



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

September 18, 2019

Dr. Christine Martin
Superintendent
SAU 87 (Mascenic Regional School District)
16 School Street
Greenville, NH 03048
By email: cmartin@mascenic.org

Re: Complaint No. 01-15-1087
SAU 87 (Mascenic Regional School District)

Dear Dr. Martin:

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 SAU 87 (District). The Complainant alleged that the District discriminated on the basis of disability against her daughter (Student). Specifically, she alleged that the District unreasonably delayed in implementing an educational placement for the Student, and was not implementing the services determined necessary for the Student to receive a free appropriate public education. 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 (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 any program or activity receiving 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.

Summary of Preliminary Investigation

Background

During the 2014-2015 school year, the Student was enrolled in XXXXXXXXXXXXXXXXXXXX
XXXXXX.

According to documents provided by the District, the Complainant requested an evaluation on
XXXXXXXXXX. Later in the month, she completed a referral form, which mentioned that the

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

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a free appropriate public education (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 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.

In investigating a denial of a FAPE under Section 504, OCR first looks at the services to be provided as written in a student's plan or as otherwise agreed to by the student's team. If OCR finds that a district has not implemented a student's plan in whole or in part, it will examine the extent and nature of the missed services, the reason for the missed services, and any efforts by the district to compensate for the missed services in order to determine whether this failure resulted in a denial of a FAPE.

In interpreting evaluation data and making placement decisions, the Section 504 regulation, at 34 C.F.R. § 104.35(c), requires that a school district draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; establish procedures to ensure that information obtained from all such sources is documented and carefully considered; ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and the placement options; and ensure that each student with a disability is educated with peers without disabilities to the maximum extent appropriate to the needs of the student with a disability.

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. New Hampshire state regulations, like the federal IDEA regulation, require that school districts conduct initial evaluations within 60 days of receiving parental consent. N.H. Ed 1107.01(a).

Analysis

Based on OCR’s preliminary investigation to date, there may have been a delay in evaluating the Student, there may have been a delay in implementing the Student’s Section 504 plan, and the Section 504 plan may have been made outside the team process. However, because of the District’s willingness to engage in the voluntary resolution process, OCR has not completed its investigation and is therefore not making any findings with regard to the District’s compliance with Section 504 or Title II.

As described above, evaluations should be completed within 60 days of receiving parental consent. Here, the Complainant began inquiring about the referral in XXXXXXXXXXXX, and submitted forms and contacted the Director of Student Services later that month. However, there is no indication from the District’s records that the Student was evaluated until XXXXXX. OCR interviewed the XXXXXXXXXXXX who conducted the evaluation and she had no memory of having conducted an earlier evaluation, but her memory of the evaluation was fuzzy given the passage of time. XX.

Similarly, the Complainant provided OCR with a document suggesting she did not receive a copy of the Section 504 plan before XXXXXXXXXXXX. However, the XXXXXXXXXXXX letter arguably suggests there was some communication between the School Counselor and the Student’s teachers about the plan prior to the letter. It is unclear both when that communication occurred and what the content of the communication was. OCR interviewed those of the Student’s teachers from the 2014-2015 school year who were still employed by the District, but overall their memories of that time were not clear. However, OCR has not completed its investigation on this point (i.e., it has not, *inter alia*, attempted to contact all former teachers), because the District requested a voluntary resolution of this complaint.

Finally, the notes from the XXXXXXXXXXXX team meeting indicate that the team decided a Section 504 plan was appropriate for the Student but the meeting appears to have concluded with no such plan being created. As of the date of this writing, the District has not provided any documentation of a subsequent team meeting to show that the plan was in fact created by the team. However, OCR has not completed its investigation to determine whether the Section 504 plan was created through the team process.

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 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 all of the allegations raised in the complaint. 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,

Michelle Kalka
Compliance Team Leader

Enclosure

cc: Diane Gorrow, Esq., gorrow@soulefirm.com