



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

September 27, 2019

Joshua Smith
Superintendent
Regional School District 15
By email: jsmith@region15.org

Re: Complaint No. 01-18-1019
Regional School District 15

Dear Superintendent Smith:

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 Regional School District 15 (District). The Complainant alleged that the District discriminated against her daughter (Student) on the basis of disability by failing to appropriately assist the Student with applying to the College Board for accommodations on the PSAT administered on October 11, 2017, and by discouraging her from using disability-based accommodations on the PSAT (Allegation 1). The complaint further alleged that the District's actions denied the Student a free appropriate public education (FAPE) because it denied her PSAT accommodations required by her Section 504 Plan (Allegation 2).

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.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR opened the following legal issues for investigation:

- Whether the District, because of disability, denied the Student an equal opportunity to participate in or benefit from the October 11, 2017 PSAT when it failed to timely process the Student's application for accommodations from the College Board and encouraged her to take the exam without accommodations, in violation of the regulations implementing Section 504, at 34 C.F.R. §§ 104.4(a) and (b), and Title II at 28 C.F.R. § 35.130; and
- Whether the District denied the Student a FAPE by failing to appropriately assist her with applying to the College Board for the same accommodations to the October 11, 2017

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

PSAT that were required by her 504 Plan, in violation of the regulations implementing Section 504 at 34 C.F.R. § 104.33(a) and (b), and Title II at 28 C.F.R. § 35.130.

During the investigation, OCR reviewed the College Board website¹ and documents provided by the Complainant and the District. OCR also interviewed 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 (Agreement).

Background

The College Board administers standardized testing, including the PSAT, for high school students. The College Board must approve of any disability-based accommodations; once approved, the accommodations are generally in effect until one year after high school graduation and can be used on several College Board exams without making a new request.² The use of accommodations without approval of the College Board results in cancellation of test scores.³ Although students/parents can directly petition the College Board for accommodations, the College Board recommends that students/parents have school districts apply for accommodations on behalf of students.⁴

The District informed OCR that it provided general information to parents and students about the PSAT and SATs via calendars and links on its website, in addition to hardcopy and email information.⁵ The District also cited the Connecticut Department of Elementary and Secondary Education (CTDESE) guidelines regarding accommodations for students with disabilities taking the PSAT and SAT.

OCR determined that the Student's Section 504 plan dated XXXXX XXX XXXX, stated that the Student will receive XXXX XXXXXXXXXXX XXXX XXX XXXXXXXXXXXXXXXXXXXX XXX XXXXXX on the PSAT/SAT, listing the Guidance Counselor as the individual responsible for implementing the provision by sending "[r]equest sent to College Board." OCR determined that on September 24, 2017, the Complainant sent an email to the guidance counselor regarding the PSAT in October 2017 (and the PSAT 10 in February 2018) indicating that the Student needed assistance obtaining accommodations. The guidance counselor advised the Complainant to contact the District's Services for Students with Disabilities (SSD) Coordinator and stated that because it was the first time all sophomores were taking the PSAT, the District was "recommending that all students take them without accommodations" and if students "felt like they needed more time, they then can request extended time for the junior year test sitting and then have extended time for when they take the PSATs next year again."

The Complainant informed OCR that she contacted the SSD Coordinator by email on September 26, 2017, to ask what information the District needed to request accommodations from the

¹ <https://www.collegeboard.org/>

² <https://accommodations.collegeboard.org/after-approval/overview> (last accessed September 25, 2019).

³ <https://accommodations.collegeboard.org/request-accommodations/overview> (last accessed September 25, 2019).

⁴ <https://www.collegeboard.org/students-with-disabilities/reasons-work-with-school> (last accessed September 25, 2019).

⁵ Based on data response provided in OCR Case No. 01-16-1099.

College Board for the Student. The SSD Coordinator responded on September 29, 2017, that he was submitting the request and provided her with a consent form. The Complainant stated that she received a telephone call from the SSD Coordinator on October 10, 2017, notifying her that the College Board had not approved the Student's request for accommodations. The Student took the PSATs without accommodations on October 11, 2017, after which the Complainant spoke with the SSD Coordinator and sent an email stating that she had understood from their conversation that the request for the Student's accommodations was submitted after the College Board deadline and had been "unlikely to be approved in time for the PSAT."

Summary of Preliminary Investigation

Allegation 1

The Complainant alleged that the District discriminated against her daughter based on disability by failing to appropriately assist her with applying to the College Board for accommodations on the PSAT administered on October 11, 2017, and by discouraging her from using disability-based accommodations on the PSAT.

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance. Further, the regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1)(i),(ii),(iv) and (vii), states that a recipient may not, on the basis of disability, deny qualified individuals with a disability the opportunity to participate in or benefit from an aid, benefit or service; afford them an opportunity to participate or benefit from an aid, benefit or service that is not equal to that afforded others; provide different or separate aids, benefits, or services; or, otherwise limit them in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit or service. The regulation implementing Title II, at 28 C.F.R. § 35.130(b)(1)(i), (ii), (iv) and (vii), contains similar provisions.

Although the District does not govern the administration of College Board exams, its staff provide students with information and support regarding registering for and taking the exams, including the PSAT. Accordingly, the District may not provide this assistance in a manner that denies students with disabilities the opportunity to fully participate in or benefit from the College Board exams. Similarly, the District may not afford students with disabilities an opportunity to participate in, or benefit from, College Board exams that is not equal to the opportunities the District affords students without disabilities.

Analysis

Based on the above, OCR identified concerns with the District's recommendation that students take the PSAT for the first time without accommodations. During the investigation, the District provided an email it sent on March 12, 2018, to relevant District staff stating in part that "[a]ny

conversation with students or parents about the use of testing accommodations should reinforce the expectation that students *will* be using extended time or other testing accommodation” (emphasis added) and “school staff may discuss options with a student or parent, such as deciding not to use accommodations, but “should not be initiating this conversation or suggesting in any way that a student should take the test without the accommodations included in their 504 [plan]/IEP.” While the evidence indicates that the District has provided some information to staff about their responsibilities with respect to requests for College Board testing accommodations, the Agreement will ensure that the District will continue to notify staff, in addition to parents/guardians, that testing accommodations may be requested for any College Board exam.

The evidence further indicates that the District determined the Student required accommodations for the PSAT, as per her Section 504 plan, and that the District provided students with support and assistance in submitting requests for accommodations to the College Board. The evidence obtained to date suggests that the District may not have submitted the Student’s request for testing accommodations to the College Board with sufficient time to allow for processing. During the investigation, in March 20, 2018, the District also provided OCR with a document entitled “Accommodation Procedures for High School Students Taking College Board Exams,” which it disseminates at annual review meetings for students beginning in the eighth grade. The procedures include a basic overview of the process for requesting accommodations for College Board exams. While the evidence indicates that the District has implemented a process, which it provides to students/parents and staff, the Agreement will ensure that the District develops and implements comprehensive procedures regarding accommodations for College Board exams, and that it disseminates and provides notice of the procedures to students, parents, and staff.

As previously stated, because of the District’s willingness to engage in the voluntary resolution process, OCR has not completed its investigation and is therefore has not reached any findings regarding the District’s compliance with Section 504 or Title II with respect to Allegation 1.

Allegation 2

The Complainant alleged that the District’s actions denied the Student a free appropriate public education (FAPE) because it denied her PSAT accommodations required by her Section 504 Plan.

Legal Standard

The Section 504 regulation, at 34 C.F.R. §104.33, require public school districts to provide a free appropriate public education (FAPE) to all students with disabilities in their jurisdictions. 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 non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. 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. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and

35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

In some instances, IEP or Section 504 teams may determine that a student's participation in an extracurricular or nonacademic activity is required as a necessary component of the student's FAPE. If so, a school district must develop and deliver appropriate related aids and services through the IEP or Section 504 team process to enable the student to successfully participate in the activity. Where participation in an extracurricular or nonacademic activity is not required in order to provide a student with a FAPE, a school district nonetheless is required to provide the student with an equal opportunity to participate in such activities. A school district must make reasonable modifications to policies, practices, and procedures and provide aids, supports, and services necessary to ensure that the disabled student has an equal opportunity to participate, unless it can demonstrate that doing so would be a fundamental alteration to the program or would constitute an undue burden.

Analysis

While the College Board makes its own determination concerning a student's eligibility for requested accommodations, as previously stated, the Student's Section 504 plan indicated that she required an accommodation of extended time on the PSAT. The evidence also indicates that the District advised the Complainant that students were recommended to take the PSAT without accommodations the first time, despite the provision in her Section 504 plan, and that it may not have submitted her request for accommodations in a timely manner. Based on the above, the evidence indicates that the District may not have assisted the Student in a timely and appropriate manner with her request for accommodations.

As previously stated, OCR has not completed its investigation because of the District's willingness to engage in the voluntary resolution process. Accordingly, OCR has not reached any findings regarding to the District's compliance with Section 504 or Title II with respect to Allegation 2.

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 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,

Meighan A.F. McCrea
Compliance Team Leader

Enclosure

cc: Julie Fay, Esq. (via email: [XXXXXXXXXXXXXXXXXX](#))