



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

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CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

August 3, 2015

Dr. Eugene T.W. Sanders
Chief Executive Officer and Superintendent
Sandusky City Schools
407 Decatur Street
Sandusky, Ohio 44870-2483

Re: OCR Docket #15-14-1312

Dear Superintendent Sanders:

This letter is to notify you of the disposition of the above-referenced complaint, filed against the Sandusky City Schools (the District), which the U.S. Department of Education's Office for Civil Rights (OCR) received on September 8, 2014, and which alleged that the District discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that during the 2013-2014 school year, the District failed to identify and evaluate the Student as an individual with disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits 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; thus, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR opened an investigation to examine whether the District failed to evaluate a student with a suspected disability in a timely manner in violation of Section 504's implementing regulation at 34 C.F.R. § 104.35(a).

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Applicable Legal and Policy Standards

Under Section 504, a school district may not, on the basis of disability, exclude a qualified student with a disability from participation in, deny the student the benefits of, or otherwise subject the student to discrimination under any of its programs or activities. 34 C.F.R. § 104.04(a).

The regulation implementing Section 504, at 34 C.F.R. § 104.33, provides that a recipient that operates a public elementary or secondary education program or activity must provide a free appropriate public education (FAPE) to each qualified individual with a disability within its jurisdiction. An appropriate education 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 students without disabilities are met and that are based upon adherence to procedures that satisfy the educational setting, evaluation and placement, and procedural safeguards requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36.

To be eligible for a FAPE, a student must have a physical or mental impairment that substantially limits one or more major life activities. This determination must be made on the basis of an individualized inquiry. Major life activities to be considered are not limited to learning and include, but are not limited to, functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, working, eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Major life activities also include the operation of major bodily functions, such as the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. 34 C.F.R. § 104.3(j)(1)(i), as amended by the Americans with Disabilities Act Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008).

The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires school districts to evaluate any child who, because of disability, needs or is believed to need special education or related aids and services.

The regulation implementing Section 504, at 34 C.F.R. § 104.35(b) requires recipients to establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services. The regulation at 34 C.F.R. § 104.35(c) requires that, in interpreting evaluation data and making placement decisions for students with disabilities, a recipient must: (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 placement options; and (4) ensure that the placement decision is made in conformance with the educational setting requirements at 34 C.F.R. § 104.34.

If a school district determines, based on the facts and circumstances of an individual case, that a medical assessment is necessary to make an appropriate evaluation consistent with 34 C.F.R. § 104.35(a) and (b), the district must ensure that a child receives this assessment at no cost to the parents. If alternative assessment methods meet the evaluation criteria, these methods may be used in lieu of a medical assessment.

Although the Section 504 regulation does not set forth specific timeframes by which recipient school districts must complete evaluations of students, a recipient school district must ensure that qualified students with disabilities are evaluated and provided access to meaningful educational services without unreasonable delay. OCR will consider, as guidance, state-required timeframes for evaluations as well as a school district's internal guidelines to determine whether the evaluation has been completed within a reasonable time. Ohio Administrative Code 3301-51-06(B)(3) states that, within 30 days of receipt of a request for an evaluation, the district will either obtain parental consent for an initial evaluation or provide to the parents written notice stating that the school district does not suspect a disability and will not be conducting an evaluation. Ohio Administrative Code 3301-51-06(B)(4) states that the initial evaluation must be completed within 60 days of receiving parental consent for the evaluation, although the timeline can be extended if agreed to by mutual written agreement of the parent and the group of qualified professionals.

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts may always use regular education intervention strategies to assist students with difficulties in school. However, Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if a student, because of disability, needs or is believed to need such services. Interventions should not delay referral for evaluation where such a delay would be inconsistent with meeting the district's obligations under Section 504.

The Section 504 regulation, at 34 C.F.R. § 104.36, requires a recipient that operates a public elementary or secondary education program or activity to 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. Compliance with the procedural safeguards of the Individuals with Disabilities Education Act is one means of meeting this requirement.

Under Section 504, if a parent requests an evaluation, the district may (1) evaluate the student within a reasonable amount of time; or (2) decline to evaluate the student because the district does not believe that the student has a disability within the meaning of Section 504. In the latter case, the procedural safeguards requirement of 34 C.F.R. § 104.36

requires the district to provide notice to the parent of its determination and resulting refusal to evaluate and the parent’s right to challenge the district’s decision by requesting an impartial hearing by a person knowledgeable about Section 504 (an impartial due process hearing).

Summary of OCR’s Investigation to Date

To date, OCR has interviewed the Student’s parent (Parent) and has reviewed documentation submitted by xxx and by the District.

[x--- paragraph redacted---x]

[x--- paragraph redacted---x]

The District provided OCR with a timeline of events that lists xxxxxxxxx x xxxx, as the initiation date for its Section 504 process with regard to the Student, when legal protections began and records releases were signed for the Student’s physicians. Another District-prepared document states that interventions were set to begin that day.

[x--- paragraph redacted---x]

According to the District, the District initiated its evaluation process, but the Student’s parent refused to provide consent to evaluate. According to the Parent, she objected not to the evaluation, but rather to the method proposed, which she stated would include the Student having xxxxx xxxxxxxx xxxxxxxx the District could observe. Information provided by both parties confirms that the Parent wanted the Student placed on xxxx xxxxxxxxxx, that the District informed the Parent in writing in xxxxxx xxxx that it considered she had refused consent for an evaluation, and that the Parent notified the school xxxxxxxxxx, by xxxxxxxx xxxx, that she had not refused an evaluation but rather had objected to the evaluation method proposed.

Information provided by both parties supports that, with the intervention of the District’s superintendent, the District began xxxx xxxxxxxxxx for the Student on xxxxxxxx x xxxx. The Parent informed OCR that testing delayed implementation of xxxx xxxxxxxxxx and that instruction delivered was inappropriate, and she also provided documentation regarding dates on which the instructor reportedly cancelled sessions. The District provided OCR with documentation of dates when services reportedly were and weren’t provided, including sessions cancelled by the Student/the Parent and the instructor.

Both parties provided OCR with information supporting that they met again in xxxxx xxxx about a Section 504 plan for the Student and again in xxxxx xxxx to agree on and sign a Section 504 plan. The District also provided information to document that the Parent enrolled the Student in a xxxxxxx xxxxx for the 2014-2015 school year.

OCR notes that it has worked with the District on revision of its Section 504 policies and procedures and is providing the District with technical assistance concerning the identification, evaluation, and placement of students under Section 504.

Voluntary Resolution Prior to Conclusion of Investigation

Prior to the completion of this complaint investigation, the District asked to resolve the complaint under Section 302 of OCR's Case Processing Manual (CPM) by signing a voluntary resolution agreement (Agreement). The CPM 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 allegation(s). 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. The provisions of the resolution agreement are to be aligned with the complaint allegation(s) or the information obtained during the investigation and consistent with applicable regulations.

Under terms of the Agreement, the District will invite the Parent and personnel from the Student's current school to a meeting to determine what compensatory education and remedial services are necessary to remedy any deficits the Student has from the time period in question, ensuring that the Student's parent will have a meaningful opportunity to provide input; develop a plan to provide those services; and provide the Parent with notice of the determinations made and of the procedural safeguards afforded under Section 504. The District will then provide the services, with the consent of the Parent, and document their provision for OCR or will document for OCR the Parent's lack of consent or failure to make the Student available for receipt of services.

In light of the signed Agreement, OCR finds that this complaint is resolved and is closing this 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 resume its investigation of the complaint allegations.

Conclusion

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.

We appreciate the cooperation of the District's legal counsel during the resolution of this complaint. We look forward to receiving the District's first monitoring report, which is due by August 31, 2015. You may send the report to xx xxxxxxxx xxxxxx, who will be monitoring the District's implementation of this agreement. Xx xxxxxx may be reached at (xxx) xxx-xxxx or at xxxxxxxx.xxxxxx@ed.gov. If you have any questions about this letter, you may contact OCR staff person xx xxx xxxxxx at (xxx) xxx-xxxx or at xxx.xxxxxx@ed.gov.

Sincerely,

/s/

Lisa M. Lane
Supervisory Attorney/Team Leader

cc: xxxxxxx x xxxxxxxx.

Enclosure