



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200
SAN FRANCISCO, CA 94105

REGION IX
CALIFORNIA

September 12, 2014

Donna Kellogg
Superintendent
Rim of the World Unified School District
P.O. Box 430
Lake Arrowhead, California 92352

(In reply, please refer to case no. 09-14-1058.)

Dear Superintendent Kellogg:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its resolution of the above-referenced complaint against Rim of the World Unified School District (District). The complaint alleged discrimination against students on the basis of disability. Specifically, it alleged that the District discriminated against students with disabilities during the 2013-2014 school year by denying or setting restrictions on the use of Independent Study by students with individualized education programs (IEPs).

OCR opened an investigation under the authority of Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. Title II prohibits discrimination on the basis of disability by certain public entities. The District receives funds from the Department, is a public education entity, and is subject to the requirements of Section 504, Title II, and the implementing regulations.

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), no qualified individual 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 school district program or activity. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under both the Section 504 regulations, at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iii), and the Title II regulations, at 28 C.F.R. §35.130(b)(1)(i), (ii) and (iv), school districts, in providing any aid, benefit or service, may not deny a qualified person with a disability an opportunity to participate, afford a qualified person with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded to others, or provide different or separate aids, benefits, or services unless necessary to provide qualified disabled individuals with aids, benefits, or services that are as effective as those provided to others.

In addition, the Section 504 regulations, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

The Section 504 regulations, at 34 C.F.R. §104.35(a), require school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(c), placement decisions must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. A procedure consistent with the IDEA is one means of meeting this requirement.

OCR began its investigation by reviewing documents provided by the Complainant and the District and conducting several interviews. The following is a summary of the preliminary factual information gathered by OCR, and of the resolution of this complaint.

The District's Independent Study regulation (AR 6158) provides a non-exhaustive list of educational opportunities offered through this program, including: special assignments extending the content of regular courses of instruction; individualized study in a particular area of interest or any subject not currently available in the regular curriculum; individualized alternative education designed to teach the knowledge and skills of the core curriculum; continuing and special study during travel; and volunteer community service activities. It also states that Independent Study may be used on a short-term basis when requested by a parent or guardian due to emergencies, vacation, or illness.¹

For students without disabilities the process for obtaining approval of a request for Independent Study is relatively simple. Parents must complete a form that is then reviewed and signed by a school administrator. With respect to students with disabilities, AR 6158 reflects California Education Code Section 51745 by specifying that no individual with disabilities may participate in Independent Study unless his or her

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¹ The District's attendance policy and practice provides that the School Attendance Review Team (SART) process is automatically triggered when a student has 10 excused absences. However, the SART process is not triggered if Independent Study has been approved for the 10 days of excused absences.

IEP specifically provides for such participation. However, neither state law nor the District regulation distinguishes between long-term and short-term Independent Study requests with respect to the IEP requirement.

Prior to the 2013-14 school year, schools in the District routinely approved short-term Independent Study requests for all students, including students with disabilities. School sites did not hold IEP meetings prior to approving such requests. In July 2013, the District hired a new Special Education Director (SE Director) who began advising administrators that IEP meetings were required before Independent Study, even short-term, could be approved for students with IEPs. Parents and guardians of students with IEPs were not formally notified of this change in practice.

Despite this change in the practice, several short-term Independent Study requests were approved for IEP students in September through mid-December 2013 without holding an IEP meeting. In addition, one principal misunderstood the change and believed that Independent Study requests were not to be approved for any student on an IEP, even on a short-term basis. This principal denied short-term Independent Study requests for several IEP students between September 2013 and March 2014 without holding an IEP meeting. After receiving guidance and training provided by the District, the principal began holding IEP meetings to review all short-term Independent Study requests for students with IEPs. The preliminary facts did not indicate that any other principal categorically denied Independent Study requests made on behalf of all students with IEPs at any point in the 2013-14 school year.

In December 2013 the SE Director met with all school principals to review Independent Study requirements with respect to students on IEPs. She communicated to the principals that the District interpreted State law to require that a new IEP must be developed and approved prior to each distinct Independent Study request, whether long-term or short-term.

While a change in a disabled student's program that lasts less than 10 days would not in most cases be considered a significant change in placement, the Section 504 regulations would not necessarily prohibit a district from choosing to implement a system of approving short-term Independent Study requests through the IEP process. However, the District must ensure that the determination of the appropriateness of short-term Independent Study is based on the individualized needs of the student and that the use of a different process than the one available to general education students does not deny students with disabilities an equal opportunity to participate in or benefit from short-term Independent Study. In addition, regardless of the system a district chooses to implement, parents and guardians must have a clear understanding of the system and their options within it, and district staff should implement the system consistently.

Based on the preliminary evidence, there appeared to be some inconsistency among the school sites with respect to whether IEP teams could make a one-time determination that short-term Independent Study was appropriate for a student

throughout the school year without having to develop a separate IEP in response to each Independent Study request. There also appeared to be some lack of clarity regarding whether IEP teams could determine that short-term Independent Study request determinations could be made through IEP addenda without having to convene an IEP meeting in response to each request.

The preliminary facts gathered by OCR also indicated that the District had not yet provided guidance to the school sites regarding an expectation that the timing of determinations with respect to short-term Independent Study requests for students with IEPs must not deny them an equal opportunity to participate in and benefit from that program. Finally, there appeared to be some lack of clarity about the requirement to make individualized determinations regarding the appropriateness of short-term Independent Study for students with disabilities who required a heightened level of special education services.

Under Article III, Section 302 of OCR's Complaint Processing Manual, a complaint may be resolved at any time when, before the conclusion of an investigation, a school district expresses an interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving this complaint. The District thereafter entered into the enclosed Resolution Agreement. Accordingly, OCR did not complete its investigation or reach conclusions as to whether the District complied or failed to comply with Section 504 or Title II with respect to the issues raised by this complaint.

Through the Resolution Agreement, the District agreed to: modify AR 6158 in several respects; distribute the modified regulation to relevant personnel and provide training or guidance to ensure consistent implementation; and take effective ongoing action to notify parents and guardians of students with disabilities of the modified regulation.

Based on the commitments made in the Resolution Agreement, OCR is closing the investigation of the complaint as of the date of this letter. 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. OCR will monitor the District's implementation of the Resolution Agreement. OCR is informing the complainant of the complaint resolution by concurrent letter. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in this 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, another complaint may be filed alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to thank District representatives for their courtesy and cooperation in resolving this case. If you have any questions about this letter please contact Stanley Toledo at 415-486-5562, or me at 415-486-5555.

Sincerely,

/s/

Mary Beth McLeod
Team Leader

Attachment