



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
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NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

August 25, 2011

Victoria Kniewel
Superintendent of Schools
West Windsor–Plainsboro Regional School District
505 Village Road West
West Windsor, New Jersey 08550

Re: Case No. 02-11-1098
West Windsor–Plainsboro Regional School District

Dear Dr. Kniewel:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the West Windsor–Plainsboro Regional School District. The complainant alleged that the District discriminated on the basis of disability, by requiring students suspected of having disabilities to submit to a series of interventions prior to an evaluation (Allegation 1), and by failing to advise parents of their right to request a due process hearing if they disagree with the District's decision not to evaluate their child immediately (Allegation 2). The complainant also alleged that the District discriminated on the basis of disability, by requiring parents to obtain and submit medical documentation supporting the existence of a disability, at their own expense (Allegation 3), and demonstrate that students were being discriminated against prior to an evaluation (Allegation 4).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 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 programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR reviewed documentation the complainant and the District provided. OCR also interviewed the complainant, witnesses identified by the complainant, and relevant District staff. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the District discriminated, on the basis of disability, by requiring students suspected of having disabilities to submit to a series of interventions prior to an evaluation. Specifically, the complainant alleged that if a parent referred a child for an evaluation, the District required the student to submit to a series of interventions first. The complainant alleged that the evaluation was then delayed indefinitely until it could be established that intervention and referral services had not adequately addressed the student's educational problems. The complainant alleged that by implementing this requirement, the District failed to evaluate students for a suspected disability in a timely manner as required by Section 504.

OCR determined that the District's policy regarding the identification and referral of students suspected of a disability expressly provides for the direct referral of evaluation requests by parents to the CST. Further, the policy does not include a prerequisite that intervention and referral services be proven unsuccessful prior to such referral.¹

The complainant asserted that even if District policies and procedures do not explicitly require that intervention and referral services be proven unsuccessful prior to initiating a parent requested evaluation, the District, in practice, would not refer a student for evaluation until it determined that general education interventions had not adequately addressed the student's educational difficulties. In support of her allegation, the complainant identified the parent (Parent 1) of a student (Student 1) who would allegedly corroborate that the District's implementation of intervention and referral services created an unwarranted delay in determining whether Student 1 was eligible for special education and related services under Section 504.

OCR determined that Parent 1 submitted a request for evaluation for Section 504 eligibility on October 1, 2010, which was referred directly to the CST. Although the complainant alleged that the Intervention and Referral Services Committee delayed the referral of Parent 1's request for evaluation to the CST, OCR found that the CST convened on October 13, 2010, twelve (12) days after Parent 1 had submitted the request.

OCR also reviewed each of the parent initiated referrals for Section 504 evaluation that the District received during school years 2009-2010 and 2010-2011. Each student was referred for an evaluation without a delay for implementation of interventions, and a Section 504 Plan was developed for five of the six students referred for evaluation. The sixth student was found ineligible for special education and related services under Section 504.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated, on the basis of disability, by requiring

¹ The District's Director of Special Services informed OCR that although the District can advise parents as to why it believes that it would be appropriate to have the student participate in an intervention and referral services program before an evaluation is conducted, the District will not refuse to conduct the evaluation or delay the evaluation until the intervention and referral services have been tried if the District suspects the student has a disability or if the parent requests evaluation.

students suspected of having disabilities to submit to a series of interventions prior to an evaluation. Accordingly, OCR will take no further action with respect to Allegation 1.

With respect to Allegation 2, the complainant alleged that the District discriminated, on the basis of disability, by failing to advise parents of their right to request a due process hearing if they disagreed with the District's decision not to evaluate their child immediately. OCR determined that pursuant to District policy, parents who request an evaluation receive a copy of the "Parental Rights in Special Education" (PRISE) Booklet, which informs parents of the Section 504 procedural safeguards, including the right to request an impartial due process hearing as required by 34 C.F.R. § 104.36. Parents who disagree with the determination that further evaluation is not needed may request a due process hearing. Further, OCR determined that Parent 1, and other parents who referred their children for an evaluation received the PRISE Booklet.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District discriminated, on the basis of disability, by failing to advise parents of their right to request a due process hearing if they disagreed with the District's decision not to evaluate their child immediately. Accordingly, OCR will take no further action regarding Allegation 2.

With respect to Allegation 3, the complainant alleged that the District discriminated, on the basis of disability, by requiring parents to obtain and submit medical documentation supporting the existence of a disability, at their own expense, prior to an evaluation.

OCR determined that the District's "Parent 504 Memo" states:

As per your request, the Intervention and Referral Services Committee (I&RS) will be meeting to determine whether your child is eligible for services under Section 504 of the Rehabilitation Act of 1973. This meeting is necessary to determine the most appropriate school program for your child. Enclosed please find information regarding Section 504, Parent/Student rights information, a Parent/Guardian Referral Form, and two copies of a supporting documentation request. In order for I&RS to consider your request, please return the referral form along with two professional evaluations (one of which must be from a medical doctor) to your child's counselor.

Under the regulation implementing Section 504, when a school district has reason to believe that a student needs or may need special education and/or related services because of a disability, the district must conduct an evaluation. While schools may consider and/or rely on information provided by the parent, schools may not require parents to provide diagnostic information or obtain outside assessments for students as a condition of proceeding further with an evaluation.

With respect to Allegation 4, the complainant alleged that the District discriminated, on the basis of disability, by requiring parents to demonstrate that students were being discriminated against prior to an evaluation. OCR determined that the District's "504 Parent Referral Form" instructs a parent to "[d]escribe the nature of the handicap and how the child's current academic program discriminates against the student." Similarly, the District's "Section 504 Teacher Input Form" states, "When considering eligibility we must ask ourselves the following questions. Is the student currently being discriminated against? Does the student have a disability that is affecting

his learning? Is the student being precluded from participation in the learning environment because of his disability?”

The regulation implementing Section 504 does not require that a parent or teacher demonstrate that a child is being discriminated against prior to an evaluation. As stated above, the regulation implementing Section 504 requires a school district to conduct an evaluation of any student it has reason to believe needs or may need special education and/or related services because of a disability. The failure to conduct an evaluation of a student suspected of having a disability is an act of discrimination under the regulation implementing Section 504; no other proof of discrimination is needed or required under the regulation prior to initiation of the evaluation.

The District executed the enclosed Resolution Agreement to resolve Allegations 3 and 4. OCR will monitor the District’s implementation of the Resolution Agreement. Please be advised that if the District fails to comply with its terms, OCR will resume its investigation of this complaint.

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.

It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to preserve protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter 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 that if released could constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Gary Kiang, Senior Attorney, at (646) 428-3761 or Gary.Kiang@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Eric Harrison, Esq.