



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

January 6, 2017

Norma E. Martinez
Superintendent
Centralia Elementary School District
6625 La Palma Avenue
Buena Park, California 90620-2859

(In reply, please refer to case no. 09-16-1327.)

Dear Superintendent Martinez:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Centralia Elementary School District (District). OCR investigated whether the District discriminated against the Student¹ based on disability and race/national origin when it failed to evaluate the Student in a timely manner even though it had reason to believe that the Student needed special education or related services because of a disability.

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. Section 504 prohibits discrimination on the basis of disability by recipients of federal financial assistance. OCR is also responsible for enforcing 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. Title II prohibits discrimination on the basis of disability by public entities.

OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and its implementing regulation, at 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin by recipients of Federal financial assistance.

As a recipient of federal financial assistance and as a public education system, the District is subject to Section 504, Title II, Title VI and their implementing regulations.

OCR gathered evidence through interviews with the complainant and relevant District administrators and staff. OCR also reviewed documents and records submitted by the District.

¹ OCR notified the District of the identities of the complainant and the Student when the investigation began. We are withholding their names from this letter to protect their privacy.

OCR concluded that the evidence established a violation of Section 504 and Title II. OCR did not reach a compliance determination with respect to the issue alleging discrimination based on race/national origin because it was voluntarily addressed by the District prior to OCR completing our investigation of this issue.

The facts gathered during the partial investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Issue 1: Whether the District discriminated against the Student on the basis of disability by failing to assess him in a timely manner for special education and related services even though it had reason to believe that the Student needed special education or related services because of a disability.

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 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. In this regard, school districts must ensure that all students who may have a disability and need services under IDEA or Section 504, are located, identified, and evaluated for special education and disability-related services in a timely manner. 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.

Findings of Fact

- From kindergarten through third grade, the Student was enrolled in a private school. The complainant informed OCR that, due to concerns raised about the Student's speech, she decided to enroll him in a public school beginning in fourth grade. At that time, the family resided in the XXXXXXXX Unified School District (USD). According to the complainant, XXXXXXXX USD assessed the Student and determined that he had a speech impairment. OCR requested a copy of this document from the Complainant but it was never provided.
- Prior to the commencement of the 2015-16 school year, the complainants moved to the enrollment area of the District. The Student was enrolled in the fourth grade at an elementary school (School) in the District at the start of the 2015-16 school year.
- The District stated that it did not receive any documentation from the Student's former school informing them that the Student was disabled and receiving accommodations for it. The District also stated that they had no written documentation reflecting that the complainant requested speech therapy assessment and services for the Student.
- The complainant stated that she spoke to the Student's teacher several days after school started on August 14, 2015, to discuss the Student's speech problems, and that the teacher acknowledged the problem. The complainant stated that she offered to provide the teacher with a copy of the Student's assessment report from Cypress USD but the teacher declined it. The complainant stated that she requested speech therapy services for the Student, but the teacher advised her to obtain private therapy services because the District had cut off funding for speech services. The complainant stated that she subsequently hired a private speech therapist for the Student.
- The complainant stated that during a conference held on September XX, 2014, with the teacher, she again requested speech therapy services for the Student. Although the teacher said that the School had a part-time speech therapist, the complainant stated that the teacher advised her to continue using her private speech therapist because the School's speech therapist was not good.
- The teacher strongly denied having discouraged the complainant from pursuing speech therapy services through the District because of funding or because of the quality of services available from the School's speech therapist. She stated that the complainant never specifically requested a speech and language assessment.

- The teacher stated that she observed that the Student had articulation problems and approached the Student's mother about it within the first two weeks of school. She said that the Student's mother acknowledged that she was aware of this problem, and informed her that the Student's former teachers had raised this concern with her, and he had transferred to the public school system in order to get speech therapy services.
- The teacher said that she informed the complainant that, before the Student could be referred for a speech assessment, she would need to observe the Student in class to determine whether his speech difficulties were interfering with his academic success. She stated that she would need to "get to know how he was doing academically" before she could refer him for speech services.
- The teacher acknowledged that when asked, she had advised the complainant to obtain private speech therapy services if she wanted, "since it would take me some time to assess him."
- The teacher stated that she and the complainant met regularly on Friday afternoons and discussed the progress the Student was making through his private speech therapy services. She stated that when they met on Friday, September XX, she informed the complainant that the Student was doing well academically and socially, and that they did not discuss the Student's speech issues. The District did not provide notes or documentation from this meeting.
- The District's Board Policy and Administrative Regulations 6164.6 outline the policy and procedure for identifying and evaluating students with disabilities under Section 504. Under the procedures, a parent/guardian, teacher, other school employee, student success team, or community agency may refer a student to the principal or Section 504 Coordinator for identification as a student with a disability. The Principal and/or Section 504 Coordinator will determine whether an evaluation of the student is appropriate based on a review of the student's school records, including those in academic and nonacademic areas of the school program; consultation with the student's teacher(s), other professionals, and the parent/guardian, as appropriate; and an analysis of the student's needs. The Principal or Section 504 Coordinator must inform the parents/guardians in writing if an evaluation is unnecessary and provide them with a copy of the Procedural Safeguards. Otherwise, upon obtaining written parental consent, the District will conduct an evaluation.
- The District did not evaluate the student to determine whether he had a speech/language disability and needed special education or related services. The complainant was not formally notified that the Student would not be evaluated or that she had the right to contest this decision not to refer for evaluation or evaluate through the District's Section 504 procedural protection system.

Analysis & Conclusions of Law

The Section 504 regulation, at 34 C.F.R § 104.35, requires that a school district conduct an evaluation of any student who, because of disability, needs or believes to need special education or related services. In addition, section 104.36 of the regulation requires districts to implement a system of procedural safeguards that provides parents notice of decisions regarding the identification and evaluation of their children and an opportunity to challenge these decisions through an impartial hearing. Pursuant to these regulations, when a parent provides a school district with information indicating that a student may have a disability, or that the parent believes the student needs special education or related services, the district is required either to conduct an evaluation of the student or to inform the parents of its determination that the student does not require an evaluation, and of their procedural process rights.

In this case, the complainant and the teacher discussed the Student's apparent difficulties with articulation. While their accounts of the discussion differ slightly, the teacher acknowledged that the complainant made it clear that she had enrolled the Student in public school in order to obtain speech and language services. She stated that she informed the complainant that she could not refer the Student for evaluation until she had observed him for "some time." The teacher also acknowledged that she suggested that the complainant might want to obtain private speech services during this observation period. When the private services proved successful, the teacher concluded that District-provided services were unnecessary and took no further steps either to refer the Student for evaluation or to inform the complainant about her due process rights.

OCR concluded that, whether or not the complainant explicitly requested that the Student be evaluated for speech/language services, she clearly informed the teacher that she and the Student's former teachers believed such services were necessary. Because the complainant informed the District that she believed the student was disabled and needed special education or related services, the District was obliged either to conduct an evaluation or provide the Student's parents with clear notice that it considered such an evaluation unnecessary and of the procedural protections available to them. Because the District took neither of these actions, OCR concluded that it had not complied with the requirements of Section 504 and its implementing regulations.

To resolve this issue, the District has agreed to implement the enclosed Resolution Agreement (Agreement). The Agreement requires the District to 1) complete an assessment of the Student in the area of speech and language upon receiving the Student's parents' permission to assess; 2) convene an individualized education program (IEP) meeting to review the results of the speech assessment and any other relevant information to determine whether the Student has a disability and whether he requires accommodations, modifications, special education or related services; 3) reimburse the complainant for private speech therapist services obtained for the Student during the 2015-16 school year which were not covered by insurance, up to \$1,000; 4) develop a written guidance memorandum for staff outlining its procedures for

addressing the needs of students who may have a disability under Section 504 or Title II and their implementing regulations; and 5) provide training on the Guidance Memorandum to all teachers and administrators at the School.

Issue 2: Whether the District subjected the Student to different treatment based on race/national origin when it failed to evaluate the Student in a timely manner.

Legal Standards

Under the Title VI regulations, at 34 C.F.R. § 100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Section (b)(1) states that a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin, (i) deny an individual any service, financial aid or other benefit; (iv) restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit; or (v) treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility or other requirement which must be met to receive any service, financial aid, or other benefit.

To determine whether a student has been subjected to discrimination on the basis of race/national origin under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other races/national origins under similar circumstances, and whether the treatment has resulted the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's race/national origin.

Findings of Fact

- The complainant stated that although the teacher referred two Caucasian students for speech therapy services during the 2015-16 school year, she did not refer the Student because he is XXXXXX.
- The complainant also stated that, when she requested speech therapy services for the Student during a September 25, 2015, parent-teacher conference, the teacher responded that the Student's speech problem resulted from his accent rather than a speech impairment.
- The teacher denied making any comment attributing the Student's speech difficulties to his accent. The Student's primary language is English, and he has not been identified as an English learner.

Analysis & Conclusions of Law

Title VI and its implementing regulations prohibit school districts from treating similarly situated students differently on the basis of their race or national origin. A decision to refer only white students for assessment for speech and language disabilities, while refusing to refer a XXXXXX student with similar difficulties would constitute different treatment in violation of Title VI. A decision to dismiss a parent's concerns about a possibility of a speech disability because of the student's perceived accent would also raise concerns about different treatment.

OCR's interviews with the complainant and the teacher did not provide sufficient to establish that the Student's teacher attributed his speech difficulties to an accent. In order to complete its investigation of the complainant's allegation of discrimination based on national origin, OCR would have needed to obtain records of other students at the School who were referred for speech and language assessment, and interview staff as to the differences between those students and the Student. During the course of OCR's investigation process, the District expressed an interest in resolving this allegation. OCR concluded that implementation of the Agreement referenced above, including the evaluation of the Student, will resolve the allegation. For this reason, OCR did not complete its investigation or reach findings or conclusions as to whether the District had failed to comply with Title VI and its implementing regulations.

When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with the statute(s) and regulations at issue in the case.

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 is closing the investigation of this complaint as of the date of this letter, and notifying the District concurrently. The complainant may have the right to file a private suit whether or not OCR finds a violation.

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 Complainant 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.

If you have any questions, please contact Danette Ng, Investigator, at (415) 486-5539.

Sincerely,

/s/

Kana Yang
Acting Team Leader

cc: Robert French, Assistant Superintendent, Human Resources (by email)
Steven Andelson, General Counsel (by email)