



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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

REGION IX  
CALIFORNIA

September 14, 2015

Jim Cloney  
Superintendent  
2200 Eureka Way, Suite B  
Redding, CA 96001

(In reply, please refer to case no. 09-15-1326.)

Dear Superintendent Cloney:

On May 1, 2015, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Shasta Union High School District (District). The complaint alleged that the District (1) failed to provide the Complainant's son (Student) with a free, appropriate public education (FAPE) by failing to evaluate him in a timely manner even though it had reason to believe that he needed special education or related services because of a disability; and (2) discriminated against the Student on the basis of his disability by referring the Student to the Student Attendance Review Board (SARB) without following adequate evaluation and placement procedures.<sup>1</sup>

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction under Title II of the Americans with Disabilities Act of 1990 (Title II) over disability discrimination complaints filed against public educational entities. The District receives funds from the Department and is subject to the above laws and their regulations as enforced by OCR.

Under Article III, Section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved at any time when, before the conclusion of an investigation, a recipient expresses interest in resolving the complaint. Prior to the conclusion of OCR's investigation, the District expressed interest in resolving the allegation through a voluntary resolution agreement (Resolution Agreement). This letter summarizes the applicable legal standards and how the complaint was resolved.

## **I. Legal Standards**

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

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<sup>1</sup> OCR previously notified the District of the names of the Complainant and Student and is withholding their names in this letter to protect their privacy.

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

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 individualized education program (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.

Section 104.35(a) of the regulations requires 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(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used.

Section 104.35(c) of the regulations requires that placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic reevaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

## **II. Factual Background**

- The Student is a rising 10<sup>th</sup> grader at XXXXXXXX XXXX School (School) in the District and has a medical diagnosis of Attention Deficit Hyperactivity Disorder. The District identified the Student as an individual with a disability under the category of Specific Learning Disability in June 2015. The Complainant alleges that the District failed to conduct a timely evaluation of the Student and improperly disciplined him on the basis of his disability.
- The District has several Board Policies and Administrative Regulations related to the evaluation and placement of students with disabilities, BP 6164.6, "Identification and Education Under Section 504", which states that the identification, evaluation and placement process for students with disabilities will be completed within a reasonable amount of time. BP 6146.6 states that if it is determined a Section 504 evaluation is unnecessary, the parent/guardian is to be informed of the decision in writing and provided notice of procedural safeguards. The District's Administrative Regulation (AR) 6159.1, Procedural Safeguards and Special Education Complaints, also states that a procedural safeguards notice shall be made available to parents upon an initial request for an assessment.
- The District's BP 5144, "Discipline", provides the District's general student discipline policy. The accompanying administrative regulation AR 5144, permits suspension of students

in accordance with state law, and District policies and regulations, and AR 5144.1 provides the District's definition and specific process for student discipline and expulsion. The District's AR 5144.2 governs the suspension and expulsion of students with disabilities. AR 5144.2 requires that a manifestation determination be held if a student with a disability has been suspended more than 10 consecutive days, or subject to a series of removals that constitutes a pattern, or when a change in placement is contemplated due to the student's conduct.

- The District and Complainant expressed differing positions regarding the extent to which appropriate interventions were made for the Student, and timeliness of the District's evaluation. OCR reviewed records and correspondence provided by the District and Complainant, and interviewed the Complainant regarding her allegations. The data reviewed by OCR indicated that the Complainant first requested a Section 504 evaluation of the Student in March 2015, and that the District completed its evaluation in late May 2015. The data reviewed by OCR also indicated that during the 2014-2015 school year, the Student received a SARB referral for attendance and discipline related issues prior to being identified as an individual with a disability. The District stated that the Student's SARB referral was subsequently withdrawn.

### **III. Resolution**

The District, without admitting any violation of federal law, has voluntarily agreed to enter into the enclosed Agreement with OCR to resolve the complaint. Under the terms of the Agreement, the District will: promptly convene an IEP team meeting for the Student; consider specific recommendations made in the Student's psychoeducational evaluation; ensure its determinations regarding regular and special education and related aids and services for the Student are based on his individual needs; develop a credit recovery and graduation plan; and monitor the implementation of the IEP, credit recovery and graduation plan, and any applicable behavioral support plan. In addition, the Agreement requires the District issue the Complainant written notice that the Student does not have an outstanding SARB referral, and provide the Complainant with information regarding the discipline of students with disabilities.

OCR has determined that, once implemented, the Agreement will resolve the issues in this complaint. Therefore, OCR is closing this complaint as of the date of this letter. OCR will monitor the implementation of the enclosed Agreement and may reopen the investigation if the District does not comply with the Agreement. OCR is notifying the Complainant of the closure of this complaint concurrently.

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.

It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Under the Freedom of Information Act, this document and related records may be released upon request or made public by the United States. In the event that the United States receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

OCR would like to thank the District for its cooperation during this investigation. If you have any questions regarding this letter, please contact OCR attorney Kendra Fox-Davis at (415) 486-5418 or [kendra.fox-davis@ed.gov](mailto:kendra.fox-davis@ed.gov).

Sincerely,

/s/

James M. Wood  
Team Leader

Enclosure