § 104.35(c), states that “in interpreting evaluation data and in making placement decisions, 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 § 104.34.”

The Section 504 regulation, at 34 C.F.R. § 104.36, states that a recipient shall establish and implement, with respect to actions regarding the identification, evaluation, or 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, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

Corporation Policies

The Corporation provided OCR a copy of its policy entitled “Equal Educational Opportunities” that prohibits discrimination based on disability and other protected classes. The Corporation’s Student-Parent Guide notes Section 504’s prohibition of discrimination based on disability and that, pursuant to Section 504, the Corporation is responsible for identifying, evaluating, and providing appropriate educational services to eligible students.

The Corporation also has a Section 504 Implementation Manual, which states that placement decisions “should be considered by a team or group of persons including those who are knowledgeable about the child, the suspected disabling condition, evaluative procedures, the meaning of evaluative data, and accommodation/placement options.” The Manual states that the Coordinator of Student Services is responsible for ensuring compliance with Section 504 and includes a phone number, but no other contact information. The Corporation also provided OCR a copy of notice to parents/guardians advising them of their Section 504 rights; this notice includes the name of a Corporation employee to contact, but no contact information.

Facts

The School is one of 18 elementary schools in the Corporation. In the 2015-2016 school year, there were 290 students enrolled in the School.

The complaint alleged that, in the 2015-2016 school year, the Corporation subjected students with disabilities at the School to discrimination based on disability by failing to follow proper placement procedures when amending the students' IEPs.

The Corporation reported that, in the 2015-2016 school year, there were 84 students with disabilities who had IEPs at the School. Out of the 84 students, 34 students did not have a change in services or placement during the 2015-2016 school year and 21 students had a change in services or placement through a Case Conference Committee (CCC). The Corporation reported that the remaining 29 students had IEPs that were amended in fall 2015 without a CCC.

The Corporation told OCR that the majority of these 29 students were preparing for statewide testing and School officials were concerned that removing students from the general education classroom to a special education setting for math, reading, and language arts was not in the students' best interest. Therefore, the School moved from a "pull-out" to a "push-in" service delivery model in which the students would remain in the general education classrooms for math, reading, and language arts, with support by either a special education teacher or an educational assistant and a general education classroom teacher. Between August 10, 2015 and September 3, 2015, a teacher of record contacted, by phone or in-person, the "majority" of the parents or guardians of these students to discuss the proposed changes in placement. The Corporation told OCR that all the parents or guardians who were contacted verbally consented to the changes in the IEPs without convening a CCC. The Corporation proceeded with the change in placement even for the students whose parents they did not contact.

In November, a staff member at the School expressed to School administrators his opinion that the School did not follow proper procedures in amending the IEPs as it did so without a CCC. On December 1, 2015, the School sent a letter to the parents/ or guardians of affected students to offer to convene a CCC to correct any noncompliance with the applicable regulations. The letter stated that the School would convene a CCC to determine whether the current placement was the most appropriate for the student and meets his/her educational needs. The School gave parents or guardians the option to convene a meeting immediately or wait until the next annual meeting in order to discuss changes made to the students' IEP at the beginning of the 2015-2016 school year. The School convened CCCs for the 29 students between December and March.

On January 5, 2016, an individual filed a complaint with the IDOE alleging the School failed to implement the IEPs of 19 specific students at the School. On January 19, 2016, the IDOE notified the School that it was investigating two issues: 1) whether the School implemented the IEPs of the 19 students as written; and 2) whether the paraprofessionals and assistants, who were assisting students in areas that relate to personal, social, and educational needs, were appropriately trained and working under the direction and supervision of licensed teachers or related services personnel.

On February 18, 2016, the IDOE issued its final investigation report. For the first issue, the IDOE determined that it was a technical violation of state law when the School revised the IEPs based on verbal agreements. The IDOE determined that this technical violation was mitigated by

the School's "self-regulation, timely and transparent disclosure of this noncompliance to parents, and immediate implementation of a self-corrective plan to regain compliance with regards to reviewing and revising the Students' IEPs. Thus, no additional corrective action will be ordered for this violation." For the second issue, the IDOE determined that the paraprofessionals and assistants were appropriately trained and working under the direction and supervision of licensed teachers.

Analysis and Conclusion

OCR determined that the Corporation's notice of nondiscrimination does not identify the responsible employee designated to coordinate the Corporation's compliance with Section 504 and Title II. Therefore, OCR determined that the Corporation is not in compliance with the Section 504 regulations, at 34 C.F.R. § 104.8, and Title II, at 28 C.F.R § 35.107.

Prior to the conclusion of OCR's investigation, the Corporation expressed interest in resolving the remaining issues of the complaint. In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint.

On June 30, 2016, the Corporation signed the enclosed Resolution Agreement (Agreement) which, when fully implemented, will resolve the issues raised in the complaint. OCR has ensured that the Agreement is aligned with the violation identified, the complaint allegations and the information obtained during the investigation so far, and is consistent with the applicable regulations.

The Agreement requires the Corporation to revise and widely disseminate its revised notice of nondiscrimination on the basis of disability. The Corporation is required to reconvene CCCs for the 29 students whose IEPs were amended in fall 2015 without a CCC to consider whether compensatory services are required for the period beginning in fall 2015, provided the student continues to reside in the Corporation and/or receive special education and related services from the Corporation. For any student exempt from this requirement because he or she no longer resides in the Corporation and/or no longer receives special education and related services from the Corporation, if the student re-enrolls in the Corporation in the 2016-2017 school year, the Corporation is required to reconvene CCCs for these students within 30 calendar days of re-enrollment to consider whether compensatory services are required for the period beginning in fall 2015. The Agreement also requires documentation of the decisions made by the CCCs and of implementation of all compensatory services determined necessary, subject to OCR approval. The Agreement requires training of School personnel on the applicable regulations related to changing placement of students with disabilities.

This concludes OCR's investigation of the complaint and should not be interpreted to address Corporation'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 Corporation 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.

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.

OCR wishes to thank the Corporation and Ms. Karen Glasser Sharp, Counsel for the Corporation, for the cooperation extended to OCR during the course of this activity. If you or any of your staff members have any questions regarding this matter, please do not hesitate to contact Sunita Kini-Tandon, OCR Attorney, at 312-730-1452 or by email at Sunita.Kini-Tandon@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Karen Glasser Sharp