



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

January 29, 2018

Sally Bachofer
Executive Director
sbachofer@cityonahill.org

Re: Complaint No. 01-15-1054
City on a Hill Charter Public Schools

Dear Ms. Bachofer:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against the City on a Hill Charter Public Schools (the District). The Complainant alleged that the District discriminated against her daughter (the Student) on the basis of disability. Specifically, she alleged that City on a Hill – New Bedford (the School) unreasonably delayed evaluating the Student for a suspected disability. She also alleged that after the Student was determined to have a disability and to require services in order to receive a free appropriate public education (FAPE), the services were not initiated in accordance with the Section 504 Plan that was developed. 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. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to students with disabilities. An appropriate education is 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 developed in compliance with Section 504's procedural requirements. OCR interprets the Title

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

II regulation, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require school districts to provide a FAPE to the same extent required under the Section 504 regulation.

While the Section 504 regulation requires a school district to conduct an evaluation of any student believed to need special education or related services before taking action toward initial placement, the regulation does not impose a specific timeline for completion of the evaluation. Optimally, as little time as possible should pass between the time when the student's possible eligibility is recognized and the district's conducting the evaluation. An unreasonable delay results in discrimination against students with disabilities because it has the effect of denying them meaningful access to educational opportunities provided to students without disabilities.

Timeframes imposed by the Individuals with Disabilities Education Act (IDEA) as well as state timelines for special education evaluations are helpful guidance in determining what is reasonable. 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 timeline established by the state. Massachusetts special education regulation at 603 CMR 28.05(1) explains that a district is obligated to provide an evaluation, convene a team meeting to review the evaluation data, determine whether a student requires special education, develop an IEP, and provide the parents with copies of the IEP within "45 school working days." More specifically, the regulation requires that a district complete evaluation assessments within "30 school working days" after receipt of parental consent for evaluation and ensure that summaries of such assessments are completed and available to parents at least two days prior to the team meeting.

Factual Background

Prior to enrolling at the School for the XXXXXX school year, the Student attended XXXXXXXX. In May XXXX, XXXXXXXX held an initial eligibility meeting (May XXXX Team Meeting) during which the Student's Team found that the Student had an emotional disability and recommended a Section 504 Plan. However, because the Student did not return to XXXXXXXX following this initial eligibility meeting, XXXXXXXX never developed a Section 504 Plan and the Student started the XXXXXX school year at the School without a Section 504 Plan in place.

The District explained in its data response that when the Student started at the School in fall XXX, the School "provided best teaching practices," such as differentiated instruction based on students' needs, and collected data and monitored the Student's performance. Following the Complainant's requests, the District convened the Student's Team on November 21, XXXX (November XXXX Team Meeting) to discuss the Student's disability, parent concerns, student concerns, teacher assessments of the Student's strengths and weaknesses, and possible accommodations. The District developed a Section 504 Plan and mailed the Complainant a copy on December 15, XXXX. According to the District, the Complainant refused to sign the Section 504 Plan.

On December 15, XXXX, the Complainant formally requested an evaluation of the Student in all suspected areas of disability and a functional behavioral assessment. The District conducted a special education assessment in January XXXX and a functional behavioral assessment in February XXXX. The District convened the Student’s Team on February 5, XXXX (February XXXX Team Meeting) to discuss the results of these evaluations. The Student’s Team found that the Student had an emotional disability, was ineligible for special education services, and was eligible for a Section 504 Plan. The Student’s Team revised the Section 504 Plan and mailed the Complainant a copy on or about February 12, XXXX.

On February 13, XXXX, the Complainant removed the Student from the School, which the Complainant asserted was due to the School’s failure to appropriately develop and implement a plan for the Student in a timely manner. On May 18, XXXX, after the Student was no longer enrolled at the School, the District held a meeting with the Complainant to discuss accommodations for the Student that could have been implemented earlier during the XXXXXXXX school year. During this meeting, the District offered compensatory services to the Student that it would coordinate with the school the Student attended at that time.

Preliminary Concerns

OCR is concerned about the steps the District took after the Student enrolled at the School to conduct any evaluations or determine if the Student was otherwise eligible for a Section 504 Plan. In order to complete its investigation, OCR would need to determine when the District first became aware of the results of the May XXXX Team Meeting held by the XXXXXXXX, including the recommendation that a Section 504 Plan should be developed for the Student. In addition, OCR would need to determine whether at the November XXXX Team Meeting the Student’s Team considered, pursuant to Section 504, whether the condition, manner, or duration of the Student’s major life activities were substantially limited by her impairment, rather than simply reviewing information from the Student’s teachers about the Student’s “strengths” and “weaknesses.” Lastly, OCR would need to determine whether the District timely evaluated the Student following the Complainant’s December 15, XXXX request and whether it appropriately considered the results of these evaluations during the February XXXX Team Meeting.

OCR would also need to request that the District provide additional documentation pertaining to its Section 504 policies, procedures, and practices for the XXXXXXXX school year, in addition to requesting additional documentation and interviewing School and District personnel regarding the Student’s evaluations and the Student’s Team meetings.

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 this complaint. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Resolution Agreement which, when fully implemented, will resolve the issues raised in this complaint. The terms of the Resolution Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. OCR will monitor the District’s implementation of the Resolution Agreement and continue to do so until it has determined that

the District has complied with the terms of the Resolution Agreement. Failure to implement the Resolution Agreement could result in OCR reopening the complaint.

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.

If you have any questions, you may contact Civil Rights Attorney Amy Fabiano at (617) 289-0007 or by e-mail at Amy.Fabiano@ed.gov.

Sincerely,

Meena Morey Chandra *w/p AMM*
Acting Regional Director

Enclosure

cc: Paul Hays, phays@cityonahill.org
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