



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

April 26, 2018

Gregg J. Desto
Superintendent
Dudley-Charlton Regional School District
68 Dudley-Oxford Road
Dudley, MA 01571
By email to: gdesto@dcrsd.org

Re: Complaint No. 01-18-1014
Dudley-Charlton Regional School District

Dear Superintendent Gregg Desto:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the complaint we received on October 12, 2017, against the Dudley-Charlton Regional School District (the District). The Complainant alleged that the District discriminated against her daughter (the Student) on the basis of her disability. Specifically, the complaint alleged that the District failed to appropriately consider the Student's eligibility for a Section 504 plan in fall 2017 when District staff advised the Complainant that the District does not provide related aids and services to students enrolled in honors and advanced placement classes, and that the Student was required to exhaust school resources before she qualified for a Section 504 plan.

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.

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II with respect to the Student's evaluation process. OCR also identified violations of Section 504 and Title II regarding the District's Section 504 procedures.

Background

OCR determined that during the 2017-2018 school year, the Student was enrolled in 10th grade at the District's Shepherd Hill Regional High School (the School). OCR determined that in June 2017, the Student's psychologist sent a letter advising the School that the Student suffered from

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

anxiety disorder, and that the Student would undergo a psychological evaluation during summer 2017. The psychologist also recommended certain aids and services, such as extra time and preferential seating. OCR determined that the Complainant provided the psychological evaluation to the School in September 2017, and the School convened a special education team meeting on XXXXXXXXXXXX, 2017, with the Complainant in attendance, to review the evaluation. The special education team determined that the Student was not eligible for special education related aids or services, and the Complainant requested a Section 504 meeting.

OCR determined that the District convened an Instructional Support Team (IST) meeting on or about XXXXXXXXXXX, 2017, and a Section 504 team meeting on XXXXXXXXXXX, 2017, which resulted in the District's determination that the Student did not require special education or related aids and services in order to receive a free appropriate public education (FAPE).¹ The Complainant alleged that the District failed to appropriately evaluate the Student, as evidenced by District personnel advising her during these meetings that the District does not provide related aids and services to students enrolled in in honors and advanced placement classes, and that the Student was required to exhaust school resources before she qualified for a Section 504 plan.

Legal Standards

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 based on adherence to procedures that satisfy the requirements of the regulations implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36. 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 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.

Analysis

OCR determined that the District's "Procedures for 504 Eligibility Determination" (the Procedure) states that a student's guidance counselor, upon receiving a referral from a teacher or

¹ The IST meeting was attended by four IST members (who were teachers), three guidance counselors, and the Student's teachers in three classes. The Section 504 team meeting was attended by the Student's parents, three guidance counselors, and the Student's teachers in four classes.

parent, will “collect data” (including teachers’ reports, grades, and the student’s cumulative file), after which the counselor meets with the student and the student’s parents to discuss the referral process. The Procedure further states that the counselor will convene an Instructional Support Team (IST) meeting consisting of District/School personnel,² the results of which may be to: refer the student to teachers with recommendations for alternative strategies; refer the student to the IEP team for a full evaluation; or set a review date to reconvene the IST to assess the student’s progress. With respect to determinations regarding Section 504 eligibility, the Procedures states only that the District determines eligibility “with a documented disability and effect to major life function,” and “convenes a parent conference for discussion of options, including the Section 504 coordinator, parent, classroom teacher(s), counselor, and administrator.” The Procedure also states that the District “identif[ies] necessary accommodations directly linked to the disability required to create a level field of opportunity.”³

Based on the above, OCR determined that the Procedures do not state how the District will conduct the identification, evaluation, and placement of students under Section 504. While the District maintains a Section 504 team, the Procedure does not indicate that this team exists, nor does it provide a description of how determinations regarding eligibility under Section 504 are made. OCR further determined that the Procedure does not contain information about the persons who serve on the Section 504 team (i.e., the group of knowledgeable persons), including which staff member will initiate or chair the meeting. Accordingly, OCR determined that the District has not established procedures that ensure it is appropriately implementing the requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36.

OCR further determined that the Procedure lacks provisions to ensure that the Section 504 team draws upon information from a variety of sources, that the information about its placement determination from all sources is documented and carefully considered, and 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, consistent with regulation implementing Section 504, at 34 C.F.R. § 104.35(b) and (c).⁴ In addition, OCR determined that the Procedure does not include any provisions establishing a system of procedural safeguards pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.36.

OCR determined that the Procedure does not contain the correct standard for eligibility under Section 504, when it states that eligibility is determined with a “documented disability and effect to major life function.” Section 504 and Title II do not require a student to have a “documented

² The Procedure states that the personnel will include some or all of the following: IST coordinator; counselor; 1-2 classroom teachers; Individualized Education Plan (IEP) team chairperson; school psychologist; SHARP coordinator (for high school students); administrator (principal or assistant principal); nurse; speech and language pathologist; 504 coordinator; special education teacher(s); and reading specialist.

³ The remaining steps in the Procedure require the District to “[t]ake accurate and specific notes during the 504/parent conference,” and “[c]omplete a written 504 plan citing specific accommodations, review date no more than one year later.” The Procedure also indicates that when students are referred to the Section 504 process from an IEP team meeting, the evaluation process commences with the determination of eligibility under Section 504, followed by the remaining steps.

⁴ The Procedure also does not contain stated evaluation timeframes based on state education law and/or federal guidance.

disability.” Rather, pursuant to Section 504 and Title II, at 34 C.F.R. § 104.3(j) and 28 C.F.R. § 35.108, a student has a disability and is therefore entitled to individually prescribed special education or related aids and services if the student has a “(1) physical or mental impairment that (2) substantially limits (3) a major life activity.”⁵ The Procedure further states that it will identify “necessary accommodations directly linked to the disability required to create a level field of opportunity,” which is also not consistent with Section 504. Instead, the regulations implementing Section 504, at 34 C.F.R. 104.3, requires the District to provide “regular or special education and related aids and services that... are designed to meet individual educational needs of [students with disabilities] as adequately as the needs of [students without disabilities] are met.” Based on the above, OCR found that the District’s Procedure does not comply with the requirements of the regulations implementing Section 504 and Title II.

OCR determined that in practice, the District’s evaluation and placement process with respect to the Student were not consistent with the regulations implementing Section 504 and Title II. The District informed OCR that the IST’s purpose is to collect data and consult regarding the Student’s participation and access to opportunities offered at the School, and offer thoughts and ideas regarding regular education interventions and strategies that could be implemented. The District further stated that the Section 504 team determined the Student’s eligibility. However, the minutes for the Student’s IST meeting state that the IST considered information reported by the Student’s teachers and “determined that [the Student] is not eligible for a 504 Plan,” and that she would “continue to utilize accommodations” available to general education students. While some District personnel informed OCR during interviews that the IST did not determine whether or not the Student required a Section 504 plan, District personnel corroborated that the IST made a determination regarding whether the Student qualified as eligible for related aids and/or services under Section 504. Accordingly, the evidence indicated that the IST team made a determination regarding the Student’s ineligibility under Section 504, prior to the Section 504 team meeting. Based on the above, OCR determined that the evidence indicated that the District failed to ensure that the evaluation of the Student was conducted in accordance with the requirements of Section 504, at 34 C.F.R. §§ 104.35 and 104.36.

OCR further determined that the IST provided its determination to the Section 504 team, as indicated in the minutes of the Section 504 team meeting. District personnel informed OCR that at the meeting, the Section 504 team also reviewed data including the Student’s evaluation, teacher reports obtained by the IST from the Student’s teachers, and a written statement from the Student. District personnel informed OCR that the Section 504 team found the Student’s diagnosis did not substantially limit her ability to “access to the curriculum,” as the Student’s teachers reported that the Student did not require extra time on tests and performed well academically, and the Student’s psychological evaluation indicated her cognitive scores were

⁵ This includes the ADA Amendments Act No. 110-325 (2008), codified as amended at 42 U.S.C. § 12102, which sets forth the expanded definitions of physical or mental impairment, and major life activities, consistent with 28 C.F.R. Section 35.108; the revised definition and considerations for “substantially limits,” consistent with 28 C.F.R. Section 35.108, including that evaluation teams must (1) consider students in their unmitigated state, without regard to the ameliorative effects of mitigating measures and (2) that “substantially limits a major life activity does not mean substantially limits access to the curriculum;” and that teams must consider all information provided to the team, including information relating to how an alleged disability impacts the time, manner or duration of a student’s performance of any major life activity, including information derived from outside of school (clinicians and or medical diagnoses).

generally in the average or high average range; the Section 504 team concluded that the information did not support that the Student’s disability had a functional impact on her ability to take tests under timed conditions. The District’s “Determination of No Eligibility for a Section 504 Accommodation Plan,” dated October 16, 2017 (the 504 Determination) states that the Section 504 team determined that the Student was a qualified individual with a disability “by means of the diagnosis, Generalized Anxiety Disorder,” but that no accommodations, related aids or services were necessary to provide FAPE to the Student.

OCR determined that the evidence indicates that the Section 504 team did not apply the appropriate standard for determining eligibility, since the meeting minutes indicate that Section 504 team members based their determination on whether the student was “substantially limited” in accessing class material or the curriculum, rather than whether she had an impairment that substantially limited a major life activity. The 504 Determination states, in the section entitled “Outcome/Actions Recommended,” that the “IST Team and 504 Team have reviewed the data presented and have determined that... the diagnosis of [Generalized Anxiety Disorder] is not substantially limiting [the Student’s] ability to access the curriculum and perform on part to her same aged peers.”⁶ Accordingly, the Section 504 team did not consider the Student’s eligibility under the standards required by Section 504 at 34 C.F.R. § 104.3(j), and Title II at 28 C.F.R. § 35.108.

With respect to the Complainant’s assertions that the District advised the Complainant that the District does not provide related aids and services to students in honors and advanced placement classes, and that the Student was required to exhaust school resources prior to qualifying for a Section 504 plan, District staff denied that any member of the Student’s Section 504 team made any such statements to the Complainant. However, OCR determined that the minutes from the Section 504 meeting cite the “findings of the IST meeting” that “indicated that the Student has been able to access the curriculum given her diagnosis and has not exhausted all of the resources and supports at school.”⁷ Accordingly, OCR determined that the evidence indicates that the Section 504 team considered whether the Student had “exhausted supports” generally available to students, rather than appropriately assessing the Student’s individual needs based on her specific disability.

However, OCR did not find any evidence to corroborate that District personnel stated to the Complainant that students in honors or advanced placement classes were not eligible to receive related aids and services. OCR determined that the evidence indicated that the District evaluates and provides students in honors and advanced placement classes with related aids and services pursuant to Section 504 plans.⁸ The Complainant did not provide, and OCR did not find, any other evidence to support her assertion regarding this statement.

⁶ The 504 Determination also states that the “criteria for eligibility” for a Section 504 plan are that: (1) “[t]he student has a physical or mental *disability* (emphasis added); (2) which substantially limits; (3) one or more major life activities,” which incorrectly states that a student is required to have a “disability,” rather than an “impairment.”

⁷ OCR further determined that the Section 504 team made similar “follow-up recommendations” in the 504 Determination, including staying before and after school with teachers, accessing counselors/nurse as needed, and reviewing teachers’ study guides and classroom notes.

⁸ OCR determined that at the time of the investigation, 45 students in honors or advanced placement classes at the School were receiving related aids and services pursuant to Section 504 plans, and that six of the 45 students were diagnosed with anxiety disorders as a primary condition.

Conclusion

Based on the foregoing, OCR determined that there was sufficient evidence of a violation of Section 504 and Title II with respect to Complainant's allegation that the District failed to appropriately consider the Student's eligibility for a Section 504 plan in fall 2017. In addition, as described above, OCR also found that the District's Section 504 procedures failed to comply with the requirements of the regulations implementing Section 504 and Title II.

On April 13, 2018, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District is designed to resolve the issues of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the District deemed compliant when the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance. OCR will monitor closely the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information if necessary to determine whether the District has fulfilled the terms of the Agreement. Once the District has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement entered into by the District on April 13, 2018, if the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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 may 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. In the event that OCR receives such a request, it 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, you may contact Civil Rights Attorney James Moser at (617) 289-0146 or by e-mail at james.moser@ed.gov.

Sincerely,

/S/

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

Enclosure