



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

January 31, 2023

Dr. Almi G. Abeyta
Superintendent
Chelsea Public Schools
By email: superintendent@chelseama.gov

Re: Complaint No. 01-14-1131
Chelsea Public Schools

Dear Dr. Abeyta:

This letter advises you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of the Chelsea Public Schools (District). OCR opened an investigation after receiving the above-referenced complaint. The Complainant alleged that the District discriminated against her son (Student), on the basis of disability. While we strive to resolve the complaints we receive in a timely manner, we acknowledge the length of time OCR has taken to resolve this case, and we thank the District for its patience.

OCR investigated the following legal issues:

1. Whether the District denied the Student a free appropriate public education (FAPE) when it failed to timely and appropriately evaluate the Student after the Complainant notified the District that he had a disability, in violation of 34 C.F.R. § 104.35 and 28 C.F.R. §35.130;
2. Whether the District denied the Student a FAPE and an equal opportunity to participate in its programs and activities by its use of the CDA room and physical restraint, in violation of 34 C.F.R. §§ 104.4 and 104.33-104.35, and 28 C.F.R. § 35.130; and
3. Whether the District denied the Student a FAPE by significantly changing his placement to home tutoring without convening a team, in violation of 34 C.F.R §104.35 and 28 C.F.R. § 35.130.

OCR enforces 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, which prohibit discrimination on the basis of disability in any program or activity operated by a recipient of Federal financial assistance from the U.S. Department of Education. OCR also enforces 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, which prohibit discrimination on the basis of disability by public entities. Because the District receives Federal financial assistance from the U.S. Department of Education and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

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

During its investigation, OCR reviewed materials provided by the District and the Complainant. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement.

Legal Standards

Section 504 requires school districts to provide a FAPE to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. *See* 34 C.F.R. § 104.33. 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 students without disabilities are met and are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36. 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.

A student has a “disability” if the student (i) has a physical or mental impairment that substantially limits one or more major life activities, (ii) has a record of such impairment, or (iii) is regarded as having such an impairment. *See* 34 C.F.R. § 104.3(j) (1). The regulation defines “physical or mental impairment” as “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genito-urinary; hemic and lymphatic; skin; and endocrine; or...any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.” *See* 34 C.F.R. § 104.3(j) (2). The ameliorative effects of any mitigating measures, except glasses/contacts, should not be considered when assessing whether an impairment substantially limits a major life activity.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that a district 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 regulation at 34 C.F.R. § 104.35(b) provides that a district shall 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.

Moreover, the Section 504 regulation at 34 C.F.R. § 104.35(c) provides that in interpreting evaluation data and in making placement decisions, a district shall (1) draw upon information from a variety of sources, including physical condition and adaptive behavior;¹ (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

¹ The regulation at 34 C.F.R. § 104.35(c)(1) also lists the following possible sources: aptitude and achievement tests, teacher recommendations, and social or cultural background.

§104.34, which requires placement in the regular educational environment to the maximum extent appropriate. Where a student with a disability is so disruptive in a regular education classroom that the education of other students is significantly impaired, however, the needs of the student with a disability might not be met in that environment.

Additionally, when a student exhibits behavior that interferes with the student’s education, or the education of other students, in a manner that would reasonably cause a teacher or other school personnel to suspect that the student has a disability as defined under Section 504, the school district must evaluate the student to determine if the student has a disability and needs special education or related services because of that disability. For a student who has already been identified as a student with a disability, a school’s repeated use of restraint or seclusion may suggest that the student’s current array of regular or special education and related aids and services is not sufficient to provide FAPE.²

The Section 504 regulation does not impose a specific timeline to complete the evaluation. As indicated above, however, a student’s appropriate placement must be determined by the evaluation team before a placement is implemented. Optimally, as little time as possible should pass between the time when the student’s possible eligibility is recognized and the district’s evaluation; an unreasonable delay in this process may have the effect of denying students with disabilities meaningful access to educational opportunities.³

The Section 504 regulation at 34 C.F.R. § 104.35(a) also requires that a district conduct an evaluation prior to any significant change in a student’s placement, such as a change to the student’s current setting that is materially more or less restrictive, or that includes more or fewer supports.

Section 504 applies to school officials, school employees, and everyone over whom a school exercises some control, whether through contract or other arrangement, including school resource officers, whether they are school district employees or work for a non-district law enforcement agency. 34 C.F.R. § 104.4(b)(1). Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school policies, including restraint, by relying on

² OCR’s Civil Rights Data Collection (CRDC) defines “physical restraint” as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort, which is a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

OCR defines “seclusion” as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. The term does not include a timeout, which is a behavior management technique that is part of an approved program involving monitored separation of the student in a non-locked setting and is implemented for the purpose of calming.

³ Timeframes imposed by the IDEA may serve as helpful guidance in determining what is reasonable, as are state timelines for special education evaluations. The IDEA regulation, at 34 C.F.R. § 300.301(c)(1), requires that school districts complete evaluations within 60 days of receiving parental consent for the evaluation, unless the state has established a different timeline, in which case evaluations must be completed within the state’s timeline. Massachusetts’ regulations, at 603 CMR 28.05, require that evaluations, eligibility determinations, and IEP proposals be completed within 45 school days after receipt of a parent’s written consent to an evaluation or reevaluation.

school resource officers, school district police officers, contract or private security companies, security guards or other contractors, or other law enforcement personnel to administer school policies. 34 C.F.R. § 104.4(b)(1).

As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

Findings of Facts

On XXXXXXXX XX, XXXX, the Student started XXX grade in the District, after transferring from XXXXX Public Schools. He was in the regular education setting at that time. The Complainant spoke with District staff and shared a medical diagnosis of the Student with the District in early XXXXXXXX XXXX. The Complainant told OCR that at the same time, she also verbally requested that the District evaluate the Student for a learning disability; the District disputed this assertion.

1. The District's Relevant Policies at the Time

During the 2013-2014 school year, the District had a Section 504 Guide that, among other items, limited the list of major life activities to a finite list of 18 major life activities, and stated that students with disabilities are entitled to “reasonable accommodations” that may “not fundamentally alter the program, standards, or what students are supposed to know and be able to do.”

In addition to the Guide, the District had in place during the 2013-2014 school year its Physical Restraint Policy. The Physical Restraint Policy stated:

Physical restraint is defined as the use of bodily force to limit a student's freedom of movement. Physical restraint shall only be used as a behavior management tool when other less intrusive alternatives have failed or been deemed inappropriate. In the event that physical restraint is required to protect the safety of school community members, the Chelsea Public Schools has enacted the following policy and procedures to ensure the proper use of restraint and to prevent or minimize any harm to the student as a result of the use of restraint. These procedures shall be annually reviewed, provided to school staff, and made available to parents of enrolled students.

2. Actions Affecting the Student

On XXXXXXXX XX, XXXX, the District suspended the Student out of school for one day due to disruptive behavior, according to District records.

When the Student received another out of school suspension following “disruptive behavior” on XXXXXXXX XX, XXXX, the Complainant requested, in writing, that the Student be evaluated for disability-related services. During an XXXXXXXX XX, XXXX meeting, the District proposed that the Student be referred to the Support Program so that staff could determine whether he was a “good fit” for the program. According to District materials, the Support Program was

“designed to help children whose behavior interferes with their ability to succeed in the regular classroom setting.” It provided a small classroom setting with one special education teacher and two paraprofessionals, a 1:3 teacher to student ratio, and interventions that included daily point sheets for behavior. OCR noted that the referral form asked about medications, counselors, and psychiatrists, in addition to requiring a functional behavioral analysis.

The District indicated that students were generally not evaluated for eligibility under the IDEA or Section 504/Title II before being placed in the Support Program. One component of the Support Program was the use of the Calm Down Area (CDA), described as an empty office for use when students needed to be removed from the classroom due to behaviors that jeopardized the safety of the student, other students, and/or staff. OCR found that some CDA data sheets used to document referrals of students to the CDA were not fully completed, while others contained conflicting information about the start and finish, or the total length of time, of a CDA referral. In addition, the data sheets did not clearly indicate whether a staff person remained in the CDA room with students at all times or whether students were permitted to leave.

On XXXXXXXX XX, XXXX, the Student started the Support Program. A week into the program, staff began sending him to the CDA for disruptive behavior.

The District began special education evaluations of the Student on XXXXXXXX XX and completed them on XXXXXXXX XX, XXXX. On XXXXXXXX XX, XXXX, the District created a proposed IEP for the Student that called for him to be placed out-of-district in a program with significant academic and behavioral supports. The out-of-district placement did not begin until XXXXXXXX XX, XXXX; in the interim, the Student received home tutoring, which began on XXXXXXXX XX, XXXX. OCR has not determined whether the type and amount of tutoring were determined by a team, nor whether any related services were determined to be appropriate until the outside placement began, and if so, whether they were provided.

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3. Changes to the District’s Relevant Procedures, Policies, and Training

During the investigation, OCR learned that the Support Program and its CDA have been discontinued and are no longer in use. The District informed OCR that the Support Program was closed after the 2015-2016 school year because the District did not have the space to expand the program. Thereafter, students from the Support Program were placed out of the District.

Furthermore, Massachusetts adopted comprehensive regulations on restraint and seclusion that went into effect on January 1, 2016.⁴ Accordingly, the District modified its restraint policy to permit restraint “only...[as] an emergency procedure of last resort when a student’s behavior poses a threat of assault, or imminent, serious, physical harm to the student or others and when the student is not responsive to verbal directives or other less intrusive alternatives have failed or

⁴ OCR found no significant differences between the definitions of restraint or seclusion used by the CRDC/OCR and Massachusetts law.

been deemed inappropriate to keep a student and all other members of the school community safe.” Relatedly, the District now prohibits seclusion in compliance with State law.

The District now provides information about Section 504 on its webpage under “Student Services.”⁵ The webpage indicates that a person has a disability if they have a “physical or mental impairment which substantially limits one or more major life activities.” The webpage states that Section 504 does not “specific[ally] mention ... learning disabilities,” but notes that “learning, reading, thinking and concentrating among others ... are all considered major life activities.”

The District’s webpage also publishes its “Special Education Process and Procedure Manual.”⁶ The Manual includes eligibility forms which indicate that if a student does not have a disability enumerated in the IDEA, the student is not eligible for “Special Education” but “may be eligible for accommodation(s) for disability(ies) under Section 504.” The manual states that accommodations and supports for the general education setting are changes made to provide a student with equal access to learning opportunities.

The District provided training materials to OCR, specifically a presentation titled “Review of Section 504 and Special Education Laws and Regulations.” The District represented that this training had been provided to staff in 2014 and 2016, and is currently provided online for new staff.

The training materials indicate that under Section 504, a qualified student is one who has a physical or mental impairment that substantially limits one or more major life activities (or has a record of, or is regarded as, having such an impairment). Under “What is a [p]hysical or mental impairment that substantially limits a major life activity,” the presentation cites the broad list of “physical or mental impairment[s]” and “mental or psychological disorders” contained in the regulations at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.108. The presentation next states that “[l]earning, hearing, seeing, concentrating, thinking, and communicating are all major life activities,” but does not indicate any other examples. If staff observe that a student’s “major life activity of learning, concentrating, etc., is limited in the classroom,” the presentation indicates that they should refer the student for evaluation.

The training materials state that under Section 504, the District is obligated to provide a FAPE, but does not define what a FAPE is. Subsequent slides in the presentation indicate that Special Education is only required for students who, because of a specifically enumerated disability, are unable to progress in the regular education curriculum, and thus require specialized education.

Finally, the District provided information to OCR indicating that it has provided staff with updated trainings regarding how the change in state law and District policy regarding restraint and seclusion have impacted its Section 504 obligations.

Analysis

⁵ [District Student Services Webpage - Section 504/Title IX](#) (last visited Sep. 13, 2022).

⁶ [District Student Services Webpage - Special Education Process and Procedure Manual](#) (last visited Sep. 13, 2022).

During its investigation, OCR identified a concern regarding the District's evaluation and placement practices. As to the Student, OCR is concerned that the District had sufficient information to know or suspect that the Student needed special education or related services due to disability, yet it did not take steps to evaluate him before simply placing him in the Support Program. Also as to the Student, OCR is concerned that the decision to place the Student on home tutoring pending the start of his out-of-district placement may not have been the result of a team process.

OCR also identified concerns as to whether the District's use of the Support Program and its CDA for behavior management comported with Section 504, as to the Student and other students. As to the Support Program, OCR is concerned that the District may have bypassed or otherwise failed to uphold Section 504 obligations by utilizing the Support Program as a regular education program, as opposed to a special education program or related service. Many features of this program indicated that it was not a general education program: instruction was provided by special education staff; it had comparably fewer students and a significantly smaller student to staff ratio; and most notably, it had referral criteria that very strongly suggested that eligible students might be students with disabilities under Section 504/Title II, and thus be entitled to FAPE. For example, the Support Program's referral criteria required that students' disruptive behavior interfere with their ability to be in the regular classroom setting. Also, upon referral to the Support Program, the District requested information about students' medication and medical care, and required a functional behavioral analysis.

As to the CDA that was part of the Support Program, OCR identified a concern because the District did not clearly track the bases for referral and the amount of time that students in the Support Program spent in the CDA. As such, OCR is concerned the District may not have tracked repeated or increasing use of the CDA that might have indicated the need to evaluate or re-evaluate a student. Also, without tracking time lost to the CDA, the District could not assess the need for compensatory services to ensure the provision of FAPE. Finally, to the extent use of the CDA amounted to seclusion, staff may have failed to record and report that use as required by OCR's CRDC.

Although the District discontinued the Support Program and the CDA that it housed, the District did not cite reasons that address OCR's concerns with the District's use of the program. Specifically, it does not appear that the District identified concerns or otherwise assessed whether the Support Program comported with the requirements of Section 504 and Title II when it decided to discontinue it. Therefore, OCR has an ongoing concern as to whether the District is utilizing similar programs and whether they comport with Section 504 and Title II.

Finally, OCR is concerned that the District's current posted information and training materials on Section 504 and Title II do not fully reflect appropriate standards regarding identification, evaluation, and placement of students with disabilities. While the updated training materials provided by the District include the non-exhaustive description of major life activities from the regulation, these materials also suggest that only impairments which impact learning, concentrating, and related academic activities indicate eligibility for services under Section 504.

The Student-specific concerns can no longer be addressed in light of the Student's XXXXX XXXX; however, as explained above, they have informed broader concerns about the District's compliance with Section 504 and Title II.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving OCR's concerns, and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address these concerns. OCR will monitor the District's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

Sincerely,

Meighan A.F. McCrea
Supervisory Civil Rights Attorney

Enclosure

cc: Cheryl Watson Fisher, Esq.